

THE RSPO ROULETTE:

***HOW PROFITS WIN OVER
PEOPLE AND PLANET***



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Authors

Andrew Ng
Si Siew Lim

Contributing Writer/Production Support

Erwin Navarro

Editorial Supervision

Sarojeni Rengam
Irene Fernandez

Photo Credit

Aidenvironment unless indicated otherwise

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Pesticide Action Network Asia and the Pacific
P.O. Box 1170
Penang
10850 Malaysia

www.panap.net

1 INTRODUCTION



The Roundtable on Sustainable Palm Oil (RSPO) was formed due to criticisms of the impact of the palm oil industry on the environment and people where it is cultivated. Palm oil has become a major industry in countries like Malaysia, Indonesia and others along the equatorial belt. Owing to projected increases in global demand for food, palm oil has become an increasingly lucrative crop. The advent of biofuels has further boosted demand for the crop.

The RSPO was founded in 2004 as a multi-stakeholder organisation bringing together all the different stakeholders into a common platform with equal footing to develop and manage a system for defining a new paradigm for palm oil operations in the spirit of sustainable development. As such, its membership is a reflection of the various interests, from growers to the final consumer end of the supply-chain as well as social and environmental civil society organisations (CSOs).

Currently, the RSPO has set up a third party certification scheme based on its Principles & Criteria for Sustainable Palm Oil (P&C). RSPO claims its certified palm oil constitutes 15% of the global supply of palm oil¹.

¹ RSPO. http://www.rspo.org/news_details.php?nid=183

2 THE ESTABLISHMENT OF THE RSPO

2.1 The growth and proliferation of sustainability standards

The general definition for sustainability standards “refers to a voluntary, usually third party-assessed, norms and standards relating to environmental, social, ethical and food safety issues, adopted by companies to demonstrate the performance of their organizations or products in specific areas.”² Another important aspect is that such standards are “legally non-binding and voluntary commitments made by companies so as to promote sustainability along the entire value chain”.³

It is commonly noted that the beginnings of environmental standards for products and services started with the organic movement. Today, there exists a multitude of different standards⁴ covering a broad range of issues and sectors including (among others) manufacturing (e.g. garments, food), agriculture (e.g. RSPO, Fairtrade) and resource extraction (e.g. Kimberley Process, FSC). These standards are a reflection of the changes in global governance; where decreasing government regulations have taken place simultaneously to increased global trade.

Claims have come in various forms. Self-declarations were the earliest forms and are dependent on the honesty of the claimant and the faith of consumers in these claims. The use of third party certification schemes has become de rigueur owing to lessons learnt in developing a functional system that provides the highest levels of confidence for consumers while making them practical and implementable to producers.

Typically, third party schemes rely upon the use of Certification Bodies (CB) that act as independent auditors of operations based upon a set of standards that have been developed over a set of values. These standards typically are issue based, for example the Fairtrade scheme, Forest Stewardship Council (FSC) and RSPO. The control over consistency and quality of CB assessments relies on an oversight mechanism, for example the Accreditation Systems International (ASI) or ISO. Certification audits are also paid for by producers who wish to be measured and awarded certificates against a particular standard.

² Wikipedia. http://en.wikipedia.org/wiki/Sustainability_standards_and_certification

³ Von Hagen, Oliver, Manning, Stephan and Reinecke, Juliane, Sustainable Sourcing in the Food Industry: Global Challenges and Practices (September 17, 2010). *Moderne Ernährung Heute*, Official Journal of the Food Chemistry Institute of the Association of the German Confectionery Industry, Vol. 4, p. 1-9, October 2010. Available at SSRN: <http://ssrn.com/abstract=1678472>

⁴ Based on statistics cited by ISEAL, the Ecolabel Index found 420 operational sustainability labelling initiatives in 246 countries, covering 25 different industrial sectors. From <http://www.ecobuy.org.au/director/publications/newsletter/enewsletters.cfm?itemID=950D77510F2F9CA9E315E5543739FF82&articleID=8EF8F3F0D4B4B96EB20F53A0320C0CE6>



*Burning of peat land for
an oil palm plantation*

2.2 The origin of the RSPO

By the end of the 1990s, the palm oil sector was recognised as an emerging sector expanding in Malaysia and Indonesia. Previous areas under rubber cultivation were converted throughout the period as well as expansion of new plantations into previously forested areas. Being a monoculture crop, palm oil cultivation has issues and problems that were put in the spotlight by stakeholders. Some of the most well known issues included forest loss resulting from oil palm expansion and the deplorable working conditions of plantation workers.

Increased stakeholder criticism led to the formation of the RSPO in 2004. The founding members included large multinationals like Unilever, Malaysian Palm Oil Association (MPOA) and environmental NGO WWF. The RSPO was envisaged as a multi-stakeholder organisation, following the model of the FSC, providing equal voice for all the different interests. The organisation was to be a membership-based one, where the pool of

members was to come from companies and organisations that are linked to the supply-chain or had a stake in the palm oil sector. Membership is organised along sectoral chambers. Chamber representatives make up the RSPO governance structure, the Executive Board (EB).

The goal of the RSPO was to promote the production and use of sustainable palm oil. Since inception this has been elaborated into a set of Vision and Mission statements. Their evolution reflects the progress of the organisation from its outset, and is centred on mainstreaming RSPO-certified “sustainable palm oil” in the global marketplace⁵.

The primary vehicle through which RSPO aims to achieve its goals is the application of the RSPO “standard” known as the P&C through a third party certification system. The protocol used for the certification system follow most internationally



⁵ For the full elaboration of the RSPO Vision and Mission, see http://www.rspo.org/en/vision_and_mission

known formats of using the ISO Guide 65/66 guidance, which includes accreditation to an umbrella body for certifiers as well as specific rules for Certification Bodies (CB) pertinent to RSPO's P&C. Certification Bodies (CB) are required to be accredited by Accreditation Systems International (ASI). Currently, RSPO provides two types of certificates:

- i. Production of palm oil using the RSPO Principles & Criteria,
- ii. Supply-chain for traceability to allow for claims to be made.

RSPO's standards are not static; a review process occurs periodically while various issues that face RSPO are often addressed through various mechanisms, especially by way of setting up ad hoc committees that develop solutions based on the issues and ensuring they are acceptable to the RSPO membership,

especially producers. One such example was the commissioning of a study in 2006 on paraquat, while the Smallholder Task Force has been an ever-present sub-entity of RSPO almost from the establishment of the P&C.

RSPO has created a complaints system that is meant to address grievances against the RSPO, its members or the certificates issued. They are organised into 2 main bodies, the Complaints Panel/Process (CP) and the Dispute Settlement Facility (DSF). The CP is the primary gateway for any complaints and is the central clearinghouse mechanism. It is also charged with managing cases and the Panel forms the highest level of mediation and review. However, decision-making on complaints ultimately rests with the EB⁶.

At present the RSPO claims that 15% of global palm oil is RSPO certified while its membership has exceeded 1000 individual companies, organisations and individuals⁷.



⁶ The EB is "responsible for overseeing the activities of the Complaints Panel" while 4 out of 5 CP members come from the EB itself. From http://www.rspo.org/en/system_components_and_terms_of_reference

⁷ RSPO Milestones. <http://www.rspo.org/en/milestones>

3 RSPO's OPERATING SYSTEMS

3.1 The RSPO Certification System

The essential elements of certification include the following:

1. Aspiring companies identify and appoint a CB that is already accredited and listed by the RSPO as auditors for the standard.
2. CBs then conduct onsite comprehensive assessments based on the National Interpretation of the P&C⁸ (or where national document is not present, the CB assesses based on the generic P&C). This includes consultation with relevant stakeholders, interviews with relevant interested parties (including workers, NGOs, community, contractors, etc.). Elements like legal compliance, social conflict and impacts on forest or pollution require further investigation either through desktop work or contact with relevant parties.
3. A period of public commenting is allocated for interested parties to provide input, including raising concerns or identifying issues that were missed by CBs.
4. Where the auditee has failed to meet certain criteria, a Corrective Action Request (CAR) is often raised by CBs. They are either Minor or Major depending on the seriousness of the issues and criterion covered. CARs are meant to be time-bound and action plans, as well as documentation of implementation, are considered requisite.
5. Based on the opinion of the CB, a report is generated on whether the audited entity should receive RSPO certification. According to RSPO, certificates are valid for 5 years, reviewed annually through surveillance audits by the CB while "a palm oil producer must show a plan to have 100% of its associated smallholders meet RSPO standards within 3 years"⁹.

The costs associated with certification assessment are borne by the auditee, and is a common practice amongst many similar certification schemes¹⁰. This arrangement is seen as necessary to place financial responsibility for audits upon those who stand to make the most commercial benefit from a certification. However, it also highlights a clear weakness with the system, which will be discussed in the next Section.

⁸ At present, RSPO claims that the P&C version used is the 2013 version.

⁹ RSPO Certification FAQ. http://www.rspo.org/en/RSPO_CERTIFICATION_FAQ

¹⁰ The FSC states that in order to become FSC certified "the forest manager (or owner) contracts an FSC accredited certification body to carry out an assessment." Source: <https://ic.fsc.org/forest-management-certification.38.htm>

3.2 The Strengths and Weaknesses of RSPO's Certification System

The establishment of the RSPO has provided a platform for defining a credible set of criteria for what is a less destructive form of palm oil operations where previously there was none. The RSPO was formed with the memories of long-standing stakeholder-industry conflict regarding tropical timber trade of the 1980s – 90s. The resulting industry and stakeholder deliberation on key problems created by palm oil cultivation, i.e. deforestation, social conflict, pollution and abysmal working conditions have resulted in a recognised standard on ideal palm oil production practice. The environmental and biodiversity interests have benefited greatly through successful lobby and then incorporation into the current P&C. These include:

- Biodiversity conservation and forest protection through well articulated High Conservation Value (HCV) criteria in the P&C and other enforceable instruments of RSPO;
- Introduction of a New Plantings Procedure that scrutinises (especially) land clearing and targets palm oil-caused deforestation; and,
- Greenhouse gas measures and criteria that looks to make RSPO members accountable for their carbon emissions.

Based on the track-record for environmental issues, it can be said that RSPO provides a common platform for raising important stakeholder issues with the palm oil sector, its customers

and consumers. Through a systematic and strategic approach, environmental groups within RSPO have also demonstrated that pressing issues can be turned into management criteria for producers' implementation.

Third-party certification systems are not without inherent weaknesses. CB based audit systems leave gaps in ensuring consistency, uniformity and honesty in surveillance. RSPO presently claims to have 19 certification bodies that are endorsed to carry out certification audits¹¹. Notwithstanding the experience of the listed CBs, RSPO auditors need to have strong understanding and expertise in social issues. These issues include workers rights, legal compliance and community relations.

The need to ensure that audits take into account a company's overall performance (as mandated under RSPO's Partial Certification and Anti-Flagship clause) is another serious weakness with RSPO certifications. While RSPO has developed a so-called anti-flagship clause, it remains to be seen how this is being implemented. RSPO-member IOI Plantations remains certified despite having an active grievance filed against them. IOI is featured below.

The user-pays arrangement also serves as a major point of contention for stakeholders when audits are scrutinised or challenged. The integrity of RSPO auditors and their impartiality have been called into question before.

¹¹ RSPO Certification FAQ. http://www.rspo.org/en/RSPO_CERTIFICATION_FAQ

The earliest case of a complaint against RSPO auditors in 2009 involved Control Union Certifications (CUC). Stakeholders contend that not only did CUC fail to apply partial certification (or flagshipping) requirements in their assessment of the first RSPO audit (United Plantations in Perak, Malaysia), but CUC over-stepped its role and became biased by taking a position (and opinion) regarding complainants that was not its remit as an auditor.¹²

Increasingly, stakeholder concerns as raised through audit processes appear to have little traction with CBs. In the same IOI case, when challenged by stakeholders, SGS defended the actions of IOI while making assumptions and providing unsubstantiated claims to support its approval of the producer. An early exploratory meeting that concluded with no concrete commitment to action from IOI was enough evidence for the CB

that IOI had in fact already acted to resolve the matter¹³.

In conclusion, the major weaknesses of RSPO in implementing a credible and just certification scheme relate to fundamental areas of the running of the certification protocol itself.

1. Audits for certification have been called into question for the quality of work, authenticity of claims (to support certification), piecemeal investigation into environmental & social problems, and poor implementation of stakeholder consultation.
2. Instances of biased handling of stakeholder concerns on certification candidates by certification bodies that has led to increasing scepticism amongst stakeholders.

EXPERIENCE OF SGS AND IOI

In 2010, as part of stakeholder's grievance against IOI, the audit firm SGS was commissioned by IOI Plantations to assess and report on progress. SGS remained unaware of a high profile, newsworthy accident at another IOI operation that resulted in deaths and was relevant to their assessment. This glaring oversight by SGS during the audit raises questions regarding the depth to which RSPO auditors investigate, in order to ensure there is a comprehensive and holistic appraisal of potential certification candidates¹⁴.

¹² Views attributable to authors.

¹³ SGS Respond to the Complaints Submitted by a Concerned Stakeholder. From http://www.onegrassroots.org/POMI_files/%201%20January%202010%20SGS%20Respond%20to%20stakeholder%20complaints.pdf See item 5, page 4.

¹⁴ This incident was raised through direct feedback from stakeholders to SGS. The notes on the complaint and SGS's dismissal of concerns can be viewed here: http://www.onegrassroots.org/POMI_files/%201%20January%202010%20SGS%20Respond%20to%20stakeholder%20complaints.pdf

3.3 RSPO's Complaints System and Dispute Settlement Facility

The RSPO has developed a grievance redress mechanism that aims to ensure accountability of RSPO's members to its vision. In essence, the RSPO Complaints System (CS) was created to address "complaints against RSPO and its members in a manner that is reflective of the nature, mission and goals of RSPO"¹⁵. The CS acts as the focal point for any grievance submitted against RSPO or its members, and the main body for ensuring resolution of non-conformance of RSPO's own rules and regulations¹⁶ as brought forth by complainants.

RSPO describes the CS as a way to ensure a "fair, transparent and impartial process to duly handle and address complaints against RSPO members or against the RSPO system itself"¹⁷. The RSPO Secretariat is responsible for the management, administration and running of the CS¹⁸, including managing complaints as they arrive as well as monitoring its own competence and performance managing the CS. Oversight is by the EB.

The Complaints Panel (CP) is the main body tasked with deliberating, investigating and determining the course of action, culpability and strength of arguments put forth in any given case. The RSPO designed the panel as a 5-person body with representation reflecting RSPO's membership stakes. Conflicts of interest are "reviewed" while alternates are invited at the Panel's discretion. It is not revealed how and who reviews conflicts of interest, as well as what guidance is provided to ensure this review is done systematically, properly and credibly. As well, the goal of reviewing the CP composition is for "achieving balance and expertise"¹⁹ but does not indicate impartiality or specify further on conflicts of interest.

A supplementary system of the CS is the Dispute Settlement Facility (DSF). The DSF was created in part as a reaction to

the large number of complaints raised against RSPO members, especially disputing certification awards to palm oil producers that did not meet RSPO's own requirements but were nonetheless certified. The DSF is limited in scope, more focused on addressing land disputes (P&C violations) through a mediated process, but is also possibly used to provide a mediated resolution in other complaint cases. The DSF's workflow is described in Annex 1. Responsibility for the DSF is with the EB, while the Secretariat is charged with administration. There are provisions for the establishment of a Steering Committee, with the assumption that it is composed of EB members to oversee the DSF's functioning and performance.

The primary means the DSF works is through the use of mediated discussions between conflicting parties. RSPO mediators are required to have certain relevant and specific competencies and experience while RSPO claims that there is a published list of approved mediators (not found on RSPO's website). Outcomes are based on mutually agreed resolutions. All key points of the process require both parties agree on next steps. Costs for mediation are to be borne by both parties, proportional to their financial capacity while RSPO claims it will also subsidise some of the associated costs. Should mediation fail to bring a mutually agreed outcome the case may then be reverted back to the CS as a formal complaint. RSPO also provides caveats for companies, specifically that should mediation between conflicting parties continue beyond 1-year, it is considered that

'... use of the DSF can be construed under the RSPO Principles & Criteria to be a "recognized dispute resolution process acceptable to both parties," in which case decisions regarding withdrawal of a company's certification (or similar adverse actions against said company) are not yet necessary'.²⁰

¹⁵ RSPO Complaints System Introduction. http://www.rspo.org/en/complaints_system_introduction

¹⁶ The rules and regulations stated on RSPO's complaints system webpages include RSPO Statutes, By-laws, motions approved by the General Assembly, or any other approved articles, including the Principles & Criteria for Sustainable Palm Oil Production, National Interpretations of the P&C, New Plantings Procedure, Certification System, Trade and Traceability and for Communication and Claims rules and RSPO Code of Conduct.

¹⁷ RSPO Complaints System Introduction. http://www.rspo.org/en/complaints_system_introduction

¹⁸ Specific tasks and details of the scope of the Secretariat's role is provided in the Terms of Reference and can be found under Section 2.1 of the RSPO website http://www.rspo.org/en/system_components_and_terms_of_reference

¹⁹ RSPO System Components. http://www.rspo.org/en/system_components_and_terms_of_reference

²⁰ RSPO DSF Protocol. <http://www.rspo.org/en/protocol>

3.4 Why the Complaints System is Failing Stakeholders

"A grievance mechanism can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it."

- Prof. John Ruggie, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises

RSPO cites the Ruggie Report and United Nations Guiding Principles on Business and Human Rights as the criteria it aims to in its introduction to the RSPO Complaints System²¹.

Since RSPO operationalized its grievance management and redress mechanism, RSPO has received many formal and informal complaints against RSPO members and contested certificates issued to some producers. The DSF was to assist handling of grievances, with a focus on producer-related complaints.

While RSPO has placed resources into managing complaints, there appears to be a growing dissatisfaction amongst stakeholders and affected parties on the performance. They include RSPO's handling of cases, and structural/organisational deficiencies that skew outcomes in favour of RSPO members.

The RSPO CS is dependent upon the Secretariat to function. In fact, the Secretariat is "the body that is responsible for coor-

dination, administration, and communications for all aspects of the RSPO system, including the Complaints System"²². The Complaints Panel itself (composed of EB members) deliberates and is meant to adjudicate, but also be a case-clearinghouse, designating cases to other resolution mechanisms.

The Secretariat holds broad discretionary powers to determine the validity of complaints and next steps upon receipt. How the Secretariat determines each case is unclear; stakeholders' frustrations include their grievances not understood and delays in response times²³. The Secretariat only provides public statements regarding allegations against RSPO or members at its own discretion. Explanations from RSPO's website state the Secretariat *may* make public communications in situations where cases are particularly egregious or highly publicised²⁴. In addition, the Secretariat self-monitors its "functionality and competence" in discharging its duties and responsibilities as the CS co-ordinator.

²¹ RSPO Complaints System Introduction. http://www.rspo.org/en/complaints_system_introduction. The full document cited by RSPO: *John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, March 21, 2011.*

²² RSPO System Components and Terms of Reference. http://www.rspo.org/en/system_components_and_terms_of_reference

²³ This does not include grievances brought against Certification Bodies as they may also be channeled to ASI, while the DSF appears to be very focused on land rights conflicts with producers.

4 STANDARDS IGNORE HUMAN COST

The RSPO P&C expressly includes criteria that cover social and human rights issues. They include coverage of workers rights issues, legality or legal conformance, indigenous communities, customary or traditional land rights, human health, occupational safety and contributing to local development. The large number of human rights related issues is a reflection of the palm industry's association with social conflict, land-grabbing, workers abuses and illegal operations. The link covers both RSPO members and non-members.

The track record for RSPO when dealing with known and widespread instances of workers and human rights issues²⁶ in the certification process is weak. In fact, RSPO has admitted as much:

Darrel Webber, Secretary General of the Roundtable on Sustainable Palm Oil (RSPO), a Kuala Lumpur-based palm oil industry group, says the RSPO has never decertified or suspended a member for failing to adhere to labor standards.²⁷

4.1 Paraquat and other highly hazardous pesticides

The continued use of highly hazardous pesticides (HHPs) especially paraquat in RSPO is one of its biggest failure in ensuring sustainable palm oil production and respecting the rights to health of the workers. Paraquat is very dangerous, without a known antidote, and could cause death or other various ailments including nosebleeds, stomach pains, skin and respiratory disorders, and impaired vision. Low dose exposure has also been linked with Parkinson's Disease which could manifest many years after a poisoned worker has left the plantation. Ingestion of one teaspoon is fatal.²⁸ Where safe alternatives exist, the continued use of HHPs goes against core human rights and sustainability principles.

Widespread poisoning of pesticide sprayers²⁹, particularly women workers by the highly hazardous paraquat in oil palm plantations, led to a worldwide call to ban paraquat. The conditions of use in plantations such as inadequate personal protective equipment put workers in high risk of occupational exposure. Spillage, tank leakage, spray drift and accidents occur and unavoidable. In some developed countries where paraquat is allowed for use, governments impose strict regulations on its use including certifications for users and adequate personal protective equipment such as face shields which are not practical for use, and even inhumane, in hot and humid tropical conditions.

²⁶ Recent reports regarding human rights issues in the oil palm industry have led to a growing view that issues relating to workers rights abuses (including forced labour, underaged labour and other abuses) on oil palm operations are rampant and widespread, even amongst RSPO members. Source: http://www.humanityunited.org/blog/article-unveils-human-toll-palm-oil?utm_source=List%3A+Schuster+Institute+for+Investigative+Journalism+Newsletter&utm_campaign=af96dfe4d3-Newsletter_July18-2013&utm_medium=email&utm_term=0_eb74928ed1-af96dfe4d3-66828085#.UhhUD2SFBK5

²⁷ Information is based on the 9-month investigative work done by the Schuster Institute and Bloomberg Businessweek article on Forced and Child Labour. Source: <http://www.schusterinstituteinvestigations.org/#!slavery-palm-oil-plantations-indonesia/cqcc>

²⁸ Watts, M. Paraquat Factsheet. PAN AP. <http://www.panap.net/sites/default/files/attachments/pesticides-factsheet-hhps-paraquat.pdf>

²⁹ Tenaganita and PAN AP. Poisoned and Silenced – A Study of Pesticide Poisoning in Plantations.



The lifelong irreversible effects of paraquat poisoning among pesticide sprayers in oil palm plantations.



Photos courtesy of PAN AP

In 2002, Malaysia's then Pesticide Control Board banned the poison.³⁰ However, the decision was deferred in 2006 in a political decision by the Agriculture Ministry after a successful lobby by Syngenta and the plantation industry.³¹

Paraquat is recommended for use during the immature stages of oil palm trees (2-3 years) to control broad-leaved weeds. However, herbicides continue to be used through out the oil palm's mature and productive life for non-essential or aesthetic purposes.

Other fair trade organisations such as the Rainforest Alliance, Fairtrade Labelling Organizations International, Forest Stewardship Council, UTZ Certified, or the Common Code for the Coffee Community have explicitly prohibited paraquat use in its supply chain. Dole and Chiquita have eliminated the poison from their supply chain as well. Some oil palm plantations have declared eliminating paraquat use in their estates – a few are doing fully organic production. **Clearly, safe and feasible alternatives are not only possible but are currently practised.**

The RSPO initially made progress in protecting the health of workers by making a commitment as early as 2006 to identify safe cost effective alternatives by 2007 to replace chemicals categorised as WHO Type 1a and 1b, or listed in the Stockholm and Rotterdam Conventions, and paraquat. The 2007 P&C made note of this commitment and set the ground for the intent and purpose of Criteria 4.6.³² RSPO commissioned CABI International for this study but, by 2011, spectacularly failed to make recommendations on safe and cost-effective alternatives.

Subsequently, the initial hopes for RSPO to champion people's health rights waned. In its 8th General Assembly in Kuala Lumpur, RSPO's President, Unilever's Jan Kees Vis, revealed

that an informal survey by the Executive Board showed about half of growers have stopped using paraquat. Yet, the proposed resolution to phase out paraquat was opposed by the General Assembly apparently for technical reasons that the P&C does not categorically phase out the pesticide. During the revision process of RSPO's P&C, industry stalled efforts to phase out paraquat. The current 2013 version of the P&C cites "national Best Practice Guidelines", presuming safe use or risk management is even possible, in allowing the use of paraquat (Indicator 4.6.4) even for prophylactic purposes (Indicator 4.6.3).

For HHPs including paraquat, "safe use" guidelines are a myth and simply not possible. Paraquat is one of the dozens of HHPs used in the plantation industry. HHPs do not cause only short-term effects but may cause long-term adverse health problems. The latter may only become apparent long after workers have left the plantations. Some HHPs are persistent organic pollutants; others like organophosphates could be endocrine disrupting chemicals (EDCs). One concern over EDCs is that exposure to even very minute doses – doses considered safe in standard toxicity tests – could cause various ailments. Parental exposure to HHPs could even affect the growth and development of their children.

Paraquat itself is linked with Parkinson's Disease which takes years or decades to manifest. Efforts to minimise risk does not stop unwarranted poisonings. What risk management approaches simply does is to shift the burden of cost from the grower to the pesticide sprayers or users who would suffer life-long irreversible adverse health conditions.

The failed effort in RSPO to protect the health of people and the environment, in favour of the use of the low-cost paraquat, tips the balance in favour of profits over people and planet.

³⁰ Environment News Service. Malaysia Government Bans the Herbicide Paraquat. <http://www.ens-newswire.com/ens/sep2002/2002-09-23-04.asp>

³¹ Inter Press Service. Malaysia: Return of Paraquat – Activists Aghast. <http://www.ipsnews.net/2006/10/malaysia-return-of-paraquat-activists-aghast/>

³² RSPO Principles and Criteria for Sustainable Palm Oil Production. 2007. http://www.rspo.org/files/resource_centre/RSPO%20Principles%20&%20Criteria%20Document.pdf

4.2 Land and community rights violations

Land and community rights issues present the most complex challenge to RSPO. RSPO has tried to address the issues associated with palm oil cultivation on communities through the adoption of concepts like Free, Prior and Informed Consent (FPIC) into the P&C. As well, community and land rights issues are a key requirement under the RSPO's Certification rules. The DSF was established in recognition of the high number of grievance cases brought against RSPO that included or primarily involved social, indigenous groups, land rights and community consultation³³.

Of the 21 cases officially posted on RSPO's website, half (11 out of 21) either exclusively or partially involve land rights, community rights, legality or a combination. All the cases involving social issues are against palm oil producers. There are further cases lodged with the DSF that are not publicly known.

The prevalence of land conflict is not surprising. The expansion of palm oil land area has led to displacement of many communities. RSPO does not recognise that mere requirement to act

"within the laws of the land" serve to continue and exacerbate the problems:

(continued land) demand that is testing the capacity of local land agencies, administrators, and legislators to the limits and beyond. Regulations and procedures, which evolved to deal with small-scale, often informal, domestic land markets, are proving unequal to the challenge posed by this global demand for huge areas of land. Obviously, this pressure to acquire land has implications for those who currently own the coveted areas, who are for the most part 'indigenous peoples'.³⁴

As palm oil producers look beyond exhausted land banks in Indonesia and Malaysia, the same pattern appears to be repeated, where similar structural weaknesses in governance in "emerging" producers like those in West Africa. With one case each from Liberia and Nigeria against producers so far, it may be the start of more cases as plantation expansion occurs there.

Long Teran Kanan community and NGO representatives met with IOI in 2010.



³³ The RSPO's key criteria for protecting community and land rights are 2.2, 2.3, 6.4, 7.5 and 7.6 while art. 4.2.4 of the RSPO Certification Systems identifies minimum group-wide conformance for meeting certification requirements. Source: <http://www.rspo.org/en/Framework>

³⁴ Colchester, M. Palm oil and indigenous peoples in South East Asia. 2011. International Land Coalition & Forest Peoples Programme.

LONG TERAN KANAN / IOI PLANTATION CASE STUDY

The community took action to resist land grabbing and other human rights violations.



Photo courtesy of SADIA

In 2010, a formal complaint was lodged against RSPO EB member IOI Plantations for breaching RSPO's rules on land rights. The case involved IOI's single operations in Sarawak, Malaysia. The basis of community grievances was for restitution and compensation for land area converted to oil palm and operated by IOI within the customary rights land. Customary title to the contested area pre-dated the oil palm operations and the community in question, from Kampung Long Teran Kanan, had been in a legal battle with IOI and the government of Sarawak over their rights to the land.

From the onset, the complainants were challenged in getting effective management of the complaint. IOI has never been removed from the EB.³⁵ After the parties agreed on a mediated process, IOI did not withdraw their applications in Court, thoroughly undermining any non-adjudicated mediation for resolution. It continued to operate business-as-usual and, in spite of protests on this and the legal procedure, RSPO has never effectively reigned in IOI, in spite of the glaring facts. IOI's RSPO certificates were reinstated while the community of Long Teran Kanan remain without justice, restitution or their land. Those from civil society directly involved in the grievance cannot understand the lenient treatment of IOI by RSPO.³⁶

³⁵ The RSPO EB is the ultimate oversight and supervisory body for the Complaints System and Secretariat (that operates and manages the CS), meaning that while a complaint was made against an EB member, that member had unparalleled access and opportunity to influence and coerce the inner workings and decision-making of the CS and Complaints Panel unchallenged.

³⁶ A prime example of unprecedented leeway include RSPO's "request" for IOI to directly fund mediation work and ignoring LTK's request for IOI to suspend its Court action and inform the judicial system that it agrees to enter into a mediated settlement with the villagers. Main information sources: last uploaded, official files from the Palm Oil Monitoring Initiative II (POMI II) webpage. http://www.onegrassroots.org/POMI_files/2%20Nov%202012%20STATEMENT%20FROM%20COMPLAINT%20PANEL%20ON%20IOI-LTK%20CASE.pdf and http://www.onegrassroots.org/POMI_files/11%20Dec%202012%20LTK%20NGO%20response%20to%20Grievance%20Panel.pdf

4.3 Workers conditions and treatment

Palm oil cultivation and production is a labour intensive venture³⁷. The plantation- or estate-scale model demands high labour inputs to be economically viable. A combination of little mechanisation and existing management practices that leverages of unskilled plantation labour, the palm oil industry has become particularly dependent on recruiting, retaining and maintaining a large pool of workers who tend to basic and operational level labour work as part of their employment.

Life, job requirements and working conditions in palm plantations are challenging. For workers, it often involves manual labour or even hazardous work, including nursery and seedling care, plant management, pesticide handling or spraying, weeding, fertilising and harvesting. It remains the least appealing job sector by choice but is fed by large numbers of migrant workers in South East Asia.

The undesirability of working in plantations has even led to a significant dependence of the Malaysian palm oil sector on foreign workers, leading to significant problems and allegations of workers rights abuses. In Indonesia, exploitative practices are also alleged to be widespread and documentation of workers' rights abuses has become more prevalent.

The key forms of exploitation in the palm oil sector include the following:

- **Slave labour:** commonly found in treatment and conditions imposed on migrant labour, through third-party labour brokers or direct employees of plantations and smallholders.

- **Child labour:** prevalent in smallholders, including working in dangerous or hazardous jobs.
- **Discrimination against women workers:** this includes lower pay, poorer working conditions, repression of reproductive rights, and personal safety issues.

RSPO has attempted to respond to claims and allegations made by various civil society groups regarding its track record in addressing human rights issues, specifically those relating to workers rights through its latest version of the P&C³⁸.

In its 2012 report for Humanity United, Accenture Consulting analysed stakeholder views, case studies and news articles on the palm oil industry's performance on protecting human rights and workers. On the RSPO, the report made 2 observations regarding the current RSPO practices that do not serve to protect workers rights. They include³⁹:

1. Certification agents check policies and procedures against a checklist of standards and do not effectively understand conditions by engaging with workers or performing more exhaustive and revealing forms of enquiry;
2. Significant concerns raised by NGO's included the RSPO not placing due focus on these issues in the P&Cs or the RSPO structure — no working group exists to focus on labour issues.

³⁷ Figures for employment are often difficult to obtain as there are various employers, including plantations, part-time workers for plantations and smallholders, undocumented workers, third-party contractors.

³⁵ Criticism of the RSPO's track record on the issues have been included in broader criticism of RSPO's inability to mandate basic adherence to its P&C, frustration at having human-rights issues sidelined or under-prioritised in the workings of the RSPO, and simply not having credible and adequate attention to the issue in its core requirements, the P&C, nor seriousness in application at the certification level. More information regarding criticism of the RSPO can be found here: Accenture. Exploitative Labor Practices in the Global Palm Oil Industry. 2012.

RSPO member, KLK was implicated in a case documented through a Bloomberg Businessweek article, found here: <http://www.businessweek.com/articles/2013-07-18/indonesias-palm-oil-industry-rife-with-human-rights-abuses>

Further information regarding the article can be found here: <http://www.schusterinstituteinvestigations.org/>.

³⁶ Accenture. Exploitative Labor Practices in the Global Palm Oil Industry. 2012.



Child labourers in palm oil plantation face higher risk of occupational injuries.

5 RECOMMENDATIONS

PAN AP calls on RSPO to

1. Ensure a greater respect and reflection of human rights issues within RSPO's mission.

- RSPO should work to ensure its members work towards meeting the United Nations Guiding Principles for Business and Human Rights in their corporate policies and practices as a minimum.
- RSPO should prioritise social and human rights issues in its allocation of resources, attention and activities. Beyond the new iteration of the P&C, there needs to be broader implementation of these standards through ensuring awareness of producers, ensuring that auditors are specifically appraised on how to measure them, and broader outreach to stakeholders, communities and other grassroots groups to build broader consultation.
- RSPO should publicly list the international conventions it endorses as the minimum to meet RSPO's certification standards.
- RSPO should develop networks, relationships and partnerships with human rights groups and institutions to improve its standards, address the social conflicts linked to its members and support capacity building for stakeholders.

2. Adopt a clear 'No Paraquat' policy in its Principles & Criteria.

The issue of paraquat has been debated in the RSPO since its inception in 2004 with a resolution made to find a way forward. That promise was never fulfilled as the initial study was under-prioritised and follow-up subsequently forgotten. The issue remains at the forefront of the Pesticide Action Network's struggle. Without an end to the use of paraquat there will never be a way forward to bridging other critical workers' issues that RSPO and its members face. In recent years, several RSPO oil palm grower members have already publicized the successful elimination of paraquat in its operations thus stakeholders remain wanting of a clearer 'No Paraquat' stand by RSPO.

3. End land grabbing and ensure respect for native customary rights. In the case of IOI, to ensure that IOI submits a time-bound action plan to resolve its NCR violations with the Long Teran Kanan community.

Although respect for NCR and FPIC principles are enshrined in the P&C, more than half of the violations submitted to the Complaints System are related to land grabbing and NCR violations. This lack of appreciation of FPIC and the nature of NCR by CBs, RSPO members, and RSPO itself allows for the continued violations of these rights. RSPO should spearhead a programme to effectively transform RSPO grower member's attitudes towards respecting native customary rights, land, customs and traditions and of CB's capability to monitor and assess land conflicts.

4. Improve RSPO's certification and audit process to be a catalyst for positive change at the grassroots level.

Problems associated with the performance of Certification Bodies in assessing and approving the award of RSPO certification has led to glaring cases challenging certificates that dissolve RSPO's credibility. RSPO needs to specifically address social, legality and biodiversity issues in audits – ensuring that audits are robust, realistic and accurate of conditions. Other issues over the role of auditors, quality of reporting and knowledge base on legal, social and environmental issues also require attention and improvements if RSPO is to return any credibility to its certification scheme.

- RSPO should prioritise extensive training, capacity building and experiential learning on social and environmental criteria of the P&C for its accredited certification bodies.
- RSPO should mandate and require fulfilment of higher experience and training levels for social and environmental experts for RSPO audits.
- RSPO should support stakeholder feedback by thoroughly consulting with them and developing a robust, funded mechanism or body to allow better inputs by stakeholders to inform audits.

5. Reform the Complaints System and related mechanisms

The grievance mechanism is a counter-balance to certification schemes claims. An effective, transparent and credible system is critical to ensuring that there is trust in the certification branding and product. RSPO's Complaints System and its tools have not delivered on a wide range and number of cases. Increasing frustration and disillusionment by stakeholders who attempt to engage RSPO to find justice threaten to destroy RSPO's credibility.

- RSPO should reform the Complaints System, Dispute Settlement Facility and their functionaries into an independent body.
- RSPO should provide for enough resources and capacity for the Complaints System and other tools to ensure their effective functioning in adjudicating and investigating cases.
- RSPO should manage, resource and fund a mediation procedure (through the DSF) that is independent, effective, impartial and credible.
- RSPO's protocol for grievances, roles, criteria and timelines should be further elaborated, considered and detailed transparently and consistently to stakeholders.
- RSPO should increase support for stakeholders, especially grassroots communities and workers to raise grievances, including case registering, investigation, representation and negotiation.

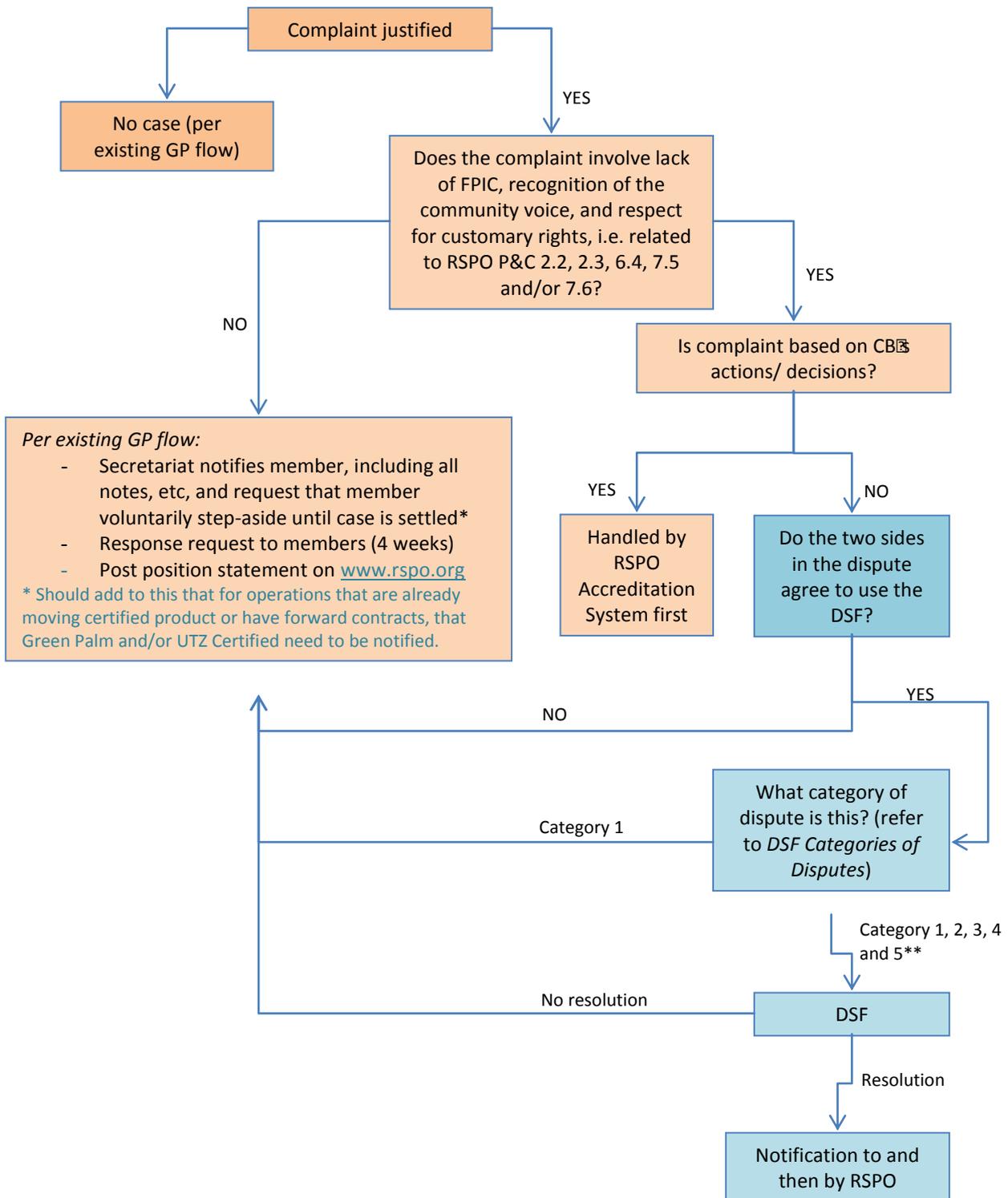
6. Improve transparency and ensure independence of RSPO's operations and secretariat.

As RSPO has grown, so have the expectations. With its certification scheme running, stakeholders now expect that they are able to engage on equal footing, in the spirit of RSPO's multi-stakeholder philosophy. However stakeholders and civil society have become disillusioned with RSPO as it continues to allocate meagre resources to its secretariat in terms of capacity to address grievances.

- Due to the nature of its work and importance to stakeholders, RSPO should elevate the Complaints System to be as visible as other spheres of the Secretariat's work.
- RSPO should ensure greater transparency in all its operations and communications.

ANNEX I

THE DSF PROCEDURE FLOWCHART*



**Even a "category 1" dispute could still use the DSF as a way toward resolution.

*RSPO DSF Process Flow. From <http://www.rspo.org/file/DSF%20Procedure%20Flowchart.pdf>



Pesticide Action Network Asia and the Pacific (PAN AP) is one of the five regional centres of Pesticide Action Network (PAN), a global network dedicated primarily towards the elimination of harm caused to humans and the environment by pesticides and towards promoting biodiversity-based ecological agriculture.

PAN AP's vision is of a society that is truly democratic and culturally diverse, based on the principles of food sovereignty, gender justice and environmental sustainability. PAN AP has developed strong partnerships with peasants, agricultural workers, indigenous peoples, fisherfolks, rural women movements and other small food producers in the Asia Pacific region. Guided by the strong leadership of these grassroots groups, PAN AP has become a strong advocacy network with a firm Asian perspective.

Our mission lies in strengthening people's movements to advance and assert food sovereignty, promote biodiversity-based ecological agriculture and the empowerment of rural women; protect people and the environment from highly hazardous pesticides; defend the rice heritage of Asia and resist the threats of corporate agriculture and neo-liberal globalisation.

Currently, PAN AP comprises 108 network partner organisations in the Asia-Pacific region and links with other civil society and grassroots organisations, regionally and globally.

For more information:

Email: panap@panap.net
Website: <http://www.panap.net>
Facebook: [panasiapacific](https://www.facebook.com/panasiapacific)