



WHO WATCHES THE WATCHMEN?

Auditors and the breakdown
of oversight in the RSP0

 **grassroots**



ACKNOWLEDGEMENTS

This report was written and edited by the Environmental Investigation Agency UK Ltd and Grassroots. This document has been produced with the financial assistance of UKaid and the Norwegian Agency for Development Cooperation (NORAD). The contents of this publication are the sole responsibility of EIA.

Designed by:
www.designsolutions.me.uk

Printed on recycled paper

November 2015

All images © EIA unless otherwise stated



ENVIRONMENTAL INVESTIGATION AGENCY (EIA)

62/63 Upper Street, London N1 0NY, UK
Tel: +44 (0) 20 7354 7960
Fax: +44 (0) 20 7354 7961
email: ukinfo@eia-international.org

www.eia-international.org

EIA US

P.O.Box 53343
Washington DC 20009 USA
Tel: +1 202 483 6621
Fax: +202 986 8626
email: usinfo@eia-international.org

COVER IMAGE:

Mash Hall
www.mash-hall.com

CONTENTS

3	INTRODUCTION
4	WHAT IS THE RSPO?
5	CERTIFICATION AND NEW PLANTINGS
6	AUDITORS AND THE OVERSIGHT REGIME
8	CASE STUDIES
18	CONCLUSION: WHO WATCHES THE WATCHMEN?
22	RECOMMENDATIONS



INTRODUCTION

The harm inflicted on people and the environment by the oil palm industry is a global scandal. Overwhelming evidence in the past two decades has shown the role it is playing in the destruction of biodiversity, driving climate change and the abuse of indigenous and community rights.

The Roundtable on Sustainable Palm Oil (RSPO) emerged in 2004 as a response to this crisis. The growers, financiers and buyers of palm oil collectively developed a system that would allow them to present a different vision, one of a responsible industry capable of rooting out these problems, cleaning up supply chains and, ultimately, providing customers with a “sustainable” product.

The system is predicated entirely on the ability of auditors to monitor the operations of palm oil growers to ensure they are not destroying primary forests, vital habitats or evicting communities from their land. Major banks and consumer goods firms now delegate responsibility for the impacts of their sourcing policies and finance to these auditing firms.

However, research by the Environmental Investigation Agency (EIA) and Grassroots shows how this system is critically flawed. Auditing firms are fundamentally failing to identify and mitigate unsustainable practices by oil palm firms. Not only are they conducting woefully substandard assessments but the evidence indicates that in some cases they are colluding with plantation companies to disguise violations of the RSPO Standard. The systems put in place to monitor these auditors have utterly failed.

The consequences of these failings are severe. The destruction of forests and biodiversity, entrenched social conflicts, human trafficking and death threats against environmental defenders are all able to persist because of a dereliction of duty by auditors and the RSPO. Without scrutiny and appropriate action, this will be branded as sustainable.

In practice, oversight of the regime is being provided by communities and activists who are rigorously monitoring plantation companies. This has resulted in a stream of complaints against RSPO members which clearly implicate auditors in carrying out dodgy assessments and deliberately attempting to misrepresent the facts on the ground. While oil palm growers are to some extent held to account, the auditors consistently evade scrutiny and are left free to move onto the next plantation, to the next dodgy assessment.

The case that auditors themselves require rigorous policing is compelling but to date the RSPO has betrayed a paucity of critical self-analysis. Systemic weaknesses and loopholes in its infrastructure ensure these failings are rarely identified without interventions by NGOs. The system is failing to learn from abuses by auditors, or to close the loopholes and address weaknesses in the monitoring of auditors.

This report seeks to expose this critical flaw in the RSPO and encourage its members to commit to meaningful reform. It also, implicitly, raises doubt over the credibility and assurances of any palm oil certified through this system as “sustainable”.

The emergence of the RSPO created a firewall between palm oil buyers and some of the ills of the industry. It has enabled companies that have committed to buy RSPO-certified palm oil to distance themselves from habitat destruction and human rights abuses. But if credible doubt is raised over the efficacy of the monitoring regime and of the RSPO to address these problems, buyers are once again exposed to scandal.

Until credible reform is in place, buyers must exercise due diligence to determine the source of their palm oil – or risk the many products on supermarket shelves being tainted with human trafficking, human rights abuses and species extinction.

An immediate opportunity to initiate such reform presents itself at the 12th Annual General Assembly of RSPO Members, in Kuala Lumpur, from November 16-19, 2015 at which members will be invited to vote on a resolution to ensure quality, oversight and credibility of RSPO assessments.

The evidence in this report makes clear that it must be supported.

Oil palm in PT Kartika Prima Cipta concession, West Kalimantan

WHAT IS THE RSPO?

The RSPO is a certification scheme founded in 2004 by plantation companies and NGOs in response to extensive evidence that the production of palm oil was driving deforestation, biodiversity loss and human rights abuses. It is intended to provide buyers of palm oil with reassurance that the product they are using has been produced “sustainably”.

In 2005, the founding members agreed on a set of Principles and Criteria (P&C, or the RSPO Standard) against which palm oil production could be measured.¹ The P&C have been periodically reviewed and revised as the membership of the RSPO has swelled. By 2014, certified production accounted for 20 per cent of the global supply.²

Oil palm grower members can commission audits to verify individual units of their operations (a mill and its supply base) against the Standard. If these audits are successful, these units of the company can produce palm oil to be traded as RSPO-certified, for a premium. Members are obliged to stipulate a time-bound plan, setting a deadline for certification of their

entire operation. In the meantime they must comply with the rules of Partial Certification [See box]. As a result, the RSPO’s members account for far more of the global supply than has been certified.³

The Standard includes a commitment to transparency, compliance with all national legislation, responsible treatment of workers, a prohibition on the destruction of primary forests and ‘High Conservation Value’ (HCV) areas [see box], and respect for the customary land rights of local communities. Companies cannot acquire land from communities without a process of Free, Prior and Informed Consent (FPIC) [see box].

The Standard does not, to date, prohibit deforestation or clearance of peatlands, nor does it require protection of landscapes with high carbon stocks. This places the RSPO out of step with much of the market where major companies and traders are committing to ‘zero’ deforestation, peatland or high carbon stock developments. As a result, the RSPO is failing to address the sector’s role in anthropogenic climate change, as the conversion and drainage of peatlands is a leading source of greenhouse emissions in Indonesia and Malaysia.⁴

Yet in various respects, the requirements under the concepts of HCV and FPIC go significantly beyond state regulations in Indonesia or Malaysia, which account for around 90 per cent of global palm oil production.⁵ While not a silver bullet, if properly implemented the Standard presents a significant opportunity to mitigate the impact on indigenous and other communities, workers, biodiversity, the environment and a range of other issues.

However, even within the confines of what the RSPO does regulate there has been considerable criticism that it is not addressing abuses by member companies. A litany of formal complaints against major companies – including the largest in the sector – evidence the ongoing violations of the Standard.

To date, criticism has predominantly focused on the plantation companies perpetrating these violations. Yet much key responsibility for these violations, and for the failure of the RSPO system to prevent them, lies with the auditors who are tasked with checking planters for compliance.

WHAT ARE HIGH CONSERVATION VALUES?

HCVs are biological, ecological, social or cultural values which are considered outstandingly significant or critically important. They may provide basic needs for local people, provide essential ecosystem services, or contain or support threatened or endangered habitats or species. There are six HCVs covering these various criteria.

Within the RSPO, companies are required to identify these areas in a participatory manner, with local communities and other relevant stakeholders.

The Standard stipulates that no new developments since November 2005 can have replaced primary forests or any area required to maintain or enhance one or more of the HCVs.

The multi-stakeholder HCV Resource Network has been established to promote the HCV approach and support its effective application.

PARTIAL CERTIFICATION

Organisations with more than one management unit area are only permitted to certify individual management units or subsidiary companies providing:

- there is a time-bound plan submitted to the RSPO, providing a deadline for certification of all relevant entities;
- there are no ‘significant’ land conflicts in uncertified holdings;
- there are no labour disputes that are not being resolved through an agreed process in uncertified holdings;
- uncertified holdings have not replaced primary forests or HCVs since November 2005;
- uncertified holdings are not breaking the law.⁶

CERTIFICATION AND NEW PLANTINGS

HOW DOES CERTIFICATION WORK?

To achieve certification of their operations, RSPO members must contract accredited Certification Bodies to carry out an assessment of conformance to the Standard. The Certification Bodies examine compliance through documentation reviews, field checks and stakeholder consultations. If a member meets the criteria, Certification Bodies can issue a certificate, valid for five years with Corrective Action Requests where necessary. They assess progress against Corrective Action Requests on an annual basis through surveillance audits.

Companies may sell palm oil produced by mills with an RSPO certificate as “Certified Sustainable Palm Oil”, using the RSPO’s brand.

THE NEW PLANTING PROCEDURE

In 2010, the RSPO introduced the New Planting Procedure (NPP) in response to concerns over harmful practices in uncertified areas. The NPP obligates members to carry out Social and Environmental Impact Assessments (SEIA) and HCV Assessments (HCVA) before they begin operating in new concessions. The assessments should identify areas that are off-limits, ensure that an FPIC process is in place for community lands and that companies have obtained all necessary legal permits.

These NPP assessments are commonly carried out by independent consultants or smaller organisations. After the assessments are carried out they are verified by a Certification Body through a desk-based review and, more recently, a field visit. If they are accepted as accurate, they are submitted to the RSPO as an NPP notification. These notifications, and documents summarising the SEIA and HCVA, are published on the RSPO’s website to enable stakeholders to provide comments during a 30-day consultation period. Subsequent to the consultation period, companies can begin clearing land.

The NPP is a vital part of the RSPO because it should take place before any

land development occurs. As a result, it presents an opportunity to prevent destruction of HCVs and rights violations, avoiding loss of biodiversity and foment of social conflicts. Whereas full certification audits will take place in established plantations already producing palm oil fruit, the NPP takes place years earlier at a critical moment during the land acquisition process. It is at this stage when social conflicts, deforestation, land fires, legal violations and a range of other issues that have plagued the sector are most likely to emerge.

The NPP is also important because many members only have a proportion of their operations certified and in many cases none at all. In these instances, the NPP is the only measure of whether they are compliant with the RSPO Standard.

WHAT IS FREE, PRIOR AND INFORMED CONSENT?

‘Free, prior and informed consent’ (FPIC) is the principle that communities have the right to give or withhold consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use.

It is a critical principle in areas where most oil palm is cultivated, where local customary legal systems exist in parallel with (and predate) state laws often used to govern plantation development. Communities often have long-standing and locally recognised rights, but without legal titles issued by the state.

To accord with the principle of FPIC, companies wishing to use lands belonging to indigenous and other local communities must enter into negotiations with them, free of coercion and before developments begin. Communities have the right to decide whether they will agree to the project or not once they have a full and accurate understanding of its implications on them and their land.

The RSPO Standard states, inter alia, that:

- companies cannot use land that is legitimately contested by communities with legal, customary or user rights;
- use of land cannot diminish the customary or user rights of others without their free, prior and informed consent;
- negotiations should be dealt with through a documented system that enables indigenous and other communities to express their views through their own representative institutions;
- local people must be compensated for agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreement.

Further guidance on how these principles are applied is included in both the Standard and National Interpretations for relevant countries.⁷

AUDITORS AND THE OVERSIGHT REGIME

WHO ARE THE AUDITORS AND HOW ARE THEY REGULATED?

The RSPO-accredited Certification Bodies include multinational technical services and auditing companies, such as TUV Rheinland and SGS, and also smaller nationally based firms. Since 2012, the Certification Bodies have been regulated by Accreditation Services International (ASI), an international organisation that serves a similar role for other certification schemes such as the Forest Stewardship Council. ASI now carries out annual checks on the Certification Bodies to ensure levels of competence.

Until 2014, the assessors carrying out SEIA and HCVA under the NPP process were approved by the RSPO. The RSPO has now commissioned the HCV Resource Network (see box on HCVs) to establish an Assessors Licensing Scheme (ALS) that provides guidance for HCV assessors and monitors their performance.

The ALS and appointment of ASI were responses to failings in the performance of Certification Bodies and assessors (collectively referred to as “auditors”). They provide a regulatory regime which is an improvement on that controlled internally by the RSPO. However, violations of the standard as a result of errant auditors persist because the regulatory regime remains ill-equipped to screen out substandard and deliberately misleading assessments.

BELOW:

Deforestation in Muara Tae community land, East Kalimantan.



Monitoring of auditors is particularly weak at the NPP stage, eroding the efficacy of the NPP as a critical control point that can pre-empt HCV destruction and rights abuses.

SUMMARY OF FAILINGS BY RSPO AUDITORS

On paper, there are several layers of checks and balances in the system. In the NPP, for example, licensed assessors carry out field checks, present assessment documents checked by a Certification Body and which are submitted to the RSPO and published for consultation. In practice, those checks and balances can be weak and are frequently circumvented.

The case studies in this report will provide evidence of the following failings:

- auditors providing fraudulent assessments that cover up violations of the RSPO Standard and Procedures;
- auditors failing to identify indigenous land right claims;
- auditors failing to identify social conflicts arising due to abuse of community rights;
- auditors failing to identify serious labour abuses;
- auditors failing to identify risks of trafficked labour being used in plantations;
- ambiguity over legal compliance;
- auditors providing methodologically and substantively flawed HCV assessments that will enable destruction of HCVs;
- Certification Bodies displaying weak understanding of the Standard;
- Certification Bodies providing suspect assessments in response to legitimate complaints from NGOs which fail to address the substance of the complaints;
- conflicts of interest due to links between Certification Bodies and plantation companies.

CIVIL SOCIETY PROVIDING DE FACTO OVERSIGHT

The RSPO infrastructure includes a Complaints System which provides NGOs, communities and other outside stakeholders recourse where RSPO members have violated the Standard. Complaints are considered by the Complaints Panel, composed of a cross-section of members, which issues corrective actions.

In practice, oversight of the system and the identification of major violations is not being provided by auditors or the RSPO itself. It is being provided by NGOs and communities who are consistently highlighting violations by plantation companies through formal complaints.

The RSPO's online complaints tracker currently records 52 complaints, of which 45 are related to certification (including the NPP); 62 per cent of these cases involve HCV assessments, 42 per cent involve land disputes and 40 per cent involve FPIC.⁸ The limited capacity of civil society to effectively monitor a sector covering millions of hectares of land across three continents, on limited budgets, suggests that these violations are just the tip of the iceberg.

Moreover, the complaints are not evidence of a functioning system addressing its own problems. There is a wealth of evidence to show the complaints process has failed to provide acceptable outcomes to complainants or has held errant members to account.⁹ There are concerns with conflicts of interest, with companies that have been subject to complaints joining the Complaints Panel even while the problems raised remain unresolved. Some complaints have dragged on for five or more years without resolution.

In most cases, these complaints have emerged only after auditors have missed clear opportunities to identify violations – or the risk of violations occurring – at a much earlier stage. Yet the auditors are rarely the focus of complaints. In all but two cases, complainants have targeted the plantation companies themselves in order to address the pressing need to prevent HCV losses and stem conflict. They have not addressed the role of auditors and the various inadequacies, mistakes and fraud they have perpetrated. Where the evidence of failings by auditors is clear, the RSPO has not examined or acted on this itself.



© Alejo Sabugo/IAR Indonesia

As will be shown in one case study, ASI can now carry out proactive investigations into compliance by Certification Bodies. However, it is not yet mandated to examine substandard or fraudulent work during the NPP, at the most critical point where harm can be avoided. The RSPO has also failed to act proactively to report Certification Bodies to ASI where there is clear evidence to warrant it.

The Complaints System is a repeated theme in the case studies presented in this report. This is in part because the process provides a paper trail that helps elucidate violations and the role auditors have played. But it is also because it demonstrates the regressive practices auditors engage in when complaints are upheld against plantation companies. Far from helping to identify shortcomings by companies, the auditors have in some cases complicated the resolution of complaints through further substandard assessments and conflicts of interest.

ABOVE:

Orangutan rescued by IAR Indonesia in West Kalimantan.

“Oversight of the system is being provided by NGOs and communities who are highlighting violations by plantation companies”

CASE STUDIES

Muara Tae community members, East Kalimantan.

MISLEADING AND FRAUDULENT NPP ASSESSMENTS

COMPANY:

First Resources Ltd

LOCATION:

East Kalimantan, Indonesia

ASSESSORS:

Consultants from Bogor Agricultural Institute

CERTIFICATION BODY:

TUV NORD Indonesia

In September 2012, the RSP0 published an NPP notification for PT Borneo Surya Mining Jaya (PT BSMJ), a subsidiary of RSP0 member First Resources Ltd. The notification included summaries of an HCV Assessment and Social and Environmental Impact Assessment for PT BSMJ's concession in East Kalimantan, Indonesia. The assessments had been produced by assessors from Bogor Agricultural Institute (IPB) and verified as RSP0 compliant by a Certification Body, TUV NORD Indonesia.¹⁰

EIA had been in communication with villagers from Muara Tae, one of the communities with customary land rights claims within the concession, since 2011 and was able to determine from a desk-based review of the assessments that they included a series of false claims. From further communication with the community, it became clear that the IPB assessors also knew those claims to be false.

The documents claimed that all local people's land within the concession had been identified and land had been acquired by PT BSMJ through a process of Free, Prior and Informed Consent. The documents also claimed that PT BSMJ was not yet operational.

"It is peculiar that this could be inadvertently missed out".

RSP0 Complaints Panel, April 2013

In fact, PT BSMJ had already begun clearing land at the time the assessments took place.¹¹ It had encroached on land belonging to the community of Muara Tae without its consent and stoked a conflict with the village that continues to this day. In the process of carrying out its studies, the IPB assessors had visited Muara Tae. In the earlier stages of the permitting process, management staff from PT BSMJ had also done so. It had been made clear to both parties that the community rejected the proposed plantation on their land and had declined to engage in the NPP assessments.¹²

Instead of reflecting these concerns in the NPP documents, the assessors wrote Muara Tae out of them. They falsely claimed they had used a "purposive sampling" method to justify the fact they had not carried out interviews in all seven of the villages within and adjacent to the concession. The one village not included in their sample was Muara Tae, according to the documents.

The omission of Muara Tae, the misrepresentation of the scope of the study, the claim that PT BSMJ was not yet operational and the claim that all local peoples' land had been identified and acquired must be viewed as fraud. The fraud enabled PT BSMJ to continue clearing and state falsely that it was compliant with the RSP0 Standard.

Subsequent to the publication of the NPP documents, EIA submitted a complaint to the RSP0.¹³ The Complaints Panel commissioned a field review by a Certification Body which confirmed the allegations made by EIA. On the basis of this review, the Complaints Panel held that the SEIA had failed to identify a "major social issue" and that it was "peculiar that this could be inadvertently missed out". It noted that the HCV assessment had not adequately considered three of the six HCVs, including recognition of forests of particular importance to Muara Tae which included endangered ironwood (*Eusideroxylon zwageri*).¹⁴

The assessors' failings enabled PT BSMJ to continue clearing HCVs and encroaching on community territories until the Complaints Panel upheld EIA's complaint. These violations have led to an entrenched dispute between PT BSMJ's parent company, First Resources Ltd, and the community that continues to the present.

While EIA's complaint against PT BSMJ has remained mired in the complaints system, the head of sustainability at its parent company, First Resources, was allowed to become a member of the Complaints Panel.

COMPANY:**Golden Agri Resources****LOCATION:****West Kalimantan, Indonesia****ASSESSORS:****Consultants from Bogor Agricultural Institute****CERTIFICATION BODY:****PT Mutuagung Lestari**

In 2013, the NGOs Forest Peoples Programme (FPP) and TUK-Indonesia carried out an assessment of the social impact of concessions being developed by Golden Agri Resources (GAR) in Kapuas Hulu District, West Kalimantan. The review paid particular attention to GAR's compliance with the RSPO Standard in one concession, PT Kartika Prima Cipta (PT KPC).

Through interviews with communities, FPP and TUK-Indonesia determined that GAR had taken land without the Free, Prior and Informed Consent of communities who had come under "sustained pressure" from the company to release land. GAR had also failed to complete HCV assessment for the concession.

The NGOs published their findings in a report detailing extensive violations of the RSPO standard in January 2014. At the time the report was written, GAR had engaged in an attempt to resolve the disputes. The company made a verbal commitment to cease pressuring communities to release their lands and stopped clearing forests, peatlands and HCV areas. It had commissioned a new HCV Assessment, carried out by consultants from IPB.¹⁵

Follow-up field research by FPP in March 2014 revealed that PT KPC continued to operate in serious violation of RSPO requirements relating to HCV assessments and FPIC. Further, it found the problems were indicative of systemic flaws within GAR's approach to land acquisition and management which extended across its operations in Kalimantan.¹⁶

At this stage there was broad acknowledgement by GAR of the scale of the problem facing its operations and of the inadequacy of its HCV assessment in PT KPC. According to FPP, GAR recognised the systemic nature of the problems in its approach to land acquisition and customary rights which, by implication, would impact all of its subsidiaries. This was evidenced by a commitment to revise its Standard Operating Procedures, on which FPP was consulted, and retrain its staff.¹⁷

However, between April and July 2014, NPP notifications were published for 18 GAR concessions. The concessions had been verified as compliant with the NPP by the Certification Body PT Mutuagung Lestari.¹⁸

In a formal complaint subsequently submitted to the RSPO, FPP argued that GAR and its assessors clearly knew that the subsidiaries could not be in compliance. HCV assessments had been found to be deficient by the company itself and were being redone. Basic aspects of the FPIC process that were fundamental prior to NPP notification were not in place. In the majority of the concessions, participatory mapping had not even begun.¹⁹

FPP's analysis of the NPP documents concluded that they contained "misleading, even false" claims about the HCV studies carried out in the concessions. The information provided "disguise[d]" the fact that PT KPC did not have an FPIC process in place and had not taken the rudimentary steps necessary to establish that process. They "overlooked" multiple and serious land disputes that had already been publicly exposed by FPP and acknowledged by GAR.²⁰

Permit data provided within the NPP reports conflicted with GAR's claim to have fully secured the legal rights to more than 270,000 hectares of land in the 18 concessions. The evidence presented by FPP relating to HCV, FPIC and the legal status of the land presented a clear case that GAR was not in a position to submit the NPP documents and, by extension, to begin land clearing in compliance with the RSPO rules.

In its complaint, FPP pointed out that a wealth of information explicitly on the lack of compliance with the RSPO was published just months before the NPP documents were submitted. It was inconceivable that the assessors who carried out the assessments, and PT Mutuagung Lestari in its verification of them, were unaware of these issues. On these grounds FPP arrived at the conclusion that "it seems these assessors have colluded with GAR in disguising the real situation".²¹

FPP observed that the misrepresentations raised doubt over the validity of the NPP. Further, that "if we cannot trust the assertions of third party assessors, the credibility of RSPO's whole voluntary standard and certification process is in doubt".

GAR withdrew NPP submissions for all of the concessions immediately after the complaint was filed. In March 2015, the RSPO Complaints Panel upheld FPP's complaint and ordered GAR to cease development on all 18 concessions pending its resolution.²² The complaint remains unresolved.

FPP submitted a complaint against PT Mutuagung Lestari in October 2014. At the time of writing (more than a year later) it had yet to be addressed by ASI and the RSPO due to a failure to determine the correct procedure to follow and slow follow-up by the RSPO Secretariat.



Oil palm in PT Kartika Prima Cipta concession, West Kalimantan.

© Marcus Colchester/Forest Peoples Programme

"It seems these assessors have colluded with GAR in disguising the real situation".

Forest Peoples Programme, October 2014

CASE STUDIES

WEAK HCV ASSESSMENTS

COMPANY:

Noble Group

HCV ASSESSOR:

Consultants from Bogor Agricultural Institute (IPB)

CERTIFICATION BODIES:

TUV Rheinland and BSI Group Singapore Pte Ltd

In recent years, the Norwegian Government Pension Fund Global (GPF), the world's largest sovereign wealth fund, has divested much of its substantial holdings in the palm oil sector on the grounds that the operations of most producers present too high a risk of violating its Ethical Guidelines.²³ The guidelines prohibit the fund from investing in companies where there is an "unacceptable risk" that their operations will contribute to "severe environmental damage".

In December 2012, the fund's Council of Ethics commissioned an assessment of its investment in Noble Group (Noble), concentrating on two concessions held by the company in Indonesia. The risk of "severe environmental damage" was measured by reviewing HCV Assessments commissioned by Noble to meet the requirements of the NPP.²⁴

The concessions, PT Henrison Inti Persada (PT HIP) in West Papua Province and PT Pusaka Agro Lestari (PT PAL) in Papua Province, amount to approximately 70,000 hectares (ha) of mostly lowland tropical forest. Each is situated within an eco-region of global importance for biodiversity conservation: the Vogelkop-Aru Lowland Rain Forests and the Southern New Guinea Lowland Forests. The former contains several bird species endemic to the area and not found anywhere else in the world.

The HCV Assessment of PT HIP was carried out in 2010 by consultants from Bogor Agricultural Institute. The assessment identified that the majority of the 32,546 ha concession was lowland tropical forest; 13,200 ha was identified as degraded natural forest of varying levels and 6,000 ha was palm oil. Inexplicably, the remaining 13,000 ha of the concession was not assigned to a forest type in the HCV assessment.²⁵

The HCV Assessment identified 661 plants, although only 30 per cent of these were identified to a species level. A total of 75 animal species were identified in the report but no efforts were made to identify any amphibian or insect species. The HCVs identified were nearly all in narrow (25-50m) strips of riparian zones – natural habitat bordering rivers, streams and lakes – with 420 ha of forest patches on steep slopes included as well.²⁶

Given the location, the larger patches of lowland tropical forest within the concession were likely to support high levels of biodiversity, including species not found outside of New Guinea. Almost no survey effort was assigned to these areas.

In 2011, another team of consultants from Bogor Agricultural Institute carried out an HCV Assessment in PT PAL, Noble's 35,760 ha concession in neighbouring Papua Province. The assessments identified a surprisingly low total of 58 animal species and no effort was made to identify any threatened amphibian, fish or insect species. The HCVs identified were all in riparian areas or peat swamps.

No efforts were made to identify HCVs in lowland tropical forest on well-drained mineral soil and, consequently, no data were made available on the likely significant biodiversity losses should this habitat be converted to oil palm. Biodiversity data from comparable areas indicate that this part of the concession was highly likely to support greater levels of faunal and floral diversity than those identified in the HCV assessment.²⁷

The review commissioned by the Council of Ethics found that the HCV assessments were either inadequate or, in the case of the large blocks of tropical lowland forest present in both concessions, simply not done. The review concluded that it was unclear what biodiversity would be lost and identified "no scientific basis for the conclusion that the planned conservation areas are sufficient to ensure the HCV's continued existence".²⁸

The HCV assessments recommended the conversion of 55,000 ha of forest "without providing sufficient data on forest condition, biodiversity or ecosystems". The review concluded that it was highly likely these areas supported large populations of threatened, protected, or endemic species that would be lost. It also observed that the limited areas set aside by Noble were "in fact areas that the company is required to protect under national Indonesian requirements".²⁹

The Council held that HCV surveys displayed "sampling bias" towards these areas protected under Indonesian law. The end result did "not seem to strengthen biodiversity [conservation] to any greater extent than already required by national legislation."

Following the review of the HCV assessments, the Council of Ethics sent its findings and a draft recommendation to divest to Noble in February 2013. Noble argued that the Council's analysis "cast [...] fundamental aspersions on the whole process of independent RSPO certification, the validity of the NPP process and the professionalism of the HCV studies carried out by those that are certified by the RSPO."³⁰

The Ethical Council concluded that "membership in the RSPO does not in and of itself guarantee that HCVs will be identified, protected and managed in such a way that biodiversity is protected in connection with forest conversion". The advice was accepted and the Fund has sold its \$49m stake in Noble Group.³¹

The HCV assessments were verified by RSPO-approved Certification Bodies and have successfully passed through the NPP notification. The large areas of lowland tropical forest will now be cleared, fully in compliance with the RSPO assessment process, if woefully out of line with the Standard and resulting in substantial biodiversity losses.

COMPANY:

PT Sawit Sumbermas Sarana

HCV ASSESSOR:

PT Sonokeling Akreditas Nusantara

CERTIFICATION BODY:

TUV Rheinland

PT Sawit Mandiri Lestari (PT SML), a subsidiary of PT Sawit Sumbermas Sarana (PT SSS), claims rights to a concession of around 20,000 ha in Central Kalimantan, Indonesia. It lies within a landscape identified by conservationists as a priority habitat for orangutan conservation.³² In March 2015, PT SML's NPP notification was opened for the 30-day consultation period by the RSP0.

Field work for the HCV assessment was carried out by PT Sonokeling Akreditas Nusantara (PT Sonokeling) in 2014. The assessors identified 4,832.83 ha of HCV areas. The areas were scattered and mostly isolated patches of hill forest and riparian zones, areas of natural habitat already protected under national legislation.³³

The assessors recorded a number of globally threatened species protected under Indonesian law, including the Sunda pangolin, Bornean orangutan and critically endangered tree species. However, the HCV areas are clearly insufficient to afford any protection to these species. They are predominantly small hill tops and narrow strips of riparian habitat, mostly unconnected to each other and completely isolated from any larger blocks of natural habitat in the landscape. There is no information in the summary HCV assessment as to how the plant species will be conserved.

Through interviews with communities in and around the concession, EIA investigators identified serious flaws in the approach taken to social HCVs and FPIC. The leadership of three communities had no knowledge of the RSP0 process or of the company's obligation to respect customary land claims. None of them had been involved in field assessments or detailed interviews to identify HCVs. Indeed, they professed to not having met with PT Sonokeling and were unaware of the name. Meetings between them and the company had focused on questions of smallholdings and requests for a documented agreement had not been met.³⁴

The company later acknowledged that a participatory mapping process had not begun, which indicates it should not have been in a position to submit NPP notification.³⁵

EIA submitted a complaint to the RSP0 in June 2015, raising concerns with the technically flawed HCV assessment and the fact that it will not conserve the Critically Endangered species in the concession.³⁶ The complaint also raised doubt over the extent to which the assessment had accurately identify social HCVs. EIA argued that the assessment was clearly flawed and should thus be struck from the record.

The RSP0 subsequently instructed PT SML to submit the assessment for a peer review and add an addendum to it. But the HCV assessment has been allowed to stand, legitimising the likely destruction of HCVs.

Due to pressure from its main buyers,³⁷ PT SML subsequently commissioned a "comprehensive orangutan assessment" to be carried out by a credible conservation organisation. This raises the prospect that PT SML is aware that the HCV assessment failed to fully and accurately identify orangutan habitat. PT SSS confirmed to EIA that the survey would be "accommodated in the land use plan",³⁸ though its HCV assessment may still lay the groundwork for those areas to be cleared.



Village next to PT SML concession in Central Kalimantan.

CASE STUDIES

HOW CERTIFICATION BODIES RESPOND TO VIOLATIONS OF THE RSPO STANDARD

CERTIFICATION BODY:

TUV NORD Indonesia

RELATED CASE:

First Resources Ltd in East Kalimantan

In 2012, EIA submitted a formal complaint to the RSPO regarding violations of FPIC, the NPP and other RSPO rules by First Resources subsidiary PT BSMJ (see page 8). The complaint itself was targeted at First Resources in order to address the immediate need for a cessation of land clearing and to relieve the pressure on the community of Muara Tae.

However, the complaint was predicated on misleading assessments carried out by consultants connected to the Bogor Agricultural Institute, commissioned by First Resources. The assessments had been reviewed and approved by TUV NORD Indonesia (a subsidiary of the global TUV NORD group) in its capacity as an accredited Certification Body. The NPP documents include a "verification statement" which concludes: "TUV NORD assessor confirmed that the assessment and plan are comprehensive, professional and compliant with the RSPO principles, criteria and indicators."³⁹

In parallel to the complaint against First Resources, EIA raised concerns directly with TUV NORD, pointing out in correspondence that it had verified manifestly inaccurate – and potentially fraudulent – assessments. In a letter sent on November 9, 2012 EIA wrote that "the documents prepared by or on behalf of TUV NORD, and 'verified' by TUV NORD, contain deliberate and willful falsehoods [...] This raises serious questions about whether TUV NORD's intent in this case was to preserve the integrity of the RSPO Principles and Criteria or to protect the interests of the company."⁴⁰

EIA provided the same evidence to TUV NORD which later led the RSPO Complaints Panel to conclude that serious violations of the RSPO Standard had occurred. TUV NORD had not carried out site visits but a desk-based "documentation audit" of the assessments produced by a third party – the consultants from Bogor Agricultural Institute. As such, EIA expected that TUV NORD would revisit the assessments on the basis of the new evidence and determine how and why it had failed to identify the violations of the RSPO.

"We are all educated Indonesians in TUV NORD Indonesia! We know better how to love and to safeguard our own country!"

TUV NORD Indonesia email to EIA, November 2012

In an email to EIA on November 27, 2012 the President Director of TUV NORD confirmed that he had "immediately" formed a team to "independently crosscheck" the case and held a face-to-face meeting with First Resources.⁴¹ The email subsequently rejected EIA's concerns while failing to address the evidence and substantive issues. Moreover, in its response TUV NORD made statements demonstrating a flawed understanding of the RSPO Standard, particularly as it pertains to the customary rights issues which have plagued the case.

The core problems with TUV NORD's position were:

- a flawed conflation of "consultation" in the legally required Environmental Impact Assessment with a legitimate FPIC process. TUV NORD stated that the process of obtaining the Assessment, a requirement under Indonesian law, involved "public consultation with the relevant stakeholders". EIA had not disputed the presence of the Environmental Impact Assessment, but the consultation within that process falls far short of FPIC;
- TUV NORD stated that the village of Muara Tae, whose land was annexed, was not identified in the Plantation Business License (IUP) issued by the district government and that the community had not been compensated as a consequence. The email stated that TUV NORD Indonesia had "relied on the IUP... in carrying out our verification audit";
- TUV NORD stated Muara Tae's customary land rights claims within the concession were negated by a decree issued by the district government. It said: "We believe that neither BSMJ, TUV NORD nor any NGOs are in any position to determine the ownership of land by any community, especially Muara Tae's claim of approximately 4,303 ha of concession area. This issue should rightfully be addressed by the local government".

The response placed an overwhelming emphasis on state law. It implicitly used First Resources' compliance with regulatory processes and permits from the state as a justification for the company's operations in customary territories. The rationale betrayed a poor understanding of the RSPO Standard as distinct from – and going beyond – state law.

In particular, the argument that only the local government could determine "ownership of land by any community" contravenes the Indonesian National Interpretation of the RSPO Standard. The interpretation defines customary rights as: *"Patterns of long-standing community land and resource usage in accordance with indigenous peoples' customary laws, values, customs and traditions, including seasonal or cyclical use rather than formal legal title to land and resources issued by the State"*.

Accordingly, the decree to which TUV NORD referred did not negate the community's customary rights. Neither did the consultation in the Environmental Impact Assessment process amount to a FPIC process.

In its “independent” investigation of the case, TUV NORD failed to consult the community whose right to FPIC had been violated and whose land had been annexed by First Resources. The review appeared to rely solely on informal testimony from First Resources and the assessors, despite the evidence presented by EIA that both parties had already ignored – deliberately or otherwise – the rights of the community concerned.

TUV NORD’s initial failings were a consequence of a structural flaw in the RSPO’s oversight regime, namely, that if an assessor presents misleading information the deceit may not be identified by a desk-based documentation review. However, its reaction in responding to a robust case alleging it had verified misleading documents betrayed of a cultural flaw within the same regime, that Certification Bodies react to such evidence by working closely with plantation companies to provide “answers” without addressing the problem.

After ASI assumed responsibility for accrediting Certification Bodies, it found that TUV NORD Indonesia fell short of RSPO requirements. TUV NORD failed to address these and its accreditation was terminated.⁴² In December 2015, the United Nations will award the Muara Tae community with the Equator Prize, recognising its “outstanding local achievement in advancing sustainable development”.⁴³

CERTIFICATION BODY:

Control Union Certifications BV

RELATED CASE:

Kuala Lumpur Kepong in Central Kalimantan

In 2011, EIA released a report detailing the operations of PT Menteng Jaya Sawit Perdana (PT Menteng), a subsidiary of RSPO member Kuala Lumpur Kepong (KLK). Shortly afterwards, NASA’s Fire Information for Resource Management System recorded a high-confidence ‘hotspot’ in the concession on June 22 or 23, 2011, a strong indication that a significant fire had started.⁴⁴

On June 20, Control Union Certifications (CUC) informed EIA by email that as KLK’s certification body it had registered the report as a formal complaint and would initiate an investigation.⁴⁵

A month later, CUC sent the results of its investigation to EIA. Regarding the report of a hotspot in PT Menteng, it wrote that KLK had a policy that prohibits burning and that “no evidence of fire has been found at any other of the KLK plantations as audited by CUC”. It added that KLK had no record of fires in the concession on the date reported.⁴⁶

CUC had reached its conclusions through a meeting with KLK staff in its offices. It did not carry out a site visit to PT Menteng.

More than a year later, CUC carried out a second assessment, during which it found a police report by KLK confirming a fire “breakout” on June 22 or 23. The second CUC report suggested that, based on this police report, the claim in the first report that there were “no records of fire” was “inaccurately explained”.⁴⁷

The case further exhibits the weaknesses in Certification Bodies’ internal investigations or assessment of complaints which place excessive trust in their clients and the burden of proof on complainants.



© Masyarakat Muara Tae



Muara Tae community members, East Kalimantan.

© Tom Johnson/EIA

“Based on the police report, the claim ‘no records of fire within the concession area during this period’ was inaccurately explained”.

CUC, September 2012

CASE STUDIES

CERTIFICATION BODIES, COMPLAINTS AND CONFLICTS OF INTEREST

CERTIFICATION BODIES:

Intertek (formerly Moody International),
SGS Qualipalm and BSI

RELATED CASE:

IOI Group

IOI Group is a Malaysian palm oil conglomerate represented on the RSPO Board of Governors through its subsidiary Lodars Croklaan. In terms of the volume of Certified Sustainable Palm Oil (CSPO) traded and RSPO-certified land bank, IOI Group is one of RSPO's most important members. IOI Lodars Croklaan is a key supplier of Unilever,⁴⁸ the fourth largest consumer goods firm in the world.⁴⁹

In spite of these credentials, IOI Group (IOI) has proven incapable of effectively resolving major, well-evidenced RSPO complaints from 2010 onward. At the time of writing, it faces a high risk of suspension from the RSPO due to its failure to resolve these issues.

These cases arose in part because auditors failed to identify non-compliances with the RSPO rules governing Partial Certification. Both were then deeply complicated by IOI commissioning its own auditors, which had issued certificates to it, to carry out "verification" of complaints against the company.

For the past five years, IOI and a succession of auditors have, as a result, become repeatedly embroiled in conflicts of interest that have ensured credible allegations of legal violations, destruction of HCV and abuse of community rights have been left unresolved.

Case One: Long Teran Kanan

In November 2010, representatives of the village of Long Teran Kanan, in Sarawak, Malaysia, together with a coalition of NGOs, filed a formal complaint against IOI. The complaint alleged that IOI had occupied customary lands belonging to the village.⁵⁰ In response, IOI commissioned Moody International (Moody), a Certification Body, to carry out a "verification" of the complaint.

By this point, Moody had already issued RSPO certificates to other parts of IOI's operations elsewhere in Malaysia. Under the rules of Partial Certification, the ongoing conflict in Long Teran Kanan should have led to a suspension of its RSPO certificates. As such, the complaint raised questions regarding Moody, not just IOI. The commission effectively tasked Moody with investigating both its client and itself.

The complainants warned Moody that this represented a clear conflict of interest.⁵¹ Moody ignored the advice and during field assessments its staff introduced themselves to the village leader of Long Teran Kanan as assessors operating under the

RSPO. When the village leader argued that the assessors were not mandated by the RSPO, the assessors denied this was the case.⁵²

The complainants viewed the resulting report as an attempt to "identify arguments that would dismiss the complainants' case and cause".⁵³ The report was posted on IOI's website but was effectively ignored by all stakeholders thereafter. The Long Teran Kanan case remains unresolved today.

Case Two: Ketapang, West Kalimantan, 2010

The second complaint concerns IOI's majority-owned subsidiaries in Ketapang District, West Kalimantan. The complaint was initiated by the publication of a report by Friends of the Earth, 'Too Green to be True', in March 2010.⁵⁴

The allegations included in the report were striking. IOI's subsidiaries were alleged to have provided 'fraudulent' statements to the Indonesian Government, falsely claiming it had not begun land clearing before submitting Environmental Impact Assessments for review. Allegedly, two subsidiaries had illegally encroached on Production Forests. One concession was established almost entirely on peatlands, in violation of IOI's own policies. Land clearing had begun before legally required Plantation Business Permits were issued, a violation of Indonesian law. The report presented a robust, prima facie case that serious criminal acts had taken place.

In response to the report, IOI commissioned another of its Certification Bodies, SGS Qualipalm, to "verify" the allegations. The SGS lead assessor later reframed the resulting verification report as an NPP for IOI's group of subsidiaries in Indonesia, the SNA Group. SGS thus crudely combined a complaint-verification with RSPO's formal NPP in one single report. IOI published the report on its website in early 2011. This 'NPP' was never processed by the RSPO.⁵⁵

The verification report was rejected by the complainants because of the attempts to reframe it as a formal, RSPO-endorsed NPP, rather than an unprocedural activity that fell outside SGS's accredited mandate.⁵⁶ Further, the SGS report omitted crucial incriminating information about SNA Group's illegal activities that could not possibly have escaped the assessor's attention; specifically, that two subsidiaries had commenced land clearing without legally required permits in January and March 2009. The permits were not issued until December 3, 2009.

In March 2015, the NGO Aidenvironment resubmitted the complaint against IOI on the grounds that the violations in Ketapang remained unresolved. The complaint also included new findings alleging repeat violation of a range of RSPO rules by IOI's subsidiaries.⁵⁷

On the basis of the previous experiences with Moody and SGS Qualipalm, Aidenvironment demanded IOI should not contract a Certification Body to verify the complaint. Aidenvironment wrote that it would be willing to work with an internal company team providing that the work was guided by a clear Terms of Reference or, alternatively, recommended that the verification be conducted by ASI.⁵⁸



Sign demarcating Long Teran Kanan customary land in Sarawak, Malaysia.

© Aidenvironment

Again, however, IOI commissioned its HCV assessor Aksenta and its Certification Body Intertek (which had acquired Moody) to carry out the verification. The complainant was not consulted on the Terms of Reference, nor did either auditor contact the complainant in an effort to understand a complaint that had accumulated a complex history over some five years.⁵⁹

Again, the process was undermined by a clear conflict of interest. An effective investigation would have required Aksenta to determine that HCV sites it had identified for conservation had been cleared by its client and for Intertek's assessors to identify failings by their own colleagues and employer. Nonetheless, the RSPo posted the reports online, presenting an arguably misleading public perception of the result of the complaint.

The entire exercise was fundamentally undermined by this conflict of interest. This interpretation of events was later confirmed by ASI, which stated: "This activity [...] raises some concerns on impartiality and conflict of interest."⁶⁰

Complaints against the Certification Bodies

Aidenvironment filed formal complaints against two of IOI's Certification Bodies in August 2015. The complaints were the first ASI would deal with under its RSPo mandate.

The complaints, against Intertek and BSI, alleged they had failed in their obligations to verify IOI's compliance with Partial Certification requirements by certifying parts of IOI's operations as RSPo-compliant while serious violations remained outstanding. It also alleged that Intertek's assessment of Aidenvironment's complaints fell outside the scope of its RSPo accreditation and conflicted with "the spirit" of RSPo statutes.⁶¹

BSI responded to the complaint in a letter sent to Aidenvironment two months later, on November 9, 2015. The Certification Body stated that the letter was sent in confidence and its conclusions have not been made public.⁶²

Intertek responded to the complaint after six weeks. Regarding allegations of conflict of interest, it contended that the RSPo grants growers "the right" to appoint accredited Certification Bodies to conduct complaint verifications.⁶³ The RSPo's Certification Systems document contains no such article. In fact, it states: "Certification bodies cannot have provided management advice to the company being audited".

Intertek also claimed it had "numerous prior consultations with the RSPo secretariat" and that RSPo staff had approved its decision to take the assignment.⁶⁴ If true, RSPo staff had dismissed one of the complainant's core demands, made explicitly to ensure impartiality.

After six years, these cases are no closer to resolution. They have been complicated by the role played by auditors in assessing complaints against their own client. Such activities dim the prospect of arriving at impartial arbitration and clear routes towards the resolution of complaints. This in turn has made the Complaints System a quagmire which ties up NGOs for years in a war of attrition, in which obfuscation prevails over evidence.

In November 2015 the RSPo will deliberate on demands that IOI is suspended from trading Certified palm oil. If the suspension is imposed, it will be at least in part due to poor advice from Certification Bodies.

CASE STUDIES

FAILING TO IDENTIFY ABUSIVE LABOUR PRACTICES

The Federal Land Development Agency (FELDA) is one of the world's largest oil palm companies, with more than 400,000 ha of land under its management in Indonesia and Malaysia.

It was founded in 1956 by the Malaysian Government to help relieve poverty among the landless. More recently, it has received criticism for its poor sustainability record and tensions reportedly exist between the company and rural smallholders due to alleged "systematic undervaluation of oil palm fruits and the use of power politics to grab land".⁶⁵

In July 2015, the *Wall Street Journal* published an article based on investigations into the use of migrant labour and labour practices in a FELDA plantation.⁶⁶ The article included a range of allegations of labour and rights abuses within a FELDA concession, including poor safety conditions, no compensation for injuries sustained at work and the use of dangerous pesticides without training. The most serious allegations concerned the use of migrant workers who had been smuggled into the country by human traffickers and made to work for months on end without pay.

Workers interviewed for the article were reportedly employed by contractors rather than FELDA and were moved between concessions. One worker said that the contractors "buy and sell us like cattle" and that he had not been paid in six months. Another said contractors took their passports so they could not leave and threatened them with arrest if they attempted to do so.

Workers employed directly by FELDA reported better conditions but also claimed to be paid less than the statutory minimum monthly wage of RM900 (\$240). The claim was evidenced by pay slips seen by the reporter. FELDA broadly rejected the allegations within the article, claiming it afforded workers "basic rights", the minimum wage and insurance.

Within weeks of the WSJ article's publication, the Complaints Panel commissioned an independent assessment of RSP0 Certification Bodies' competence in identifying labour and human rights issues, to be undertaken by ASI.⁶⁷ On announcing the investigation, the RSP0 noted it was not the first allegation concerning labour rights, including allegations that members used child labour.

In October, ASI published the results of its investigations into three FELDA palm oil mills, each of which was served by several plantations. Two of the mills remained uncertified but had already undergone assessments for certification, carried out by Control Union Malaysia Sdn Bhd (Control Union). The third had been certified by PT Mutuagung Lestari.⁶⁸

"They buy and sell us like cattle," said one 25-year-old Bangladeshi, who said he had been shunted among three contractors for six months without receiving any pay."

Wall Street Journal, July 2015



Worker trafficked from Bangladesh to work in FELDA plantation in Malaysia.

© Syed Zain Al-Mahmood/WSJ

The investigation examined the audit performance of the two Certification Bodies by conducting interviews with company staff, labourers, smallholders and contractors, and comparing evidence in the Certification Bodies' reports with the "reality on the ground".

ASI found major weaknesses in the audits carried out by both PT Mutuagung Lestari and Control Union. In both cases, they had failed to consider areas of potential environmental and social risk in smallholding, which represented "potentially the highest risk for the implementation of the RSP0 requirements". FELDA was not compliant with a range of significant RSP0 principles that had "not been appropriately evaluated". These related to the use of pesticides, training of staff and contractors, social impact assessments and workers' rights.

ASI found that "constant" debt issues experienced by communities had not been addressed in social impact assessments. In the estates audited by PT Mutuagung Lestari, it confirmed that workers were not all paid the minimum wage and some worked seven-day weeks. One had worked 28 days straight without a break. In estates audited by Control Union, women were working full days picking oil palm fruits but were only paid for part-time work. As a result, their monthly salaries of as little as RM500 were almost half the statutory minimum wage.

ASI found no evidence of forced labour or trafficking but FELDA was unable to show how it mitigated the risk of this among its contractors and in smallholdings. ASI concluded this was "potentially the highest risk" to the company's compliance with the RSP0. It also confirmed the allegation that employees' passports were being held by the company. Workers had told the WSJ that this practice was used to control them but ASI was provided signed declarations stating they had handed over the passports voluntarily for "safe keeping".

Since 2010, the US Department of Labor has identified palm oil from Malaysia as a commodity that is known to be produced by forced labour or child labour, in violation of international standards.⁶⁹ FELDA confirmed that nearly 85 per cent of its own workforce is composed of migrants.⁷⁰ In view of this, the failure of Certification Bodies to identify and mitigate such a critical, well known risk represents a huge loophole in the ability of the RSP0 to provide assurance that certified palm oil is not contributing to serious rights abuses.

Evading the New Planting Procedure

While the New Planting Procedure is currently undermined by substandard assessments, its efficacy and the credibility of the RSPO are also weakened by a more simple problem – some members are avoiding the NPP process altogether. They are able to do so due to the absence of a mechanism to identify and, more importantly, act on companies clearing land prior to the NPP.

Where this occurs there is no guarantee that companies are not clearing HCV or have a FPIC process in place. Where companies have submitted NPP notifications after beginning operations, as in case studies included in this report, HCV losses and social conflicts have occurred.

A stark example of the scale of this problem is evidenced by Triputra Agro Persada (TAP). In a report published in 2013, EIA identified that the RSPO member's planted landbank had swelled from 82,000 ha in 2010, when the NPP became mandatory, to more than 134,000 ha.⁷¹ In that time it had not submitted a single NPP notification.⁷²

Between 2006-14, TAP has been responsible for at least 37,000 ha of deforestation.⁷³ The company's substantial landbank – making it one of the largest palm oil companies in Indonesia – overlaps with more than 28,000 ha of potential and actual orangutan habitat which may now have been cleared.⁷⁴ EIA and others have documented serious social conflicts that have not been subjected to scrutiny by auditors due to TAP's evident failure to submit itself to RSPO requirements.

There is a clear disparity between the aggressive expansion TAP has promised in its annual reports, for investors and financiers, and in the modest growth it reported to the RSPO in its Annual Communication of Progress (ACOP).⁷⁵

Latin America has become the second largest palm oil growing region in the world and 26 growers have become members of the RSPO. By the RSPO's own estimate, the members manage more than 250,000 ha of oil palm.⁷⁶ But only four NPP notifications have ever been submitted from the region.

This represents a lack of scrutiny on a vast scale, with potentially commensurate RSPO violations going unexamined in countries where human rights violations are rife. In August 2015 it was reported that death threats had been levelled at an environmental activist who had protested the displacement of rural farmers by an RSPO member in Colombia.⁷⁷ The company, Poligrow Colombia Ltda, has a landbank of more than 10,000 ha but EIA has found no record of any NPP notifications.⁷⁸

No mechanism exists to identify companies failing to carry out assessments or submit notifications. The system relies on self-reporting and companies are evidently abusing this trust with harmful consequences. The RSPO Secretariat betrays an alarming inability to react appropriately and swiftly to evidence of serious violations, if it reacts at all, in the absence of a formal complaint.

In the case of TAP, the evidence was published in a report seen by the Secretariat. But to EIA's knowledge, no punitive measures have been taken, no complaint has been lodged and no NPP notifications have appeared.

In August, the RSPO wrote an email to Poligrow "asking for clarification" over the allegations made by EIA. By September, the Complaints Panel had instructed the Secretariat to write to the company "asking for clarification of NPP submission".⁷⁹ It constitutes a slovenly reaction to evidence of serious human rights violations.

"If basic safety, in addition to land and water rights of local populations in Colombia cannot be ensured, the whole oil palm industry in Colombia is tainted by these reports of violence and intimidation."

EIA, 2015



Deforestation in Triputra agro Persada concession in Central Kalimantan



CONCLUSION: WHO WATCHES THE WATCHMEN?

AUDITOR FAILINGS REPRESENT A STRUCTURAL THREAT TO RSPO CREDIBILITY

Systemic and serious violations of the RSPO Standard have been repeatedly perpetrated by some of the largest oil palm companies in the world. The failings strike at the heart of the way the companies function. The approach Golden Agri Resources has taken to FPIC, and the approach FELDA has taken to labour rights, exemplify this.

The failings demonstrated by auditors are, likewise, systemic. They betray not only a lack of competence but, more commonly, a lack of intent to identify shortcomings and hold companies to the standards of the RSPO. The reaction of Certification Bodies to evidence of violations suggests an unwillingness to address them, let alone understand how internal procedural failings occurred.

The establishment of the Assessors Licensing Scheme in 2014 and the appointment of Accreditation Services

International to regulate Certification Bodies are likely to bring some improvements to the system. This year the RSPO also began consultations on a new, more detailed draft of the New Planting Procedure (hereafter 'draft 2015 NPP').⁸⁰

However, structural and systemic problems persist, as outlined below, that created the conditions for the failures outlined in this report.

The Certification Bodies implicated in this report – who have signed off on or even covered up substandard assessments – represent about a quarter of all Certification Bodies now accredited by ASI against the RSPO requirements. Until these systemic, extensive failings are resolved, oil palm buyers and financiers must exercise their own due diligence to determine the “sustainability” or otherwise of the plantation expansion they are facilitating.

The following analysis identifies specific aspects of the RSPO system that demand improvement and reform.

WEAKNESSES IN THE CURRENT REGIME:

Oversight of Certification Bodies

ASI now carries out annual assessments to check Certification Bodies' competence and is mandated to suspend them where necessary. However, it is not automatically provided with evidence of weak performance where it is identified in another context, as it has been in formal complaints.

Assessments of Certification Bodies by ASI are not yet publicly disclosed. This creates a lack of transparency over rulings and the reason behind them, and removes some degree of liability in the form of reputational damage.

Poor technical knowledge

There are clear weaknesses in auditors' understanding of the Standard, particularly related to social criteria. This is evidenced in several of the case studies in this report. The Assessors Licensing Scheme and the pursuit of suspensions by ASI are aimed at improving these standards. But the depth of these weaknesses is striking and verification of flawed assessments persists more than two years after the appointment of ASI.

Conflicts of interest

Certification Bodies providing certification services to members have been involved in assessing complaints against the companies they have certified. This is a clear conflict of interest undermining the complaints process.

One producer surveyed in the process of producing this report expressed the view that auditors' performance was often complicated by the auditors' desire to keep their business. A clear separation is essential.

Weak guidance on Social and Environmental Impact Assessments

The draft 2015 NPP states that SEIAs conducted for the NPP must be "comprehensive, participatory and led by an independent consultant compliant with national standards". These guidelines are weak, ambiguous and provide inadequate publicly available guidance on the mandatory methodology. National legal requirements are almost certainly less rigorous than, or even contradictory to, RSPO requirements, particularly with regard to social issues.

Weak consultation in the New Planting Procedure

Consultation and the means by which comments are solicited during the NPP process remain passive and simplistic in the draft 2015 NPP. The RSPO places responsibility for sharing assessment summaries at the local (or plantation) level with companies. This effectively means local stakeholder consultation, in reality, is done by the party with vested interests.

In cases investigated by EIA, communities had not seen NPP documents. The RSPO has a dedicated webpage for publishing NPP public notifications but content is commonly only available in English, which poses a challenge for some local communities and affected stakeholders. This removes a basic ability of communities to fact-check and comment on HCV assessments and SEIAs.

Public comments submitted during the consultation period are referred back to the plantation company even where there is evidence of substantive violations.

Weaknesses in HCV assessments and oversight

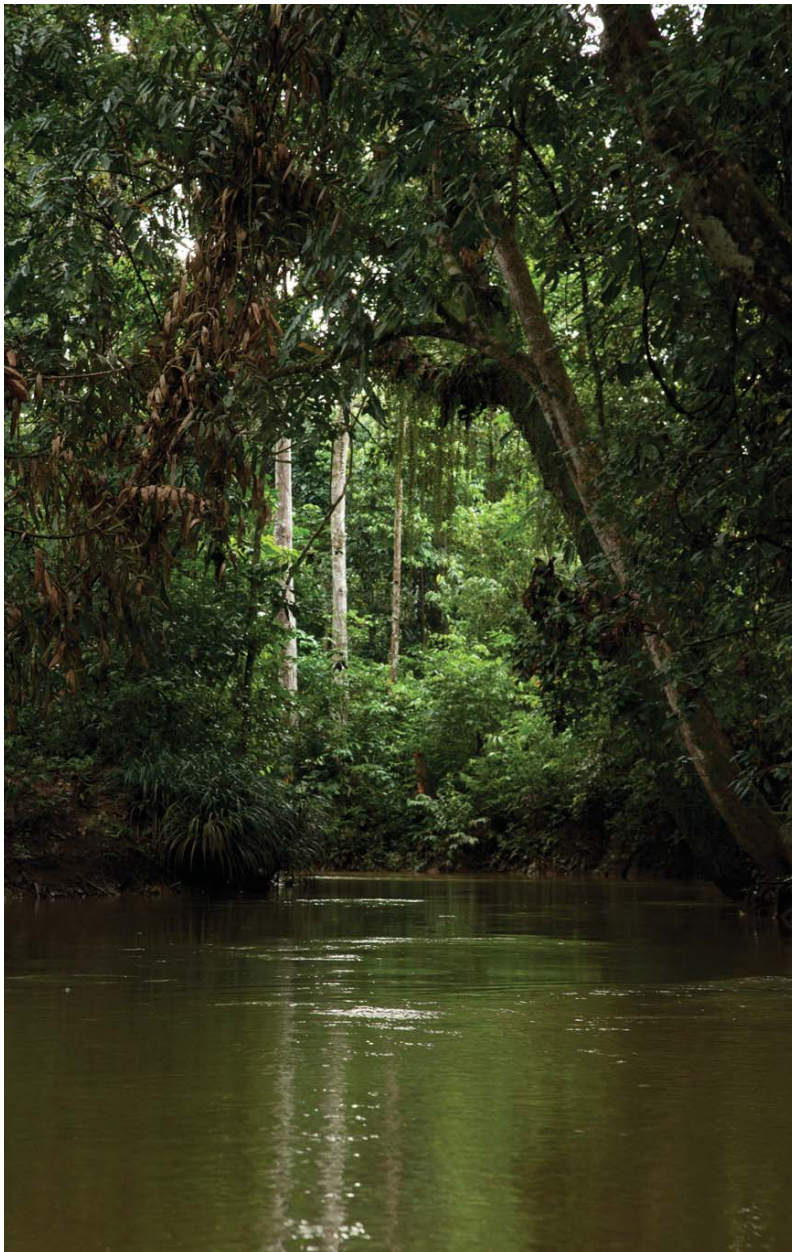
While the Assessors Licensing Scheme will improve monitoring, the RSPO does not yet set mandatory minimum standards for the acceptable quality of HCV assessments. This is particularly required in the area of 'social' HCVs, which have been shown to be poorly understood by assessors. Similarly, as the Council on Ethics to the Norwegian Government Pension Fund Global has found, assessments often cover only small fractions of concession areas and then allow conversion of areas not surveyed.

BELOW:

Rescued orangutan infant and mother in West Kalimantan.



© Alejo Sabugo/AR Indonesia



© Tom Johnson/EIA

ABOVE:
River in PT SML concession in
Central Kalimantan.

**“It is unclear if the
RSPO will aggressively
pursue suspensions
against assessors
providing substandard
and even fraudulent
assessments.”**

It is unclear if the RSPO will aggressively pursue suspensions against, or blacklist, assessors providing substandard and even fraudulent assessments. Auditors responsible for substandard assessments included in this report continue to produce new assessments.

Weaknesses in New Planting Procedure verification

The requirements for verification of NPP assessments remain rudimentary in the draft 2015 NPP. It is unclear if the RSPO provides specific guidance, indicators and thresholds for the assessment of studies. Certification Bodies must verify “the comprehensiveness and quality of all studies carried out”, for example, but the minimum threshold for “quality” is unclear. FPIC remains poorly elucidated, with ambiguity over the demands imposed on companies.

As such, the role of RSPO's Secretariat is critical in identifying problematic or high-risk submissions approved by Certification Bodies. However, the draft 2015 NPP merely states that the RSPO “checks that submission is complete” before posting notifications for consultation. There is no other publicly available information on whether or how RSPO conducts proper reviews.

ASI, which currently provides overall oversight of Certification Bodies, does not have a mandate to carry out investigations into NPP assessments. This is a critical flaw; ASI is capable of carrying out proactive field investigations to monitor compliance but without this mandate it cannot perform the function at the critical, highest risk part of plantation development. The Certification Bodies, which are guilty of covering up and verifying faulty assessments, are currently the last word on the subject.

Weak guidelines for post-New Planting Procedure monitoring

The NPP process is inherently risky because it requires the assessment and verification of plans and studies, not their implementation. There is insufficient guidance provided in the draft 2015 NPP or other RSPO documentation on how the implementation of SEIA and HCV assessments will be monitored.

Monitoring and verification of NPP implementation in annual compliance assessments or re-certification assessments is unclear; while certified areas are assessed annually, the RSPO states only that uncertified holdings will be assessed once every five years. This creates considerable time and space for violations after NPP assessments.

This is particularly the case as it pertains to FPIC and agreements with communities.

Weak guidelines on FPIC verification

Guidelines on requirements for respecting community rights to FPIC and verification of these requirements are confused and misleading. The draft NPP states that participatory mapping must begin before social and environmental assessments and that the FPIC process continues as these assessments are conducted.

It states that Certification Bodies must provide a written statement that the grower has obtained “consent from local communities and indigenous peoples” when verifying the NPP assessments.

However, it then states that “the FPIC process shall be documented at this point and a full social agreement may still be under negotiation”. This suggests that Certification Bodies can verify “consent” where agreements have still not been made which, other than being illogical, raises questions as to what it is that communities are giving consent.

The guidelines create ambiguity over the requirements for FPIC that can be exploited by growers and Certification Bodies, in ways evidenced by this report.

Fraudulent behaviour

The RSPO is not only undermined by weak guidance and underqualified auditors. The evidence that auditors knowingly made or verified false statements in assessments is compelling. It is of concern that this is not explicitly dealt with in the RSPO documentation and should be addressed with some urgency. The RSPO should maintain a zero-tolerance policy towards deliberate malfeasance by auditors and an aggressive approach to identifying it that is clearly not yet in place.

Evasion of the New Planting Procedure

The RSPO lacks mechanisms to identify non-compliance by members who fail to self-report. Further, it has failed to act on evidence that companies are not reporting, thereby evading the NPP with damaging impacts on communities and the environment. This is of particular concern in new ‘frontiers’ in Latin

America and Africa, where substantial expansion is planned and civil society is less aware of the requirements of the RSPO than within Indonesia and Malaysia. The RSPO needs to establish proactive mechanisms to identify non-compliance with the NPP.

Weaknesses in the Complaints System

The Complaints System is currently failing to properly address the complicity of auditors in non-compliances that lead to complaints. Further, auditors are playing a harmful role in the system by carrying out substandard verifications of flawed assessments by their peers.

Where complaints are brought against plantation companies, even where the complaints highlight the failings of auditors, measures are not necessarily taken against auditors. In order for their complicity to be addressed, a complaint has to be explicitly lodged against the auditor. In effect, NGOs are now tasked with policing both RSPO members and the auditors they hire, within a dysfunctional system that is reluctant to arbitrate effectively and take decisive action.

The single most important flaw in using the complaints system to address failings by auditors is that, in almost all cases, complaints only arise after considerably harm has been done. Effective audits and the entire certification system, by contrast, pre-empt harm.

BELOW:

Orangutan rescued by IAR
Indonesia in West Kalimantan.



RECOMMENDATIONS

PALM OIL BUYERS, TRADERS AND FINANCIERS SHOULD:

- Exercise due diligence to concession level until it can be demonstrated that the systemic flaws identified in this report have been resolved
- Support Resolution 6h at the 12th Annual General Assembly of RSPO Members, *on Ensuring quality, oversight and credibility of RSPO assessments*

THE RSPO SHOULD:

Ensure quality assessments

- Develop clear, mandatory guidelines on the minimum acceptable quality of HCV assessments, SEIAs, and the assessment of FPIC in the NPP
- Develop and institute a transparent and robust system for monitoring the quality of assessments
- Ensure proactive consultation of communities and experts takes place during the NPP consultation period

Improve monitoring of compliance

- Monitor RSPO members' adherence to required procedures and report all members who omit submitting NPP notifications before clearing lands to the Complaints Panel
- Expand the mandate of Accreditation Services International to cover the NPP and assessment of complaints
- Ensure that failings by all parties are identified and addressed where formal complaints are submitted

Improve accountability for substandard audits

- Publish annual ASI assessments of Certification Bodies
- Pursue suspensions and terminations of substandard Certification Bodies and assessors, adopting a zero-tolerance approach to fraudulent reports



Orangutan in Tanjung
Puting National Park,
Indonesia

REFERENCES

1. Roundtable on Sustainable Palm Oil, Principles and Criteria for Sustainable Palm Oil Production, April 2013
2. <http://www.rspo.org/about/impacts> [Accessed November 11, 2015]
3. Roundtable on Sustainable Palm Oil, Certification Systems, June 26, 2007
4. Dewan Nasional Perubahan Iklim, Indonesia's Greenhouse Gas Abatement Cost Curve, August 2010
5. US Department of Agriculture, Oilseeds: World Markets and Trade, November 2015
6. Roundtable on Sustainable Palm Oil, Certification Systems, June 26, 2007
7. Roundtable on Sustainable Palm Oil, Principles and Criteria for Sustainable Palm Oil Production, April 2013
8. Roundtable on Sustainable Palm Oil, Status of Complaints, [Accessed November 11, 2015]
9. Grassroots, Beyond Certification: Reforming the RSPO's Complaints System to meet stakeholder expectation, October 2013
10. TUV NORD, RSPO Notification of Proposed New Planting for PT Borneo Surya Mining Jaya, September 19, 2012
11. Masrani 2012, pers. comm.
12. Masrani 2012, pers. comm.
13. EIA, Formal Grievance against First Resources Ltd., October 17, 2012
14. PT Re.Mark Asia, High Conservation Value Peer Review Report of PT Borneo Surya Mining Jaya, June 2013
15. Forest Peoples Programme and TUK-Indonesia, Independent Review of the Social Impacts of Golden Agri Resources' Forest Conservation Policy in Kapuas Hulu District, West Kalimantan, January 16, 2014
16. Forest Peoples Programme, Forest Peoples Programme Complaint against Golden Agri Resources upheld, March 9, 2015
17. Forest Peoples Programme, Submission of Complaint, October 14, 2014
18. Ibid.
19. Ibid.
20. Ibid.
21. Ibid.
22. Roundtable on Sustainable Palm Oil, RE: Complaint - PT Kartika Prima Cipta/Golden Agri Resources Ltd., March 4, 2015
23. Council on Ethics for the Norwegian Government Pension Fund Global, Annual Report 2014, December 31, 2014
24. Council on Ethics for the Norwegian Government Pension Fund Global, Recommendation on the exclusion of Noble Group Limited from the Government Pension Fund Global's investment universe, June 26, 2013
25. Ibid.
26. Ibid.
27. Ibid.
28. Ibid.
29. Ibid.
30. Ibid.
31. Ibid.
32. Singleton, I., S. Wich, S. Husson, S. Stephens, S. Utami Atmoko, M. Leighton, N. Rosen, K. Traylor-Holzer, R. Lacy and O. Byers (eds.), Orangutan Population and Habitat Viability Assessment: Final Report, 2004
33. PT Sonokeling Akreditasi Nusantara, PT Sawit Mandiri Lestari Summary Report of HCV and SEIA, December 2014
34. Anonymous 2015, pers. comm.
35. Ibid.
36. EIA, Submission of Complaint, June 5, 2015
37. Mongabay, Oil palm company accused of violating RSPO, IPOP standards in Indonesia, June 11, 2015; Lim P., pers. comm., July 3, 2015
38. Irvan P., pers. comm., November 5, 2015
39. TUV NORD, RSPO Notification of Proposed New Planting for PT Borneo Surya Mining Jaya, September 19, 2012
40. EIA, letter to TUV Nord, November 9, 2012
41. TUV NORD, email to EIA, November 27, 2012
42. Mathe, L., pers. comm., October 30, 2015
43. UN Development Programme, UN leaders, together with actor and activist Alec Baldwin, announce Equator Prize 2015 winners, September 21, 2015
44. EIA, Moratorium-breaker KLK in the hot spot, June 28, 2011
45. CUC, email to EIA, June 20, 2011
46. CUC, CUC conclusions to complaint, July 25, 2011
47. CUC, letter to EIA, September 10, 2012
48. Foodprocessing.com, Palm oil partnership for IOI Loders Crokiaan and Unilever, October 9, 2014
49. Consultancy.uk, 50 largest Consumer Goods/FMCG firms of the globe, August 17, 2015
50. Lah Anyie Ngau et al, Grievance submission against IOI Group, November 2, 2010
51. Wakker E., pers. comm., November 2015
52. Wakker E., pers. comm., November 2015
53. Wakker E., pers. comm., November 2015
54. Friends of the Earth Europe and Milieudefensi, Too Green to be True, March 2010
55. Wakker E., pers. comm., November 2015
56. Wakker E., pers. comm., November 2015
57. Aidenviroment, Complaint against PT SKS, PT BNS and PT BSS, March 30, 2015
58. Ibid.
59. Wakker E., pers. comm., November 2015
60. Mathe, L., Email to Aidenviroment, October 16, 2015
61. Aidenviroment, Complaint against BSI, September 4, 2015; Aidenviroment, Complaint against Intertek, September 4, 2015
62. BSI, Letter to Aidenviroment, November 9, 2015
63. Wakker E., pers. comm., November 2015
64. Ibid.
65. Profundo, Initiating Coverage: Felda Global Ventures Holdings, June 12, 2012
66. Wall Street Journal, Palm Oil Migrant Workers Tell of Abuses on Malaysian Plantations, July 26, 2015
67. Roundtable on Sustainable Palm Oil, RSPO response to the report titled "Palm Oil Migrant Workers Tell of Abuses on Malaysian Plantations" published by the Wall Street Journal on 26th July 2015, July 28, 2015
68. Accreditation Services International, Compliance audit and investigation report, October 9, 2015
69. US Department of Labor, List of Goods Produced by Child Labor or Forced Labor, December 1, 2014
70. Wall Street Journal, op. cit.
71. EIA, Banking on Extinction, November 7, 2013
72. Ibid.
73. Chain Reaction Research, Sustainability Risk Analysis: Triputra Agro Persada, May 21, 2015
74. Ibid.
75. EIA, 2013
76. Roundtable on Sustainable Palm Oil, Sustainable Palm Oil in Latin America - From Strength to Strength, January 22, 2015
77. EIA US, Colombian Land Activist Threatened by Paramilitaries Linked to Oil Palm Company Poligrow, August 21, 2015
78. Roundtable on Sustainable Palm Oil, New Planting Procedures Public Notification, accessed November 12, 2015
79. Roundtable on Sustainable Palm Oil, Minutes of the Complaints Panel meeting No.9/2015, September 15, 2015
80. Roundtable on Sustainable Palm Oil, RSPO New Planting Procedure Draft for Consultation Version 4.3, July 2015

ENVIRONMENTAL INVESTIGATION AGENCY (EIA)

62/63 Upper Street
London N1 0NY, UK
Tel: +44 (0) 20 7354 7960
Fax: +44 (0) 20 7354 7961
email: ukinfo@eia-international.org

www.eia-international.org



EIA - WASHINGTON, DC

PO Box 53343
Washington, DC 20009 USA
Tel: +1 202 483-6621
Fax: +1 202 986-8626
email: info@eia-global.org

www.eia-global.org