



The Complaints System of the Roundtable on Sustainable Palm Oil (RSPO)

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About this report series

This report is part of a series produced by the Non-Judicial Human Rights Redress Mechanisms Project, which draws on the findings of five years of research. The findings are based on over 587 interviews, with 1,100 individuals, across the countries and case studies covered by the research. Non-judicial redress mechanisms are mandated to receive complaints and mediate grievances, but are not empowered to produce legally binding adjudications. The focus of the project is on analysing the effectiveness of these mechanisms in responding to alleged human rights violations associated with transnational business activity. The series presents lessons and recommendations regarding ways that:

- non-judicial mechanisms can provide redress and justice to vulnerable communities and workers
- non-government organisations and worker representatives can more effectively utilise the mechanisms to provide support for and represent vulnerable communities and workers
- redress mechanisms can contribute to long-term and sustainable respect and remedy of human rights by businesses throughout their operations, supply chains and other business relationships.

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Acronyms

BoG	Board of Governors
CAO	Compliance Advisor Ombudsman
DSF	Dispute Settlement Facility
EB	Executive Board
FPIC	Free, Prior, and Informed Consent
FPP	Forest People's Programme
FSC	Forest Stewardship Council
GAPKI	Indonesian Palm Oil Association
GAR	Golden Agri Resources
HCS	High Carbon Stock
HCV	High Conservation Value
ICS	Integrated Complaints System
IFC	International Finance Corporation
ISEAL	International Social Environmental Accreditation and Labelling Alliance
ISO	International Organization for Standardization
ISPO	Indonesian Sustainable Palm Oil
KADIN	Indonesian Chamber of Commerce
MSPO	Malaysian Sustainable Palm Oil
NCP	National Contact Point
n.d.	no date
NGO	Non-Government Organization
NPP	New Plantings Procedures
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
P&C	Principles and Criteria
PNG	Papua New Guinea
RSPO	Roundtable on Sustainable Palm Oil
UN	United Nations
UNGP	United Nations Guiding Principle on Business and Human Rights
WWF	World Wildlife Fund

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Executive Summary

The RSPO complaints system

The RSPO is a voluntary, multi-stakeholder organization, the main focus of which is standard setting and certification of sustainable palm oil production. The RSPO includes representatives from seven sectors of the palm oil industry: oil palm growers, palm oil processors or traders, consumer goods manufacturers, retailers, banks and investors, environmental or nature conservation NGOs, and social or developmental NGOs. The pervasive presence of disputes in the sector has meant that development of a complaints system has become an important element of the RSPO's overall regulatory system.

The central decision making body within the Complaints System is the Complaints Panel. Another important channel of dispute resolution within the RSPO, which can be used in the first instance before resorting to the Panel, is the Dispute Settlement Facility, which provides a framework for facilitating dialogue and mediated negotiations between parties. Complaints regarding certification processes are referred in the first instance to the relevant accreditation or certification body. A separate pathway also exists to deal with alleged non-compliance with RSPO provisions relating to land clearance without prior High Conservation Value assessment, or adherence to Procedures for New Plantings.

The RSPO's existing complaint handling system can deal with conflict involving RSPO members, concerning any codified RSPO standards or rules. Members of the RSPO are governed by a Code of Conduct, which applies to all members. In addition the RSPO has developed a set of production standards for assessing the performance of palm oil production—the key instrument of which is the RSPO Principles and Criteria (P&C) for Sustainable Palm Oil, which apply to certified production facilities. Despite the breadth of the possible grounds for bringing complaints through the RSPO complaints system, in practice the majority (about three quarters) of the cases handled by the complaints system to date have related to land disputes—including disputes about the Free, Prior and Informed Consent (FPIC) of communities in land acquisition processes, and disputes concerning the clearing of High Conservation Value (HCV) land—that is, land identified as containing natural habitat of particularly high biological, ecological, social or cultural value.

Formal barriers to use of the system are low. Both members and non-members can use the complaints system; there are no formal evidentiary requirements to bring a complaint; and there is no specific time limit on bringing a complaint. Nonetheless, the onus of demonstrating a case at the initial stage of making a complaint in writing rests on the complainant, and there is a general expectation that attempts at bilateral dialogue and negotiations should be exhausted before a formal complaint is lodged with the RSPO.

Remedies for grievances in cases where an adjudicative process via the Complaints Panel is used are at the discretion of the Complaints Panel. The most serious penalty available is suspension or revocation of RSPO membership. The RSPO may also suspend a company's certification certificates. These penalties are rarely applied; more commonly dispute resolution processes focus on trying to establish a negotiated settlement between parties.

The RSPO complaints system has undergone significant recent changes, and further reforms are currently being considered. At the time of this report's writing (in June 2016), draft proposals

for a new Integrated Complaint System and Independent Appeals System for the RSPO were undergoing public consultation. If implemented, these proposed reforms would entail some significant changes, particularly with regard to the independence of adjudications, appeals and investigation of disputed facts, and institutional processes to support strengthened transparency and public communications around both individual disputes and the complaints system as a whole. Such proposals may also have implications for the burdens of proof and in some cases also financial burdens faced by prospective complainants.

Past performance of the complaints system

In view of the ongoing changes to the RSPO complaints system, analysis in this report focuses on past performance—though we comment on proposed future reforms as relevant to our discussion of policy implications. We assess past performance of the RSPO complaints system with regard to: a) the securing of appropriate remedies for parties to individual grievances; and b) contributions to preventing recurring grievances.

With regard to individual remedy, there have been significant gaps in the RSPO's capacity to facilitate the successful resolution of individual disputes. The minority of cases brought through the RSPO complaints system have been concluded on the basis of an agreed settlement or imposition of a sanction. The aim of achieving timely resolution of disputes has also encountered significant challenges, with significant delays experienced in the processing of many disputes passing through the RSPO complaints system, and a significant backlog of cases. Nonetheless, there is evidence that RSPO processes have sometimes contributed to the management of complex disputes, via indirect effects on communication between disputing parties, or influence over the terms of dialogue and bargaining between stakeholders in accordance with RSPO standards.

With regard to prevention of recurring disputes, there is some limited evidence that the RSPO's engagement with complaint handling processes has supported learning amongst a few more engaged member companies, as well as RSPO staff with regard to both the handling and prevention of disputes. Such contributions are mainly evident with regard to a narrow set of issues, such as the prevention of clearing of High Conservation Value land, and support for Free, Prior, and Informed Consent (FPIC) of communities in the case of new land clearing activities. Institutionalized processes to facilitate learning and prevention have generally been weak, and efforts to promote changes in production practices throughout the palm oil sector are impeded by challenges of managing complex and often sensitive political relationships with business, NGO, and government stakeholders.

The RSPO's performance has been further limited by its weak capacity to perform important functions such as community outreach and capacity building (to facilitate access to the complaints system by marginalized communities), independent investigations and fact-finding activities (to manage problems of contested facts in complex disputes), and active support for monitoring and implementation of agreements. There have also been weak provisions for, and practical use of, enforcement mechanisms in the case of standards violations. The complaints system has further suffered from procedural problems, such as high levels of informality and unpredictability of certain decision making processes, a lack of independence of parts of the complaints system from the parties involved in disputes, and weak transparency of certain procedures, particularly reason-giving to stakeholders.



Cover: Palm oil growing area in the Indonesian province of Jambi, Sumatra.

Source: Greenpeace

Lessons for institutional reform of the RSPO complaint system

The above findings regarding the RSPO complaint system's performance of specific functions generate some quite direct implications for institutional reform. Specifically, our findings suggest a need for:

- Procedural reforms to strengthen transparency, consistency, integrity and independence of RSPO complaint handling processes.
- Provision of stronger forms of community outreach and capacity building, to enable marginalised groups to make effective use of the complaints system.
- A more active role for the RSPO complaints system in investigation and evidence gathering, either directly or via resourcing of independent third-party investigations.
- A clearer framework for assigning responsibilities within the RSPO complaints system for monitoring and implementation of agreed settlements.
- Strengthened institutionalized systems to support lesson learning by RSPO members, staff, and external stakeholders both with regard to strengthening complaint handling processes, and with regard to prevention of conflict in the palm oil sector.

Some other weaknesses of the RSPO's past performance—particularly with regard to resource shortfalls and weak enforcement capacity—were shown to result from external constraints, making them more difficult to address via internal institutional reforms to the RSPO complaint system. Our analysis suggests nonetheless that recognizing such structural constraints has practical implications: for the operation of the RSPO system; for external stakeholders or supporters of the system; and for those considering using the system to assist resolution of complaints.

For the RSPO's own operations and strategies, recognizing structural capacity constraints implies the need for explicit focus on outward-looking and collaborative strategies, involving more active efforts to negotiate shared responsibilities for prevention and problem-solving with actors who possess resources, skills or leverage that RSPO processes lack—including other companies, NGOs, and governments.

For external actors seeking to strengthen RSPO systems:

- The RSPO's authority to place more demanding obligations on its members depends in part on incentives for companies to remain within the RSPO. These could be strengthened via measures such as home country regulations on labelling of sustainable palm oil, or more demanding policies of large purchasers or financiers of palm oil with regard to sustainability standards—though any such policies would be likely to be opposed by palm oil producer associations and would need to carefully manage potential political resistance in producing countries.
- The RSPO's capacity to invest more resources in activities such as investigations and community outreach depends in part on its capacity to secure a larger resource base. However, the extent of such support depends also on the extent to which political decisions internal to the organization prioritize such activities. External support from members, buyers and donors, in the form of membership fees, payments from sustainable palm oil certificates, and additional sources of funds such as external project funding is critical, but provision of such support should be more closely tied to prioritization of activities of these kinds.
- The RSPO's capacity to support prevention of recurring conflict via influencing policy and practice in the palm oil sector as a whole depends in part on the willingness of non-member companies and government agencies in Indonesia and Malaysia to accept the legitimacy of the RSPO as a voice in national and sub-national policy debates. Lack of support for RSPO standards by powerful local actors, particularly agencies of national governments in key producing countries, can work against RSPO rules and procedures in significant ways.

For potential users of the RSPO complaints system, communities considering using the RSPO complaints system—particularly to deal with complex disputes—should be aware of the importance of seeking support from organisations familiar with RSPO processes, and should be prepared to undertake lengthy processes prior to achieving a resolution. Depending on the issues being contested in a given complaint, the forms of evidence available, and the parties involved, other available avenues for pursuing remedy (for example via complaints to local governments, courts, or by working with advocacy NGOs to place direct pressure on target companies), should also be considered as possible means of seeking remedy—instead of or in conjunction with formal RSPO processes.

Broader lessons regarding voluntary multi-stakeholder complaint systems

As a voluntary, multi-stakeholder initiative, the RSPO is one example of a type of complaint-handling system that is used in many countries and economic sectors around the world as a way of facilitating access to remedy for communities whose human rights are affected by transnational business activity. Analysis of its strengths and weaknesses thus generates broader insights re-

garding the potential and limits of multi-stakeholder initiatives as means of providing remedy for communities.

Locating dispute handling within a multi-stakeholder network has a number of potential benefits. Multi-stakeholder processes can provide useful forums for peer accountability, capacity building and learning about improved approaches to handling community disputes. Such a forum can also support processes of communication and dialogue, between parties to disputes, other companies, and other communities and NGOs. Multi-stakeholder forums also have the potential to provide a focal point for development of outreach and capacity building at community level, and to support ongoing processes of monitoring and implementation of agreed settlements.

However, our analysis also highlights some significant structural constraints facing voluntary multi-stakeholder organisations like the RSPO. Distinctive challenges can include:

- Challenges of establishing independence from the interests of influential members;
- Challenges of strengthening enforcement, as the motivation of disputing parties to adhere to a multi-stakeholder body's processes and decisions is closely linked to their overall incentives to remain within the organisation.
- Challenges of securing sufficient financial and human resources to facilitate effective institutional functioning, particularly in relation to resource-intensive activities such as community outreach, capacity building, investigation and monitoring.
- Challenges of establishing legitimacy of the organization's voice within broader policy debates oriented towards preventing recurring forms of grievance.

Complaints systems located within voluntary multi-stakeholder initiatives of this kind therefore cannot ever be understood as offering substitutes for alternative state and non-state complaint handling and governance processes. On the contrary, they are often at their most productive when they interact with, and enhance the capacities of, governments, NGOs, communities, and companies—facilitating new forms of collaboration, and assisting the development of new coalitions inside and outside of the state and private sector to foster constructive dialogue and ongoing behavioural change in support of human rights.

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Summary of the RSPO complaints system

Jurisdiction and scope

The RSPO's complaint handling system is mandated to deal with a broad range of disputes involving RSPO members. Complaints can be brought on the grounds of any alleged breaches of specified RSPO statutes, by-laws, motions approved by the General Assembly or other approved articles, including the Principles and Criteria for Sustainable Palm Oil Production, Certification System and RSPO Code of Conduct (RSPO n.d.(b)).

The range of parties able to bring a complaint to the RSPO is also very broad. The complaints system can be accessed by "all stakeholders, both RSPO members as well as non-members including affected communities (and their nominated representative), workers (and their nominated representative), and other interested parties" (RSPO n.d.(b)).

There are no formal evidentiary requirements to bring a complaint, and no specific time limit on bringing a complaint. However, the onus of demonstrating a case at the initial stage of making a complaint in writing is on the complainant (RSPO n.d.(b)). There is also a general expectation that attempts at bilateral dialogue and negotiations be exhausted before a formal complaint is lodged with the RSPO.

Structure and Process

The central decision making body within the Complaints System is the Complaints Panel. The RSPO Complaints Panel reflects the RSPO's multi-stakeholder structure. The composition varies for each individual case, involving five members whose selection is intended to balance both stakeholder interests and areas of expertise. The standard composition involves one environmental NGO member, one social/development NGO member, one grower member, one other supply chain member and one affiliate member.

Another important available channel of dispute resolution within the RSPO, able to be used in the first instance before resort to the Panel, is the Dispute Settlement Facility, which aims to provide a framework for facilitating dialogue and mediated negotiations between parties.

Complaints regarding certification processes are referred in the first instance to the relevant accreditation or certification body. A separate pathway also exists to deal with alleged non-compliance with RSPO provisions relating to land clearance without prior High Conservation Value assessment, or adhering to Procedures for New Plantings.

The RSPO Secretariat plays a central role in receiving complaints, and these are then channelled to the appropriate element of the Complaints system. Where complaints are made directly to the RSPO Board, the Board can decide to refer the case directly to the Complaints Panel. Or cases can first go through other available channels such as the Dispute Settlement Facility or relevant accreditation or certification bodies, and can then be appealed to the Complaints Panel as required.

	<p>The RSPO has produced a complex and formalised flow chart (see Appendix 1), illustrating how these elements of the complaints system conceptually fit together, though past practice suggests that it has been common for complaint handling processes to deviate from these formalised processes and timelines.</p>
<p><i>Available remedies</i></p>	<p>Remedies for grievances brought to the RSPO complaints system are at the discretion of the Complaints Panel and ultimately the RSPO Board. The most serious penalty available is suspension or revocation of membership of the RSPO. The RSPO may also suspend a company’s certification certificates (or applications for certification) where members hold, or have applied for, certified facilities. In practice, these penalties are rarely applied, and more commonly the dispute resolution processes are focused on attaining some kind of negotiated settlement between parties with regard to contested issues.</p> <p>The Complaints Panel draws on informal dialogue with the aim of mutual agreement between parties, however it is also tasked with “deliberating, investigating and determining the course of action, culpability and strength of arguments put forth in any given case” (Ng & Lim, 2013). The Panel has the authority to recommend to the RSPO Board measures to incentivize resolution (or termination of membership).</p> <p>The Dispute Settlement Facility (DSF) does not make adjudicative determinations, so specific remedies are not defined.</p>
<p><i>Monitoring and enforcement</i></p>	<p>In theory, one of the key responsibilities of the RSPO Secretariat is to provide assurance that conditions or corrective actions imposed by RSPO complaint systems are followed. However, in practice, the Secretariat lacks the capacity to actively follow up and monitor individual cases. In relation to complaints regarding certification processes, responsibility for monitoring ongoing compliance is assigned mainly to external audit processes.</p>

Methodology

This report focuses on the grievance handling system established under the auspices of the Roundtable on Sustainable Palm Oil (RSPO). This report is the companion to two other reports in this series: Wilmar: The promise and pitfalls of problem solving, and the Compliance Advisor Ombudsman for IFC/MIGA.

The analysis presented in this report incorporates a general overview of the performance of the RSPO's complaints system, drawing on publicly available documentary sources. It also draws on original field research, involving key informant interviews with participants and stakeholders of the RSPO complaints system, including individual companies, industry associations, NGOs, government officials, RSPO staff and board members, and local community members in palm oil producing areas in the Indonesian provinces of Jambi and West Kalimantan. The analysis presented in this report draws on 63 interviews and focus groups, involving the participation of 135 individuals. Focus groups and most interviews were conducted in person during research visits to Indonesia. Some additional interviews were carried out via Skype or telephone. Interview and focus group data was supplemented by analysis of written documents pertaining to the case studies we examine.

The scope of our research is limited in several ways. First, we focus primarily on the particular subset of disputes focused on land-related conflicts; these have comprised about three quarters of the disputes brought to the RSPO complaints system to date. This means that other categories of disputes, for example relating to the labour conditions of workers in the palm oil sector, are beyond the scope of our analysis. Our focus on land disputes reflects the predominance of these as sources of conflict between companies and communities in the palm oil sector.

Second, our data collection and analysis was not sufficiently differentiated along gender lines to enable us to shed new light on gender-specific problems facing smallholders and other communities in palm oil growing areas, such as gendered patterns of exclusion from official land titles. Similarly, our analysis of RSPO complaint handling procedures was insufficiently focused on gender dynamics to enable us to evaluate the capacity of the RSPO system to adequately represent or empower women in decision making processes associated with the handling of grievances.

Third, to enable us to explore the dynamics of dispute handling in more depth, the detailed aspects of primary empirical research have focused on a single case study of a series of land-related disputes in Indonesia involving the RSPO member company Wilmar.¹ We selected the series of disputes involving Wilmar's Indonesian operations for detailed empirical investigation for a number of reasons. Wilmar was one of the first RSPO members to have complaints brought against it through the RSPO, after the grievance handling system was first established. This proved to be a complex and protracted case, and involved significant interactions with another grievance handling mechanism that we also analyse as part of this series of reports: the Compliance Advisor

¹ This case is explored in greater depth in the Wilmar case study report, in this series.

Ombudsman, which is the independent recourse mechanism for the International Finance Corporation (IFC). Focusing on this case thus also enables us to analyse interactions between mechanisms, and to study the dynamics of dispute management as they evolve over time.

It is important to recognise that this individual case cannot be interpreted as representative of the diverse array of dispute handling processes in which the RSPO's complaint handling system has engaged. This is particularly so given that this series of disputes involving Wilmar lasted for almost a decade, and the RSPO's complaint handling system has evolved significantly during this time. Nonetheless, combining more detailed investigation of this case with our broader review of the complaint system's overall functioning can shed useful light on the processes and mechanisms through which the RSPO's dispute handling system operates—generating insights and questions of wider significance.

Finally, though our research involved interviews, sometimes multiple interviews, with all the major stakeholders in the Wilmar complaint on which our field research focused, our research with affected communities was more limited by resource and accessibility issues. As this report will make clear, the conflicts between communities and Wilmar subsidiaries have been lengthy, and in some cases acrimonious and even violent. Making contact with communities is dependent on support from local NGOs, and ethical conduct of research with communities is dependent upon their willingness and ability to host us as researchers in the remote parts of the plantation where they live. We elected to concentrate our resources in meeting affected community groups in the Jambi case, where the mediation was ongoing, and where some community groups were willing to participate in the research and host us. Not all community groups were willing to meet with us, and this should also be noted, though we did meet with the two community groups still engaged in a mediation at the time of the research.

What is the RSPO?

The RSPO is a multi-stakeholder governance body which was formed in 2004 with the objective of “promoting the growth and use of sustainable palm oil products through credible global standards and engagement of stakeholders” (RSPO, n.d.(c)). The RSPO is legally constituted in Switzerland,² while the Secretariat is currently based in Kuala Lumpur, with a satellite office in Jakarta (RSPO, n.d.(c)). Its establishment followed a number of years of more informal dialogue and cooperation between a smaller number of companies and NGOs.³

The RSPO's formation followed the development of a range of other multi-stakeholder initiatives during the 1990s, established to regulate other specific commodities, including most notably the establishment of the Forest Stewardship Council in 1993 (FSC 2014). The RSPO's membership is correspondingly organized around an explicit multi-stakeholder logic, to include representatives from seven sectors of the palm oil industry: oil palm growers; palm oil processors or

² It was registered as an association under Article 60 of the Swiss Civil Code on 8 April 2004.

³ Key participants in these earlier processes included the NGO World Wildlife Fund (WWF), together with Aarhus United UK Ltd, Golden Hope Plantations Berhad, Migros, Malaysian Palm Oil Association, Sainsbury's and Unilever.

traders; consumer goods manufacturers; retailers; banks and investors; environmental or nature conservation NGOs; and social or developmental NGOs.

Membership of the RSPO has grown steadily in the last few years. In 2008, the total membership of the RSPO was 830, made up of 621 ordinary members, 100 affiliate members and 109 supply chain associates.⁴ At this time there were only 17 accredited mills in two countries (Malaysia and Papua New Guinea (PNG)). By December 2012, the total membership consisted of 1164 members, made up of 809 ordinary members, 105 affiliate members and 250 supply chain associates (RSPO 2012). There were 43 certified Grower companies with 191 certified mills in seven countries (Indonesia, Malaysia, PNG, Solomon Islands, Brazil, Colombia, and Ivory Coast) (RSPO 2012).

The multi-stakeholder representation is mirrored in the formal governance structure of the RSPO. The key decision making bodies within the Roundtable are the General Assembly and the Board of Governors (previously called the Executive Board (EB)). The General Assembly of members is the highest formal authority in the RSPO. It appoints members to the Board of Governors, receives the audited accounts, and votes on other resolutions pertaining to the RSPO. The Board of Governors (BoG, or just Board) is responsible for overall management of the RSPO, and has specific powers to: execute General Assembly decisions; establish guidelines for the Technical Committee and the Working Groups, which require General Assembly approval; control RSPO expenses and prepare budgets and annual accounts for General Assembly approval; and appoint secretarial staff (RSPO 2013). Decision making within the BoG is broadly consensus based, which means processes of dialogue and negotiation between participants play an important role in shaping decisions.

The Board delegates management of day-to-day activities to the Secretariat.⁵ Development of policy on specific issues then takes place within project level working groups. The multi-stakeholder structure of the RSPO is reflected in the composition of the BoG as well as the working groups. Seats on the BoG are allocated to the seven stakeholder groups as follows: Oil palm growers - 4 (one representative each from Malaysia, Indonesia, "Rest of the World" and small-holders); Palm oil processors - 2; Consumer goods manufacturers - 2; Retailers - 2; Banks/investors - 2; Environmental NGOs - 2; Social NGOs - 2 (RSPO 2013).

The RSPO is funded largely by membership funds. The Roundtable has also received financial assistance from intergovernmental, governmental and non-governmental organizations. Some RSPO activities further depend on ongoing in kind support from members. This includes key parts of the complaints system operation, such as the Complaints Panel, which depends on the time of vol-

⁴ Ordinary membership is open to organizations with direct involvement in the palm oil supply chain or associated NGOs. Ordinary members have the right to vote at each meeting of the General Assembly and have access to all RSPO information. Affiliate members are not actively involved in the industry but have expressed an interest in the objectives of the RSPO. Supply chain associates are organizations dealing with less than a total of 500 metric tons of palm oil or palm oil derivatives per year. Ordinary members can publicly claim to be RSPO members. Affiliates and associates have no voting rights in the GA and can only claim to be affiliate or associate members of the RSPO. All ordinary members are governed by the RSPO Code of Conduct and its statutes and by-laws, and associate supply chain members are governed by the Code of Conduct for Supply Chain Associates of The Roundtable on Sustainable Palm Oil.

⁵ The roles and responsibilities of the Secretariat include: Day to Day running of the RSPO, organization of the BG meetings, roundtable and General Assembly meetings, recruitment and service of members, project support, coordination of technical groups, communications, networking, and financial management. Available at: <<http://www.rspo.org/about/who-we-are/secretariat>>. The Secretariat also manages of the RSPO's Complaint system.

unteers from member organizations, all of whom have full time responsibilities within their own organizations. From the 2015 financial report, RSPO's total income was RM\$31.6 million Malaysian ringgit (approximately US\$8.1 million dollars) (RSPO 2015), of which approximately RM\$9.77 million was from subscriptions, and around RM\$21.37 million from contributions from sustainable palm oil trade. Some funding covers core operating costs, such as Secretariat staff, while additional external donor funds play an important role in funding specific projects.

All ordinary members of the RSPO (including non-certified producers) are governed by a Code of Conduct, which was first adopted during the 2006 General Assembly of the RSPO. The RSPO has also developed a set of production standards, which are designed to be translatable into measurable indicators for assessing the performance of palm oil production. The RSPO Principles and Criteria for Sustainable Palm Oil (RSPO 2013(f)), which apply to certified facilities, are the key instrument in this regard. The Principles and Criteria are applied to certified mills and their supply base.⁶ In addition, national interpretations of the Principles and Criteria are established through national multi-stakeholder working groups. National interpretations provide additional or more detailed indicators for certification.⁷ For example, the Indonesian national interpretation provides additional details with regard to the RSPO's Criterion 5.4 relating to efficiency of energy use and use of renewable energy, requiring specific forms of record keeping with regard to use of renewable energy and fossil fuels (RSPO n.d.(e)). Where a national interpretation has not yet been established, the certification body is required to establish 'local indicators' through consultation, and use those local indicators for certification assessment (RSPO n.d.(f)).⁸

Certification audits are conducted by independent Certification Bodies, which are themselves accredited through a process based on ISO standards by an RSPO approved Accreditation Body (RSPO n.d.(f)). Palm oil production can be audited against the RSPO standard, and awarded a certificate on this basis, which can then be used to attract a market price premium.

The RSPO's grievance system

As the outline above has indicated, the RSPO is mainly a standard setting and certification body, rather than a forum for grievance handling. Nonetheless, the pervasive character of disputes in the sector has meant that development of a system for managing disputes has been an important objective since the early days of the RSPO's existence.

The RSPO first developed a grievance mechanism in late 2006, to address complaints made against the RSPO or RSPO members.⁹ Specialised capacity to manage grievances in the RSPO

⁶ The primary unit of certification is a mill and its supply base, however under certain conditions a larger company can certify a management unit or subsidiary. Articles 4.2.3 and 4.2.4, RSPO Certification Systems, available at <<http://www.rspo.org/certification/how-rspo-certification-works>> (last visited 6 November 2014).

⁷ There are currently national interpretations established for: Papua New Guinea, Peru, Honduras, Ecuador, Sierra Leone, Liberia, Ghana, Nigeria, Colombia, Malaysia, and Indonesia

⁸ There are currently local indicators set for companies in Guatemala, Brazil, Cambodia, Colombia, Costa Rica, Nicaragua, Mexico, Madagascar, per RSPO website <<http://www.rspo.org/resources/key-documents/certification/rspo-local-indicators>> (last visited 6 April 2016).

Secretariat was developed from 2010, in the form of a Grievance Panel. This was supplemented by the establishment of a Dispute Settlement Facility in 2011. A range of further revisions to the system took place in 2012, and again in 2014. Following an independent review of the complaints system undertaken in 2014 (Jonas 2014), and subsequent public consultations, a draft Integrated Complaints System (ICS) (RSPO 2015 (c)) was developed (see Appendix 2 for a diagrammatic overview). At the time of this report's drafting in June 2016, this draft ICS in the final stages of being reviewed by a working group drawn from the RSPO Complaints Panel and the Dispute Settlement Facility advisory group (RSPO 2016). The analysis presented in the present report focuses on the complaint system in place prior to any reforms that may follow from this ongoing review. We distinguish relevant continuities and changes as we go along, to the extent that is possible.

Such ongoing reforms have responded both to direct feedback from users and other stakeholders of the system, and to evolving international standards and guidelines. The RSPO states explicitly that its complaints system is designed with the goal of meeting recognised criteria of 'good practice', as reflected in international guidelines including guidelines on complaints resolution generated by ISEAL (an umbrella body for multistakeholder sustainability standards and accreditation bodies, designed to support good practice and ongoing learning), and the United Nations Guiding Principles effectiveness criteria (OHCHR 2011, ISEAL 2014).¹⁰

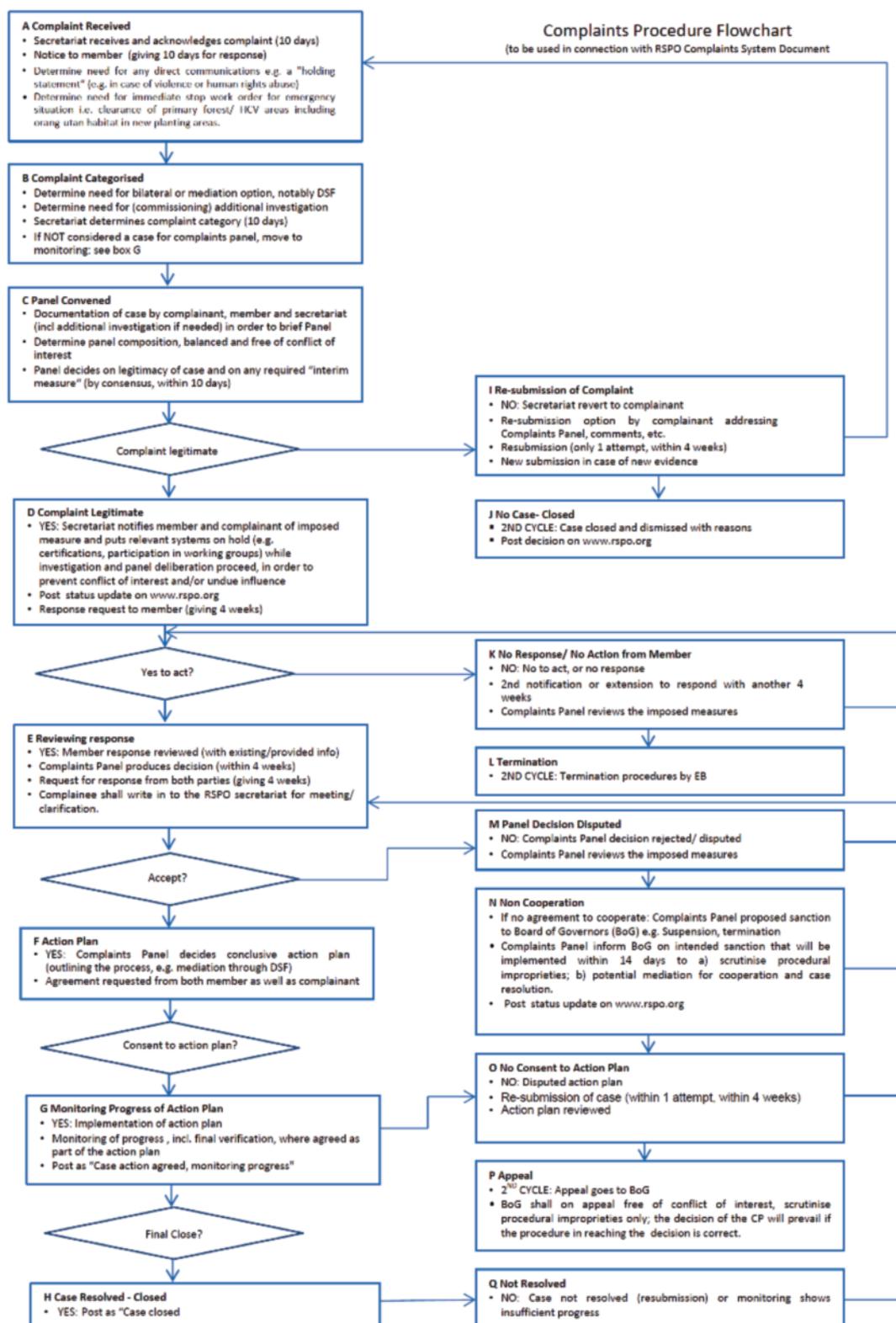
In its most recent form, the RSPO grievance system is referred to as the Complaints System, the overall structure of which is depicted in Figure 1. The RSPO describes its central objective as being to address complaints against RSPO and its members in a manner that promotes adherence to the RSPO Code of Conduct and Principles and Criteria through ongoing processes of learning and behavioural change amongst members, and provides remedy in individual cases of violations (RSPO n.d. (s)). The standards against which complaints can be brought are defined as "any alleged breaches of specified RSPO Statutes, By-laws, motions approved by the General Assembly, or any other approved articles, including the Principles & Criteria for Sustainable Palm Oil Production, Certification System and RSPO Code of Conduct" (RSPO n.d.(g)).¹¹

⁹ This initial grievance mechanism was included in RSPO's Certification Systems document in June 2007, and reference to the grievance procedure was included in the RSPO Code of Conduct for Members, under Article 5.3. Prior to the formal establishment of the grievance system, an internal mechanism existed within the RSPO Executive Board that would be triggered by a complaint being registered by the Board. This was called the Arbitration Panel (Grassroots, 2013, *Beyond Certification: Reforming RSPO's Complaints System to Meet Stakeholder Expectation*, page 8).

¹⁰ The RSPO adopted a General Assembly resolution in 2013 (Jonas 2014), regarding the need for strict separation of powers in handling complaints, and alignment of the RSPO complaints system with the UN Guiding Principles (OHCHR 2011), particularly Principle 31 on the effectiveness of non-judicial grievance mechanisms. RSPO's complaints system now directly references Principle 31 of the UNGP: Effectiveness Criteria for Non-Judicial Grievance Mechanisms (OHCHR 2011), which is part of the broader guiding principles on non-state based grievance mechanisms. See Section 1.1, RSPO Complaints System, available at: <<http://www.rspo.org/resources/supplementary-materials>> (last visited 6 November 2014). ISEAL's general code on resolving complaints focuses on principles concerning impartiality and documentation, where impartial means that it is based on a consistent procedure that does not favour one party, and a documented process means that processes and decisions are written down and made available to those who request them (ISEAL, 2014). The UN effectiveness criteria focus on general normative qualities (rights compatibility and legitimacy), procedural qualities (transparency, equitability, predictability), and specific functional capacities (accessibility, source of continuous learning, and operational mechanisms based on engagement and dialogue).

¹¹ The Complaints System document goes on at 1.4 to clarify that all complaints raised to the RSPO will be based on RSPO Statutes and By-laws, RSPO Principles and Criteria, including all guidance and indicators associated with the adoption and implementation of the P&C (including accepted national Interpretation where applicable), the RSPO code of conduct, RSPO New Plantings Procedure, RSPO Certification Systems, and RSPO Rules established for Trade and Traceability and for Communication and Claims.

Figure 1: Current RSPO complaints system flowchart



The central components of the Complaints System include a **Complaints Panel**, which is tasked with making judgements about the legitimacy of complaints and deciding on the appropriate course of action, and a **Dispute Resolution Facility**, which is designed to facilitate the mediation of individual conflicts (RSPO n.d.(g)). Provision is also made for the pursuit of grievances through direct engagement between parties, and through the RSPO's certification procedures, where complaints relate to the 'performance or decision of a certification body and/or its auditor(s)' (RSPO n.d.(g)). The RSPO Secretariat is responsible for the management of the complaints system, including receiving and handling complaints as they arrive, providing the preliminary assessment of the validity of any case, and managing and coordinating the complaints system as a whole. The Secretariat is also responsible for communications with parties to the disputes and to broader stakeholders. Oversight is provided by the Board of Governors (RSPO n.d.(g)).

The complaints system as a whole enables receipt of complaints about individual members, and about the RSPO in general, though different parts of the complaints system handle complaints of different kinds, and are differently empowered to address them. The RSPO has produced a complex and formalized flow chart and timeline, indicating how these different components of the system are conceptualized as fitting together, and the steps that any given grievance should theoretically pass through from the moment of being received by the RSPO Secretariat (see Figure 1). In practice, however, management of complaints to date has not always adhered tightly to these formalized processes, as discussed further below.

Complaints panel

The RSPO's Complaints Panel was created in 2012, following a name change from what was previously referred to as the Grievance Panel. The Complaints Panel is the central decision making body of the complaints system. Its main tasks are to decide on the eligibility of complaints, decide on actions to be taken as a basis of resolving the complaint, and to propose any sanctions "in the case of an unsatisfactory resolution" (Jonas 2014, p.5). At least in theory, it also has the mandate "to review and formulate practical actions to mitigate conflict, provide solutions to address core issues, capture wider lessons, and make recommendations to the Board of Governors (BoG) on systemic improvements" (Jonas 2014, p.5).

Its composition reflects the broader logic of multi-stakeholder representation reflected in the RSPO as a whole: it is composed of 4 members and 1 affiliate member (RSPO n.d.(g)).¹² The website states that the composition of the Panel will vary for each individual case, involving "5 expert members, in a balance of interests and expertise", selected from the RSPO Complaints Panel pool of members. This pool is populated by members who have volunteered for this purpose, and who have been approved by the RSPO Secretary General on the basis of their 'good standing' as an RSPO member, and their capacity to fulfil the role (RSPO n.d.(g)). The standard

¹² The Secretariat has expressed RSPO's intention to 'expand and diversify membership of the complaints panel', though in the past they have reportedly struggled to get volunteers (see Executive Board minutes from 03-13).

composition involves one environmental NGO, one social/development NGO, one grower, one other supply chain member and one affiliate member.

The old Grievance Panel was for many years the only formal grievance mechanism available, but under current complaint system arrangements, the Complaints Panel handles broader complaints against the RSPO as an organisation, and addresses alleged breaches of the Code of Conduct by RSPO members. As set out below, complaints concerning enforcement of Principles and Criteria compliance through the certification process, or concerning a certification body's practices or decisions are to be referred by the Secretariat to the accreditation body or certification body initially (RSPO n.d.(h)). However, where complaints are made directly to the RSPO Board of Governors, the Board can decide to refer the case directly to the Complaints Panel (RSPO 2014(b)). Otherwise, where complaints have been made directly to, or referred to, the certification bodies, the outcome can be appealed by the complainant to the Complaints Panel (RSPO 2014(b)).

In theory, the Complaints Panel can draw on informal processes of dialogue as part of its dispute handling strategy, with the aim of mutual agreement, though this is reportedly rare in practice. A form of adjudication is also possible, insofar as the RSPO Complaints Panel is ultimately authorized to make determinations on the basis of its own assessment of the merits of available evidence (RSPO n.d.(h)). In this regard, the Panel is tasked with “deliberating, investigating and determining the course of action, culpability and strength of arguments put forth in any given case” (Grassroots 2013, p.10).

As the complaints system currently stands (as of June 2016), determinations made by the Complaints Panel take the form of recommendations to the Board of Governors, meaning that ultimate authority to impose any sanctions on RSPO members still lies with the Board of Governors rather than the Complaints Panel itself (RSPO n.d.(g)). The Panel is given the authority to recommend measures to facilitate resolution (RSPO n.d.(g)). These can include recommendations for redress, reparation and compensation. Once a final decision has been issued by the Complaints Panel, according to a representative of the RSPO Secretariat, the member can then either accept or appeal the decision. If a party appeals, they must cite their reasons, which the Complaints Panel will consider, and can then reconsider, or insist on compliance with earlier decisions. At this point, in theory the party must either agree to comply, or withdraw from the RSPO—a rare but not unprecedented outcome (interview, Participant D1, March 2013). In practice, it has been reported that where cases have reached this point in the process, a stalemate has eventuated with a lack of clarity over next steps. There are a number of formal sanctions that are available to the RSPO to exert leverage over members. The RSPO can suspend or terminate a company's membership of the RSPO, or suspend its certificates, in the case of members with certified facilities.

Dispute Settlement Facility

The Dispute Settlement Facility (DSF) was developed in part as a response to the volume, complexity and resource demands of the disputes arising between RSPO producer members and local communities. Unlike the Complaints Panel, it does not comprise a separate entity formed within the RSPO. Rather, it sits within the Secretariat, and relies on outsourcing to external mediators. Negotiators or mediators are selected from a pool provided by the RSPO, and these mediators report directly to the Secretariat (RSPO n.d.(g)).

It aims to provide dialogue and mediated negotiations through a framework that is impartial for the disputing parties. Its stated goals are to “provide a means for achieving fair and lasting resolutions to disputes in a more time efficient and less bureaucratic and/or legalistic manner, while still upholding all requirements including compliance with relevant legislation” (RSPO n.d.(g), p.2). Its original aim was to focus primarily on land-related conflicts, such as those relating to alleged Free Prior and Informed Consent violations, since such cases were so high in number, and complex to adjudicate (Chao 2013; Grassroots 2013). Nevertheless, there is provision for a broader range of conflicts to be brought to the DSF for mediation assistance, including: the clearing of High Conservation Value (HCV) areas, and reaching agreement on compensation or remediation; labour rights issues; human rights issues; company commitments to communities; and environmental issues (RSPO n.d.(g) section 2.3). The RSPO has stated that a key goal of the DSF is to promote preventative and remedial processes prior to certification, as well as facilitating learning from corrective cases in the smaller number of cases referred to the DSF by the Complaints Panel (RSPO n.d. (t)).

Rules regarding ‘standing’ to bring a complaint are a little narrower for the Dispute Resolution Facility compared with the Complaints Panel, since it is available only to communities who have been directly affected by member companies. Parties who can have recourse to the DSF ‘are those who have a direct land-related conflict or other disputes with each other, i.e., individuals, smallholder groups, and/or their communities, and companies’ (RSPO n.d. (t), p.3). The aim of the DSF is to resolve disputes between companies and affected communities in a non-legalistic fashion, that arise in relation to certain RSPO P&C criteria (RSPO n.d. (t), pp.1-2). The DSF does not make decisions or determinations *per se*, so it does not apply standards to a dispute in the same way that the Complaints Panel does. Nonetheless, it operates in compliance with prevailing laws and the RSPO’s P&C (RSPO n.d. (t)).

The process requires both parties’ consent on mediator appointments and actual mediation, and costs are to be shared between parties, though distribution of costs can be negotiated on a case-by-case basis. Negotiations are confidential. Formal rules relating to evidence, precedent and so on do not apply. The same complaints form (and associated requirements of documentation) used for other pathways within the RSPO complaints system can be used to bring a complaint through the DSF, or a direct request to access this Facility can be made by the parties without making a formal complaint (RSPO n.d.(g), p.8).

Complainants need to provide information about the complaint in writing,¹³ and “the onus of demonstrating a case at this stage is on the complainant” (RSPO n.d.(h), Section 3.1). Although the parties are asked to provide the information required for the determination of the case, the secretariat can request mediators or other third parties to conduct investigative activities to collect further documentation. However in the past, this does not seem to have been a common practice. For example, in a complaint against PT Kresna Duta Agro Indo, the DSF Advisory Group decided that the matter should be closed if the complainant could not provide sufficient information, even though the option of the DSF undertaking investigation was discussed (RSPO 2013(C), pp.5-6).

¹³ Although the Secretariat is not required to accept cases that are not submitted in writing, they state that they may address such non-written complaints at their discretion.

Other pathways of complaint handling

At least in theory, the RSPO also places emphasis on the role of **informal processes** of mediation and dispute resolution directly between parties. This is reflected not only in the expectation that parties should demonstrate that bilateral means of resolving the problem have been attempted before coming to the RSPO, but also in the identification of ‘one on one negotiations’ directly between the parties as a possible pathway that the Secretariat can recommend upon receiving a complaint. This option involves the parties working out the problem directly through communication and negotiation between themselves, without official RSPO intervention—with or without the assistance of other organisations such as NGOs or consultants. This is the RSPO’s preferred option for all complaints in the first instance; technically the Secretariat is not compelled to intervene with regard to a complaint until a complainant has explained how their attempts to resolve the issues directly with the RSPO member have failed (RSPO n.d.(h), Section 3.4).¹⁴ In practice, however, it has been reported that RSPO facilitation of negotiation between parties is often negligible. It has also been noted that there is a tension between the theoretical ideal of complainants engaging with companies prior to making a complaint, and the reality that it is often not until a formal complaint has been made that companies will be willing to engage in substantive dialogue (Wiggs, 2016).

For complaints “based mainly on the performance or decision of a certification body and/or its auditor(s)”, corrective action is supposed to be sought directly through the **certification/accreditation body** prior to bringing the complaint to other channels of the Complaints System. As noted above, this encompasses complaints concerning the compliance of certified production units with RSPO Principles & Criteria, or those concerning a certification body’s practices or decisions (RSPO n.d.(h), Section 3.4). Such complaints can be made to the relevant Certification Body or referred to the Certification Body by the RSPO (RSPO n.d.(h), section 3.4; RSPO n.d.(f)). For complaints relating to compliance by certified operations with the RSPO P&C, the guidelines further state that these should be addressed where possible directly through the certification process (RSPO n.d.(h)) Section 3.4). If the Certification Body does not resolve a given matter to the satisfaction of the complainant(s), a complaint can be referred to Accreditation Systems International (RSPO n.d.(f)). This accreditation body is then expected to investigate the complaint and report back to the RSPO Secretariat. Upon closure of the case, the accreditation body reports on any follow up actions, any corrective actions imposed on the Certification Body, and an assessment of whether the complaint will still be justified after corrective actions have been implemented by the certified operation—though there has been some criticism of a lack of transparency regarding any corrective actions taken as a result of such measures (Participant C, personal communication, October 2016). Other avenues of the complaints system may then be resumed.

A separate pathway also exists to deal with alleged non-compliance with RSPO provisions relating to land clearance without prior **High Conservation Value (HCV) assessment**, and/or the **New Plantings Procedures (NPP)**, which also relates to plantings without prior HCV identification.

¹⁴ Note that this ‘official’ informal channel is distinct to a dynamic that is discussed further below, whereby complaints that have officially been assigned to formal processes end up tacitly being pushed back to informal back channels.

These procedures were introduced via staged implementation in 2014. All RSPO members who own or manage land for palm oil production are now required to disclose land clearing that has not been undertaken in compliance with the P&Cs, and to undertake a land use change analysis and liability assessment, including calculation of conservation liability. As one research participant noted, such measures attempt to address an underlying gap resulting from the RSPO's policy of certifying only once a productive mill and associated plantations has been established, leaving plantation development up to that point effectively unregulated (Participant C, personal communication, October 2016). The Compensation Panel assesses each compensation case, deciding whether to approve the land use change and liability assessment. If this is approved, then the RSPO member develops a remediation and compensation plan, including for any social impact arising from loss of HCV, and compensatory biodiversity projects. This remediation and compensation plan must also receive Compensation Panel approval (RSPO 2015b, Section 5.6). Disputes regarding the Remediation and Compensation Procedures, failure to disclose non-compliant land clearance, and failure to implement Compensation Panel approved compensation measures are all matters that fall to be resolved by the Complaints Panel (RSPO n.d.(i), pp.6,8,15).

Types of issues and complaints addressed

The RSPO's Complaints System deals with a range of issues, including, but not limited to, issues of human rights. RSPO Principles & Criteria require compliance with applicable local, national and ratified international laws, including those regulating land tenure and land use rights, labour, agricultural practices, environment and customary law. The further require adherence to principles of obtaining consent from local people for use land to which they have legal, customary or user rights, environmental management and health and safety standards, a range of internationally recognised labour standards, and requirements concerning transparent communication with stakeholders. The RSPO Code of Conduct for members relates to issues such as public reporting of RSPO activities, pricing of certified products, and good faith engagement with the standards and stakeholders more broadly.

As noted earlier, our analysis focuses in particular on land conflicts, which have been pervasive in Indonesia, reflecting the important role of commercial agriculture in the country's growth-oriented development pathway. Land that had previously been controlled by small scale farmers has been appropriated for a range of commercial agricultural uses, including palm oil, while the clearing of forests for new plantations has also been extensive (Pye 2010; McCarthy 2012). Land conflicts in Indonesia have proliferated, with varying estimates putting the number of palm oil related land conflicts in the country in the hundreds or even thousands (Pye 2010, p.858). Conflicts of these kinds focus on a recurring range of issues, including contested land boundaries or ownership, disputes concerning land purchasing or licencing, disputed determination or payment of compensation, and disputes concerning the terms of 'plasma' arrangements, whereby land is transferred from communities to plantation owners to establish planted palm oil, with the expectation that parts of the land are subsequently given back in small plots to communities for smallholder production.

Overview of use and outcomes of RSPO complaints system

Ongoing processes of reform mean that evidence about the past operation of the system must be interpreted with certain qualifications when used to draw inferences about the performance of existing arrangements. Nonetheless, there is sufficient continuity in core elements of the complaints system that careful examination of past evidence can provide insights of relevance to ongoing discussions about reform to the RSPO system. Moreover, insights derived from a review of past performance of the RSPO system generates important lessons for analysis of broader international debates about the capacity and design of non-judicial grievance systems for business and human rights. Throughout the below discussion, performance of the RSPO complaints system is assessed with regard to both the securing of appropriate remedies for parties to individual grievances, and contributions to broader processes of ongoing prevention of grievances and disputes.

Overall patterns

Some summary statistics are publicly available regarding overall patterns of usage of the RSPO complaints system, though data made available to date has been incomplete (Grassroots, 2013, p.13). Nevertheless, available figures provide at least a rough indication of past patterns of usage, showing that the vast majority of cases (73%) related to either FPIC or HCV issues, with the remainder relating to code of conduct breaches, certifying body credibility issues, human rights violations,¹⁵ new planting procedures or 'other'. Geographically, 79% related to Indonesia (60%) or Malaysia (19%). The 2014 Review of the RSPO Complaints system (Jonas 2014, p.ii) counted 49 complaints in total, acknowledging inconsistencies between the internal files on which its estimates were based, and the information available in the online Case Tracker (Jonas 2014, p.5).

The figures provided are difficult to disaggregate, and it is unclear how many of these cases have been handled by different components of the complaints system. It seems that only a small number refer to disputes handled by the DSF. As of November 2013, the DSF had reportedly been involved in 16 cases in 7 countries (RSPO 2013(c)). As of November 2014 there were seven disputes in process with the DSF. Although information on the cases is limited, it appears that at least three came to the DSF via the Complaints Panel, while two came directly to the DSF with NGOs such as Oxfam, Novib, and Sawit Watch providing support to the communities (RSPO n.d.(j)).

What then can we say about overall patterns of resolution of these cases? One report (Grassroots, 2013, p.13) calculated that successful closure of cases had been achieved in less than 10% of cases. Of the 56 cases on the RSPO site as of November 2014, 24 were listed as closed, and a further 11 were closed, subject to ongoing monitoring. Each of the pages for the closed cases included a brief indication of the reasons for closure. Although some cases had been closed on

¹⁵ The precise definition of these in this context is not clear, but it may plausibly be interpreted with reference to Criterion 6.13, 'Growers and millers respect human rights'. This refers to the UN Guiding Principles on Business and Human Rights, which takes as its minimum: the International Bill of Human Rights (UDHR, ICCPR, and ICESCR) and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. Evidently this does not include FPIC, which is treated as a separate category.

the basis of an amicable settlement between parties or the imposition of a sanction, most were closed for other reasons, including: insufficient evidence; being referred to other mechanisms (including the RSPO member's internal mechanisms); deemed resolved (e.g. due to compensation paid to a family); or withdrawal from RSPO membership.

Analyses of the complaints system have identified a number of problems in the timely and effective resolution of cases, including a backlog of complaint cases filed with RSPO, very low success rate of resolving individual cases, and very long delays experienced in moving cases forward (Grassroots, 2013). Although we have found no systematic information regarding turn-around times, and this information is not provided on the RSPO's case tracking system, it is clear that a number of cases have remained open for many years (Grassroots, 2013).

The Wilmar Case

As noted earlier, our primary empirical research focused on one specific series of complaints in which the RSPO complaints process has been involved—a series of grievances involving Indonesian communities and the RSPO member company Wilmar, in which the Compliance Advisor Ombudsman (CAO) grievance handling mechanism was also involved. This series of cases is discussed in detail in a separate case-study report in this series. It is important to note that some of the events involved in this case pre-dated some of the subsequent reforms to the RSPO complaints system, so many of the formal provisions and features of the existing complaints system described earlier in this report were not in place during key stages in the evolution of this dispute. For example, the Dispute Resolution Facility had not yet been created when complaints against Wilmar first arose. It had just been created when a later dispute in Jambi erupted in 2011, but even at this time an NGO report on the case recommended that the DSF could at best serve in an observer role for the purpose of learning in this case, given that the dispute was already entrenched and the DSF only newly formed (Colchester et al 2011, p.56).

The Wilmar case was in fact the very first case handled by the original Grievance Panel, which was composed of Executive Board members and one non-Executive Board member. In 2007 a complaint was brought by Friends of the Earth Netherlands, KONTAK Borneo and Lembaga Gemawan (the latter two organisations being local Indonesian NGOs) against Wilmar International Ltd (Grassroots 2013, p.8). This complaint was filed with the RSPO in 2007 during the early stages of a dispute between communities and Wilmar in Sambas, West Kalimantan. At this time, the RSPO's grievance handling system was still at an embryonic stage of its own development. This complaint instigated a series of written communications back and forth between the complainants and Wilmar, but before any substantive progress had been made, the CAO became involved in the dispute, and the RSPO deferred to the CAO process, itself taking only an observer role.

The RSPO also had some minor involvement in providing a forum for early processes of dialogue between parties involved in a later dispute with Wilmar involving communities in Jambi, Sumatra, which was also the subject of an CAO complaint. In February 2011 the RSPO became involved in this dispute in a more formal capacity after a complaint was filed directly to the RSPO. The complaint against the Wilmar subsidiary PT Asiatic Persada was brought in relation to RSPO Principle 2, on land related issues. In response, Wilmar rejected the NGO complaints,

and contracted an RSPO-accreditor assessor, PT TUV Rheinland, to review the situation and provide a report, published in August 2011. This report noted that the underlying land dispute would have to be resolved for the company to be certified, but its findings largely supported the company's account of disputed facts, and it was criticized by a number of observers for perceived lack of independence (FPP, Huma and Sawit Watch, 2011).

In relation to the Jambi dispute, as in Sambas, the RSPO deferred to the CAO's role in leading mediations, participating only in an observer capacity, and not being "actively involved in the day to day running" of the case (interview, Participant B, June 2012). In the Sambas case, the CAO became involved shortly after the initial RSPO complaint; in Jambi, the CAO was already involved in the mediation process before the formal complaint was brought to the RSPO. In addition to playing an observer role, the RSPO published information on its website about the process of the CAO mediations, contributing an additional form of public communication about the dispute at certain points in time (though this information was removed from the website before the case had been concluded) (interview, Participant C, February 2013). In 2013, the RSPO's role was once again called into question, in relation to the sale of the PT Asiatic Persada subsidiary to a non-RSPO company. This sale allowed the company to remove itself from the mandate of the RSPO system, as currently defined, leading to significant criticism from some observers (Forest Peoples Programme, 2013).

Overall, outcomes of these conflicts between Wilmar and communities affected by its operations have been very mixed. Considered together, the involvement of the CAO and RSPO contributed to the partial resolution of conflict in Sambas (and in another dispute in Riau, Sumatra), but ultimately failed to achieve much influence over outcomes in the complex and protected disputes in Jambi. Relative to other actors involved, the RSPO's contribution to shaping these dynamics was very marginal. According to one observer, the RSPO's contribution was close to 'useless': "If it wasn't for the CAO those cases would still be dragging on and everyone would be wasting their time and their money in pursuit of the complaint, or efforts to not let it be pursued on the basis of RSPO's own standards and procedures" (interview, Participant C, February 2013).

Although the RSPO's interventions in the Wilmar case have been minimal, this case highlights some important issues about both the mechanisms of intervention and processes of influence through which the RSPO operates, as well as broader strengths and weaknesses of the RSPO complaints system. Despite the RSPO's limited role, its engagement at various points of the protracted histories of these disputes sheds some useful light on functions and capacities of the RSPO complaints system. We draw on analysis of these processes, alongside examples from other cases, in the analysis presented below. In particular, analysis of the Wilmar case highlights the indirect ways in which both the RSPO's standards, and the architecture the organisation provides for inter-stakeholder networking, can at times influence the dynamics of disputes in subtle but noteworthy ways. Even where its formal role is minimal, RSPO standards can sometimes help structure dialogue and bargaining between parties, and create entry points for leverage exercised either directly over companies by NGO activists, or via pressure from major buyers in the palm oil supply chain.

Contributions to effective dispute resolution – strengths and weaknesses

There are a number of features of the RSPO’s formal constitution and practical operation that enable and constrain its capacity to successfully prevent and resolve disputes involving its members. Although the RSPO lacks the scope, powers, or otherwise the resources and leverage to have binding or decisive influence over the course and outcomes of disputes, there are a number of channels through which it can exercise leverage, at least under some conditions. In the analysis below, we identify some of the most important roles and functions undertaken by the RSPO, highlighting both strengths and weaknesses of their past operation.

Overall, our analysis suggests that the RSPO’s indirect contributions to wider processes of change in the palm oil sector have often been more significant than its contribution to resolving individual disputes, though both have been limited in important ways. We further observe that in certain respects, particularly with regard to processes of learning, ‘soft’ organisational infrastructure comprised of relationships, networks and dialogue processes often play a very important role alongside formal institutional structures and procedures in underpinning the RSPO’s capacity to support dispute resolution or prevention.

Table 1: Strengths and Weaknesses

<p><i>Accessibility, community outreach and reliance on NGO intermediaries</i></p>	<p>Formal Barriers to Entry: Formal barriers to grievance processes are relatively low. A wide range of parties can bring complaints, there are no formal evidentiary requirements, and no time limitations on bringing complaints.</p> <p>Informal Barriers to Entry: Informal barriers persist, including the use of English for RSPO processes and complaints; the expectation for the exhaustion of bilateral dialogue and negotiations before complaints are lodged; and barriers between communities and the RSPO in geographical and cultural terms.</p> <p>Representation and Legitimacy: With frequent reliance on NGO support for communities, issues of representation and legitimacy arise.</p>
<p><i>Performance of key functions</i></p>	<p>Enforcement of RSPO decisions: There is frequent criticism of the complaints system’s capacity to enforce its decisions. Available sanctions for non-compliance include expulsion from the RSPO or suspension of certification certificates, but these are rarely used, and can be avoided by companies leaving the RSPO or selling relevant subsidiaries.</p> <p>Investigation and Monitoring: There has been criticism of the RSPO’s limited involvement in independent fact-finding or investigation activities, and of the RSPO’s limited role in monitoring the implementation of agreed remedies.</p>

Governance and procedural integrity

Independence of the complaints system: Concerns have been raised by stakeholders over perceived lack of independence of the complaints system from the influence of members, including: a lack of separation between the RSPO Board of Governors and the Complaints Panel; potential conflicts of interest in the composition of the Complaints Panel; and concerns about the independence of external bodies sometimes used for monitoring activities.

Consistency, predictability and transparency: There have been concerns about RSPO rules and procedures not being followed consistently; inconsistent treatment of different cases; and lack of transparent reasoning with regard to adjudication decisions. However, levels of transparency for formal RSPO governance processes are relatively high.

Indirect contributions to dispute resolution processes

Influencing negotiation and dialogue between disputing parties: The RSPO Secretariat has usually played a passive role in the facilitation of dialogue between disputing parties, but has sometimes made minor contributions to facilitating dialogue between disputing parties.

Conflict prevention through lesson learning and wider sectoral change: The RSPO can provide a forum for learning and normative change around policies and practices in the sector, and this is often regarded as central to the RSPO's constitution as a multi-stakeholder network. The complaints system itself is also explicit in this goal, and there are a number of examples where RSPO processes have contributed to sectoral dialogue and learning concerning specific policy issues. However, institutionalized learning has remained limited.

Influencing sectoral change through direct engagement with government policy: RSPO grievance handling processes have the potential to promote broader change in the human rights practices of palm oil companies to the extent that they promote engagement of RSPO members with government policy on issues which are important to help prevent recurring conflict. However, to date such contributions have been ad hoc and limited in scope.

Accessibility, community outreach and reliance on NGO intermediaries

Formal barriers to entry

Formal barriers to entry facing prospective complainants wishing to use the RSPO complaints system are relatively low. Eligibility to bring a complaint is very broadly defined, such that intermediaries and other interested parties are able to bring complaints, not only directly affected parties. The RSPO states in this regard that the complaints system “can be used by all stakeholders, both RSPO members as well as non-members, including affected communities (and their nominated representative), workers (and their nominated representative), other interested parties” (RSPO n.d.(h), article 1.5). Complaints can also be initiated by the BoG without a complaint being brought by an external party: in other words they can be instigated by ‘public domain’ processes, rather than through direct complaints. This was the case for example for a dispute involving Golden Agri Resources (GAR), which resulted from a report from Greenpeace that linked “massive deforestation in Indonesia” to GAR plantations (Grassroots 2013, p.26). In that case, the Greenpeace report formed the basis for the complaint, even though the report had not been verified by the RSPO (Grassroots 2013, p.22; RSPO n.d.(k). There are no formal evidentiary requirements to bring a complaint, though it is expected that any party bringing a complaint to the RSPO system “can provide solid evidence; proof” (interview, Participant D, February 2013). No specific time limitations on bringing a complaint are specified.

Informal barriers to entry

Despite relatively low formal barriers to access, some stakeholders have stressed the persistence of more informal barriers. One NGO described to us how communities “had to overcome so many obstacles – first of all everything had to be in English. They had to understand what is the RSPO, and what can they do through this process. And of course the evidence had to be very solid to make a complaint to the roundtable” (personal communication, Participant E, 2013). The provision of information about RSPO processes mainly in the English language, and conduct of correspondence with the Secretariat in English, has also been identified as a significant barrier to some stakeholders’ “understanding of and effective participation in the complaints process” (Jonas 2014, p.10). Practical barriers can also be created through the RSPO expectation that attempts at bilateral dialogue and negotiations be exhausted before formal RSPO processes are used (RSPO n.d.(h) Section 3.4). Many communities face further barriers with regard to geography, culture, or trust in institutional processes. RSPO mechanisms are often remote from communities, in geographical and social terms, and communities have few means of accessing information about them except via contact with outside NGOs.

Such barriers can make it difficult for complaints to be brought by communities unless they have strong relationships with NGOs or other organisations with established expertise regarding RSPO processes. Yet community access to NGOs able to act as channels of information and support is itself very uneven, with many communities lacking support of this kind. According to one NGO involved in supporting communities to bring grievances through the RSPO system: “you can’t expect these communities to keep on writing letters to RSPO every month and to ask all the right questions ... they have no idea of what RSPO is, even when the village head had been at Roundtable meetings, and all of that, they really don’t know how it works ... [and



Supply trucks for palm-oil plantations in Jambi, Indonesia.

Photo: Samantha Balaton-Chrimes

even] with the NGO involvement they go nowhere if donor funding dries up ... if you skip these two groups [local NGOs working with communities and international campaigning groups] then you have no case at all in the RSPO, so that is not a system” (interview, Participant C, February 2013). For NGOs working to support communities in complex cases, resource demands can also be significant. As one NGO representative emphasised: “you should know how much money it cost just to get RSPO’s attention for a case like this – the amount of money pooled into resolving two conflicts in Sambas for Wilmar. This was about 450 Ha of land in one village, 237 in another village, and it must have cost a million dollars [in estimated time and resources] to have these two post stamp pieces of land handed back to the community” (interview, Participant C, February 2013).

In the presence of informal barriers of these kinds, provision of active outreach and capacity building for marginalised communities has been widely recognised as important. Functions of outreach and capacity building are overlapping, but can be usefully distinguished in some respects. Their value to an effective complaints handling system has several dimensions. Outreach to communities can play an important role in enabling marginalised communities to access those complaint mechanisms that are formally available. Community capacity building can help enable them to interpret and understand information they are given through processes of outreach, deliberate amongst themselves as to pros and cons of pursuing any complaints through available formal mechanisms (including but not limited to RSPO processes), and adequately defend and represent their interests within any complaint process they choose to pursue. Capacity building may also help enhance the capacity of communities to engage independently in complaint processes, reducing reliance on NGO supporters. The importance of such outreach and capacity building functions has been recognised by the RSPO, its website stating that “those

who may face particular barriers to access can be provided assistance through the RSPO Dispute Settlement Facility”. In practice, however, provision of such support, where appropriate, appears to have been very limited.

In the absence of systematic provision of such support by the RSPO, some NGOs have attempted to strengthen structures of support available to communities. One such initiative was led by the NGOs Oxfam Novib and Sawit Watch, with the aim of building capacity, knowledge and relationships among communities and their supporters to facilitate better utilization of existing grievance mechanisms – including those provided directly through the RSPO. This initiative was designed to facilitate visiting teams to work with communities in relation to specific disputes; communities would then receive feedback and advice from an expert panel comprising Indonesian pro bono lawyers to make recommendations regarding whether cases should go to the RSPO’s DSF, to national litigation, or other mechanisms. In some individual cases local public interest law organisations have also played a role in assisting communities to develop documentation of their claims, and to select the most appropriate forums for bringing the grievances (e.g. via the police, Komnas HAM, the courts, or mediation) (interview, Participant H February, 2013). Such organisations only deal with relatively small numbers of individual communities, however, leaving significant gaps.

Representation and legitimacy

Reliance on NGO networks to support community claims also raises difficult questions about representation and legitimacy. As one previous report has noted (Jonas, 2014, p.32), while relationships between communities and NGOs are often mutually beneficial, dependence on intermediary organisations “also comes with inherent challenges with communication, representation, managing expectations and perceptions and differing individual or organisational agendas”. One NGO representative we interviewed observed: “you need to ask the question why were certain cases brought forth, who did it and why, and what was their agenda? It is really crucial because most of the complaints, at least the ones I have been involved in, it didn’t really come from the community. There was a conflict, yeah, but why that case and why not another? Why that company and not another company? Why RSPO and why not another system?” (interview, Participant C, February 2013). Defining a legitimate role for NGOs in supporting community claims is a pervasive challenge for non-judicial grievance handling systems, as we discuss in greater detail in two companion reports in this series, focused on complaints involving the company Wilmar, and on the operation of the Compliance Advisor Ombudsman.

Performance of key functions

Enforcement of RSPO decisions

The RSPO’s complaints system has often been criticised for the perceived weakness of its capacity to enforce decisions of the complaints panel. According to one observer: “[if companies] don’t obey the standard or the decisions, after the complaint there’s no punishment” (interview, Participant J, September 2012). The ultimate sanction that the RSPO can impose against an RSPO Member is expulsion from the RSPO. The cost to companies of losing RSPO membership is ambiguous and variable, but may include costs associated with loss of palm oil certifications, as well as broader reputational or branding costs, which may influence relationships with customers, investors, other businesses, or government regulators. Another significant mechanism that the com-

plaints panel has at its disposal is a stop work order which allows the RSPO to order members to temporarily cease development work on individual or company-wide plantations (Wiggs, 2016).

Even where such sanctions are available, there is often reluctance on the part of the RSPO to deploy such sanctions, in view of concerns that terminating membership of companies would lead to a complete loss of influence over them. To our knowledge, only one company, Duta Palma Nusantara, has had its RSPO Membership terminated as a result of a complaint filed against them (Grassroots, 2013, p.11). This company's membership was terminated in May 2013, 4 years after the initial complaint filed against it (RSPO 2013 (d)).[†] Complaints against the company stemmed from their practices in establishing a palm oil plantation, clearing forest, and clearing land by open burning, all without proper assessments, and in violation of the RSPO Code of Conduct. Cases of companies having their membership suspended are also rare. The RSPO suspended Genting Plantations Berhad in April 2014, due to alleged breaches of the RSPO New Planting Procedures (RSPO 2014(c); RSPO n.d.(l)). The company's membership was reinstated in September 2014, after providing information about new planting areas, particularly HCV zones within those areas, as well as efforts to identify HCV (RSPO n.d.(m)). Concerns have also been expressed about the way in stop work orders have been implemented, in view of delays in issuing stop work orders after receipt of complaints, and weak monitoring and enforcement of orders that have been made (Wiggs, 2016).

Another possible sanction is the **suspension of certification certificates**. However, there are some significant ambiguities around the triggers for such sanctions. For example, one of the requirements of certification of companies with multiple operating units is that they have no land conflicts within any of their operations (RSPO n.d.(n)). Rules regarding suspension of certificates further require that where one of a holding company's subsidiaries is in violation of one or more specified requirements, including 'significant land conflicts', then Certificates for all of the company's holdings should be suspended (RSPO n.d.(f), Paragraph 4.2.4). In practice, however, there is perceived ambiguity regarding what level or type of conflict would trigger such sanctions, and the prevailing interpretation seems to be that this only applies to 'significant' forms of conflict, for example where sustained protests are occurring, or where a complaint "has erupted and been brought to the RSPO grievance panel" (interview, Participant L, February 2013). In part such ambiguity may result from the fact that any decision as to whether to suspend certifications is outsourced to the relevant Accredited Certification Body, and not directly controlled by the RSPO.

The only case we are aware of in which a company's certifications have been suspended at group level was in relation to a protracted complaint against the major Malaysian company IOI Group. In this case, the complaint had been drawn out for over six years before this sanction was imposed, in April 2016. At the time of finalising this report in October 2016, the complaint had still not been resolved. Suspensions of certifications can create costs for companies, particularly if they have forward contracts and have sold their oil on the basis that it was certified, and must then tell the buyer that they cannot supply certified palm oil. In the case of IOI's 2016 suspension, the suspension led rapidly to announcements by major customers Unilever, Mars and Kellogg that they were cancelling their supply contracts with the IOI conglomerate (Jacobsen 2016).

The failure to invoke this sanction in the Wilmar Jambi case generated some contention, with NGOs such as Forest Peoples Programme (FPP) arguing that it should have been applied

[†] Other companies have had their membership terminated for other reasons, such as non-submission of Annual Communications on Progress or non-payment of fees.

(Colchester, et al, 2011, p.56). Wilmar did pause the process of requesting new certifications in relation to Asiatic Persada and other locations, though as described by a Wilmar representative, this was a choice taken by Wilmar itself rather than a requirement imposed by the RSPO: “RSPO didn’t ask us to stop certification there, but we voluntarily did it. In August 2011 we paused the certification process until we had sorted it out. We also paused other certifications we were going for. ... To maintain integrity of the RSPO we didn’t want to have an issue and still be going for certification, so this was our decision” (interview, February, 2013). While the lack of a formal sanction in this case has been widely criticised, Wilmar has suggested that it would be impossible to ensure no conflict in any of their operations, and that this provision needs to be interpreted loosely in order to be practical (interview, February 2013). Another example of this is Felda Global Ventures, who self-suspended in March 2016.

Enforcement can also be stymied as a result of gaps in RSPO standards, which currently enable companies to evade RSPO enforcement efforts via the sale of subsidiaries. In the dispute concerning Wilmar subsidiary PT Asiatic Persada, as noted above, Wilmar sold the subsidiary to a non-RSPO certified company while the dispute and associated mediation was still ongoing. According to the Forest People’s Programme (2013): “The handover of PT Asiatic Persada without prior consultation highlights a critical weakness of the RSPO: the absence of criteria or guidance on the obligations of RSPO member companies where concessions are sold to non-RSPO companies, particularly where conflicts and conflict resolution are still underway.”

Investigation and monitoring

Another source of criticism of the past performance of the RSPO complaints system has been the lack of systematic attention to “prevention and ... regular monitoring of its members’ activities” and to “due diligence and independent verification” in the case of disputes (Jonas 2014, p.8).

Such criticisms reflect evidence that to date, the RSPO has played little role in independent fact-finding or investigation activities. One report suggested that the lack of attention by the RSPO to fact-finding and investigation functions “has pushed [the] burden for substantiation on complainants, who are required to constantly re-submit and substantiate evidence to RSPO” (Grassroots, 2013, p25). To the extent that investigation or fact finding have occurred, these have tended to be delegated by the RSPO to private certification or auditing bodies, whose independence has sometimes been questioned.

The RSPO has tended to be similarly passive in relation to monitoring activities, both in the course of individual mediation or dispute resolution processes, and during implementation processes post-settlement. Interviews with the RSPO Secretariat confirmed that “the RSPO because of our resources cannot monitor directly the implementation. That is why we have the certification body - that is why the role of the certification body is actually very critical in the RSPO to maintain RSPO credibility” (interview, Participant D, February 2013). However, audits don’t look specifically at implementation of negotiated agreements, and in practice members’ self-reporting of implementation has often been relied on (Jonas 2014, p.10). The RSPO was not involved in follow-up and monitoring of agreed settlements resulting from mediations between communities and Wilmar in the cases we investigated, even where structured monitoring and implementation processes have been established by other actors, such as in relation to the CAO-led mediation process involving Wilmar and communities in Sambas, West Kalimantan.

Governance and procedural integrity

In assessing the operation of the RSPO complaints system, we also consider key elements of its governance and procedural integrity. Below we examine in turn the independence of the complaints system, and qualities of predictability, consistency and transparency.

‘Independence’ of the complaints system

Concerns have been raised by many stakeholders and observers regarding the lack of ‘independence’ of the RSPO complaints system from the power and interests of individual corporate or NGO members. One specific concern has related to the **lack of separation between the Board of Governors and the Complaints System**. As one report observed in 2013, the RSPO Board of Governors could “simultaneously fulfil all of the following conflicting roles: Complainant, Defendant, Membership of the Complaints Panel, Appeal Panel, Advisor to the Complaints Panel, Oversight Body of the Complaints Panel and Final Arbiter to determine ultimate sanctions” (Grassroots, 2013, p.24). In relation to the initial Wilmar complaint, an NGO staff member we spoke with suggested: “The problem with the RSPO process ... is that the grievance panel was basically made up of members of the Board – so the same people that had to steer the RSPO were responsible for dealing with complaints. So we had for instance Unilever at the time sitting on the Board. But we also had targeted Unilever at the time because they were a big buyer – so they were not impartial” (interview, Participant E, October 2013). The lack of clear division between the BoG (formerly Executive Board) and Complaints Panel has been highlighted as a concern by numerous commentators (Jonas 2014, p.26). It is noteworthy that if the proposed Integrated Complaints System comes into effect, separating these roles will be one of the reforms introduced (RSPO 2015(c)).

Potential **conflicts of interest in the composition of the Complaints Panel** have also attracted some criticism. The RSPO’s policy states that conflicts of interest in the composition of the Panel are reviewed, and alternates are invited at the Panel’s discretion (RSPO n.d.(h), Section 2.5.2).¹⁶ Nonetheless, conflicts of interest can sometimes be difficult to entirely avoid, given common supply chain links between producer companies (who are often defendants), and downstream processors or retailers participating as panellists.

Weak **independence of auditors and assessors used in relation to individual disputes** has also been an issue for some stakeholders. Concerns have arisen when Certification Bodies have been asked to provide an independent opinion regarding a complaint against a company for whom they have provided certification assessments, paid for by the company. Certification Bodies familiar with a particular company through their audits of that company have at times been engaged by the RSPO to provide definitive opinions on their performance (Grassroots, 2013, pp.13-14). In the Wilmar case, the certification body TUV was contracted directly by Wilmar

¹⁶ It is stated that “The Panel reviews conflict of interest before each case and the panel through the chair invites replacing members as necessary for achieving balance and expertise. Selection of expert members should aim to include at least one member who has local knowledge and must be based close to the ground action where they can move in to investigate further, while maintaining independence. If a complaint is raised against a consumer goods manufacturer, then a processor/trader or retailer of bank/investor is selected. If a complaint is raised against a Malaysian grower, then an Indonesian or Rest-of-the-World grower will be called upon and vice versa”

in relation to the dispute with Asiatic Persada, leading to perceptions among some NGOs of significant conflicts of interest (interview, Participant R, September 2012).

Consistency, predictability and transparency

The RSPO's procedures have also been criticised from the perspective of qualities of consistency, predictability, and transparency.

Concerns have been widely expressed that formally designated **rules and procedures have often not been followed on a consistent or predictable basis**. The 2014 Review of the RSPO complaints system highlighted a lack of clarity with, and inconsistent application of, various parts of the Complaints Procedure Flowchart, as outlined in Figure 1 (Jonas 2014, pp.29-30). Other observers have highlighted examples in which companies such as Nestle and Unilever have exercised influence over the complaint process in relation to high profile cases, outside of formal procedures. For example, Unilever announced in 2009 that it was suspending purchases from PT SMART (and hence also Golden Agri Resources (GAR)) on account of a report from Greenpeace that linked deforestation in Indonesia to GAR/Sinar Mas plantations supplying Unilever. Sinar Mas and GAPKI protested its “unilateral move to suspend purchase based on the report”. The RSPO Board then used the ‘public domain information’ provision as a basis for triggering an RSPO complaint on this issue, circumventing the need for a specific complainant to bring a case and present a *prima facie* case against SMART. Some observers perceived that cases such as this, in which the BoG had taken a direct interest, then received expedited consideration, again without any clear procedural rationale. Such examples highlight how informal processes of claim-making and dispute handling can be perceived to undermine formal procedural integrity (Grassroots 2013, p.22; McCarthy 2012, p.23; Wiggs, 2016).

More broadly, the **lack of consistency and predictability in treatment of different cases and issues** has been a significant source of criticism. In part such criticism has related to inconsistencies in how individual complaints (and individual issues within more complex complaints) are prioritised by the RSPO for resolution—a problem that one report refers to as ‘cherry-picking issues and cases’ (Grassroots, 2013, p18). Most complaints received by the RSPO contain more than one complaint subject, relating to different RSPO standards, and often seeking different dimensions of redress, compensation or sanctions. The RSPO has been clear in articulating their lack of capacity to manage all of the grievances that arise in the sector in relation to RSPO members – asserting that “the RSPO is not the palm oil police” (RSPO November 2008 Executive Board meeting minutes, cited in Grassroots 2013, p.21). Nonetheless, in cases where the RSPO has chosen to selectively address a few issues but not the entire complaint, the absence of transparent justification of such decisions has attracted criticism. For example, in a complex and protracted dispute involving the company IOI, the RSPO was criticised for failing to address issues of IOI adherence to legal recommendations from an Environmental Impact Assessment (Grassroots 2013, p.18). Similar criticisms have been levelled at **inconsistencies in adjudication decisions** made by the RSPO, such as choosing to expel the company Duta Palma Nusantara, even though this wasn't requested by complainants, while not applying such sanctions to other cases perceived to be “of similar recalcitrance, transgression or seriousness” (Grassroots, 2013, p21). Transparent reason-giving for such decisions could enhance predictability even in the absence of formal precedent, but has generally been lacking.

More broadly, levels of **transparency** of formal RSPO governance processes are relatively high. The RSPO expresses a strong in-principle commitment to transparency, and a presumption in favour of transparency within complaints processes.¹⁷ This is practically reflected in the availability online of minutes from the BoG and General Assembly meetings and basic information about current complaints—though information such as the progress of individual cases has tended to be inconsistently provided and updated. Since the beginning of 2015, minutes of Complaints Panel meetings have also been available on the RSPO website (RSPO n.d.(b)). In practice, however, many key decisions and processes related to complaints procedures occur outside of these formal decision making forums, and remain relatively opaque. Moreover, the website remains inaccessible to many key audiences, since it is internet based and available only in English (and more recently also in Chinese).

Such weaknesses in transparency have been further compounded by problems with day to day processes of **communication** between the RSPO Secretariat and those involved in individual disputes. According to surveys conducted for one report, published in 2013, 80% of respondents perceived ‘a lack of, delay in or non-satisfactory communications in general’ on the part of the RSPO in relation to complaints they were involved in—some describing the quality of communication as “passive, piecemeal and ad hoc” (Grassroots 2013, p.16).¹⁸

Such weaknesses have sometimes been linked to a broader lack of **formalised record keeping** and monitoring of how the complaints system is operating in practice, both throughout the life cycle of individual cases, and in relation to patterns of usage in the system as a whole. In this regard, the 2014 Review of the complaints system noted lack of sufficient documentation and time for discussion of complaints within the Complaints Panel, insufficient documentation of processes and rationales for decisions taken by the Panel, inconsistent or inaccurate documentation and communication of information about complaints, and insufficient detail in Panel minutes (Jonas 2014, p.29). It was acknowledged that “improvements have been made in recent months, including minutes [of complaint panel meetings] being recorded in a more consistent format, though they still lack detail in terms of the content of the deliberations and justifications for decisions” (Jonas 2014, p.6). From the start of 2015, the Complaint Panel minutes have been available online on the RSPO website. However, as the 2014 report notes, the lack of “official record of thought processes and rationales behind the decision-making” impedes “the likelihood of ensuring clarity and consistency when interpreting similar issues, and limits otherwise useful opportunities for reflection, analysis and institutional learning” (Jonas 2014, p.12)

Such limitations have generated significant risks of negative impact on broader public **trust and legitimacy** of the RSPO system. As one report noted, clear and reliable rules and procedures can help provide “predictability, consistency and transparency to the complaints system, which translates to credibility with stakeholders and belief from RSPO Members” (Grassroots 2013,

¹⁷ The RSPO states on its website that “the RSPO aspires to ensure transparency throughout the mediation process and the reporting thereof. Decisions not to disclose information through the RSPO website or other media require motivation on genuine grounds that disclosure will go against the interest of the mediation process and/or may jeopardize the well-being or safety of stakeholders involved, and that non-disclosure does not undermine adherence to the principles and objectives of RSPO.” (RSPO n.d.(j))

p.21). Without this, the result is “unpredictable procedures, arbitrary actions and unclear motives, leading to the perceived mistrust of the [Complaints System] by complainants and defendants ... and loss of credibility” (Grassroots 2013). For a multi-stakeholder initiative like the RSPO that depends for its authority on the voluntary participation of members, erosion of trust and legitimacy is a serious threat.

Indirect contributions to human rights protection in the palm oil sector

Up to this point, much of our analysis has focused on formal functions, procedures and governance arrangements through which the RSPO complaints system operates. However, the RSPO has sometimes also influenced company-community disputes in noteworthy ways through more **indirect or informal** channels. We first examine ways in which RSPO processes have influenced **dynamics of negotiation and dialogue** surrounding specific disputed cases or issues. Second, we consider the indirect influence of the RSPO over processes of **lesson learning, conflict prevention and sectoral change**, oriented towards prevention of recurring human rights grievances in the palm oil sector. We consider these latter processes in relation to individual companies, networks of actors, and broader sectoral and policy practices. Our analysis suggests that while formal RSPO complaints systems have sometimes contributed positively to such processes, the broader informal networks of multi-stakeholder relationships facilitated by the RSPO often also exert significant influence over the course of disputes.

Influencing negotiation and dialogue between disputing parties

Formal RSPO complaint handling processes have often been perceived as contributing little to active facilitation of constructive and balanced dialogue between disputing parties. In particular, the role of the Secretariat in facilitating dialogue has been understood as primarily administrative, limiting their capacity to actively facilitate communication or dialogue. Secretariat staff stressed their lack of autonomy or authority and the need to defer to the Complaints Panel for any major decision: “even though we are acting like a liaison ... we have to follow what the complaint panel decision [is] in this regard, so if we convey some message or we give some advice to the member it has to be based on the complaint panel decision” (interview, Participant D, February 2013). Some commentators have interpreted this role somewhat critically, describing the Secretariat as acting largely in a ‘postman’ role during disputes (Grassroots 2013, pp.26-27).

Nonetheless, there are some ways in which both formal complaint handling processes, and broader RSPO structures and activities, have sometimes made minor and somewhat indirect contributions to **enabling dialogue between parties to individual disputes**. In the Wilmar case, for example, a small number of interviewees suggested that the RSPO had played a minor role in enabling NGOs working with communities involved in complaints to gain access to corporate senior management. Some reported that early communication between Wilmar company rep-



representatives and the Jambi-based NGO Setara was facilitated via RSPO events and associated personal and organizational networks. Some viewed these relationships as playing a role in the decision of senior figures within Wilmar's Singapore head office to pressure management in their subsidiary PT Asiatic Persada (based in Jambi) to participate in grievance handling process being led first by Setara, then later by the CAO. Some further perceived that the RSPO's role in this case helped lend greater **credibility or authority** to otherwise marginal community and local NGO voices. One NGO observed that since the NGO Setara had strengthened direct relationships with the RSPO (as well as directly with the Wilmar head office and with the CAO) "the companies are a bit more scared or respectful of Setara ... Setara's voice is now heard on that level more" (interview, Participant R, September 2012). Involvement of the RSPO, along with other authoritative bodies, thus can help not only to establish relationships with companies; under some circumstances it can also make small contributions to enhancing the status of weaker parties. It is important to note however that such roles are usually subtle and marginal in their influence. Moreover, such examples illustrate the value of the RSPO's existence as a multi-stakeholder forum, rather than the value of any specific procedure or intervention on the part of RSPO staff. Particularly for NGOs that already have relationships that would enable them to communicate directly with company executives, the value of using RSPO contacts to facilitate such communication can be negligible. Even some smaller Indonesian NGOs were clear that "the RSPO is not the only way to get communications – we have many ways to get direct communication [with companies] (interview, Participant R, September 2012)". Nonetheless, in some particular cases, at specific moments in time, this role can be useful.

One local NGO further described how engagement with RSPO events helped them to build their networks with other organisations working on palm oil, following their initial engagement with a community complaint against Wilmar in Sambas, West Kalimantan. This enabled them to learn more about how to effectively engage in the palm oil sector: "We had worked on some palm oil issues in 2001, but it wasn't focused, and we didn't know about the network on palm oil issues. ... we didn't have any strength on how to fight on that issue ... In RSPO, there are many categories of NGOs who are involved in the RSPO, like the conservation NGOs, and also social NGOs. So this contact enabled us to meet together. ... Then we decided after the meeting to make an investigation of the case" (interview, Participant S, February 2013). Nonetheless, these networking opportunities are usually facilitated only very indirectly by the RSPO, and networking opportunities have remained limited in important ways. There has usually been limited scope within such informal and sometimes fleeting encounters for significant sharing of knowledge or experience to occur, and the majority of local NGOs have not had the opportunity to participate in such networks at all.

Another process through which RSPO involvement can influence dynamics of dialogue around disputes is through the role of **RSPO standards** in shaping both direct negotiations between parties, and wider public debate. According to one professional mediator "I think the question of external standards is interesting because they can be helpful if the parties say, okay, this is a common benchmark that we all agree to; the company is already signed up so that makes it a natural benchmark" (interview, Participant B, June 2012). One NGO we spoke with suggested that although RSPO standards only played a very loose and indirect role in framing the terms of dialogue in the Wilmar case, they were nonetheless significant insofar as the RSPO standards embodied an explicitly 'rights based' approach. In the view of one participant, this meant that

from the outset, there was greater recognition that the community “should be treated as the land owners even though the law did not recognise this ... so then they have the right to say ‘no’ ... Once the company accepted that was the basis for the negotiation ... the negotiation proceeded better than just ‘you know you’ve got a problem, you need to talk’” (interview, Participant U, 2012). An Indonesian NGO in one of the mediations with Wilmar made a similar point, highlighting the greater recognition for the rights of indigenous people in international standards compared with Indonesian law (interview, Participant P2, September 2012). Although such influence is usually very small, the moral authority that RSPO standards carry can nonetheless provide an additional discursive tool that communities and NGO supporters can use to help build pressure in support of their claims—placing some limits on the acceptable terms within which negotiation and reason-giving can occur.

In the Wilmar case, there is evidence that RSPO standards further played a role in shaping the company’s response in early stages of the dispute. References to RSPO standards played an important role in shaping a series of letters sent back and forth between Wilmar and the RSPO Secretariat at key points of the dispute. According to one NGO staff member closely involved in the dispute: “Both Wilmar and IFC are RSPO members so they are bound to comply with RSPO standards, so here we have to look at the role of the RSPO not in terms of process but from a political accountability perspective. ... Wilmar committed itself to complying with the RSPO standards ... In terms of process, after those responses it was very clear that RSPO standards were really directing how Wilmar was responding to the case” (interview, Participant O, February 2013).

RSPO standards have sometimes also provided a useful codification of corporate commitments that NGOs can then use as a basis for holding individual companies to account. Such accountability processes can in turn enable or stimulate the exertion of material leverage from campaigning NGOs or influential companies higher up the palm oil supply chain to pressure companies to resolve individual disputes. Although such pressure can be exercised independently of any RSPO processes, in practice formal and informal processes have sometimes become blurred. Anecdotes regarding the role of informal pressure in altering the dynamics of individual disputes were particularly common with regard to the role of major supply chain buyers such as Unilever. For example, informal pressure from senior management in Unilever reportedly played some role in pressuring top management in Wilmar to in turn pressure frontline staff to negotiate a resolution with communities in Sambas, though ultimately this did not occur. In this case, informal pressure generated through supply chain relationships added cumulatively to pressure concurrently being placed on Wilmar from company financiers, the CAO grievance process, and broader NGO campaigns demanding that Unilever place greater pressure on Wilmar as one of their suppliers.

As one NGO involved in the Wilmar case acknowledged, however, one major difficulty with such informal processes of market influence is that they are unreliable, inconsistent and often unable to be sustained over time: “[Such a process] depends on a good person like [the Director of Sustainable Agriculture at Unilever] – at least at that time he wanted to fix that problem. In other cases ... Unilever is not playing that role for whatever reason, so the ... case just drags on and on” (interview, Participant C, February 2013). The role of informal market leverage in influencing the course of individual disputes can depend on a number of factors, including the role of key individuals, variations in relevant market conditions, and the strategic importance of particular supply chain relationships to the parties involved.

Preventing human rights harms through lesson learning and wider sectoral change

Lesson learning

The point has often been made that the RSPO can provide a **forum for ‘learning’ and normative change** around policies and practices in the palm oil sector. The notion of working through networks to promote cumulative processes of learning, capacity building and ideational and behavioural change is often regarded as central to the RSPO’s constitution as a multi-stakeholder network. The RSPO complaints system itself is explicit in its goal to contribute to broader processes of these kinds, stating that one objective is “to capture wider lessons and make recommendations to the RSPO Executive Board on any systemic improvements” (RSPO n.d.(p)) Section 2.5.1). Likewise, this goal has been emphasised by external stakeholders—for example, the 2014 Review of the RSPO Complaints System stressed the importance of complaints not being “seen as inconveniences to be ‘managed’ or ‘closed’, but as specific situations and symptoms of broader patterns of non-compliance that must be prevented or meaningfully resolved” (Jonas 2014, p.iii).

There are numerous examples of **individual companies** gaining skills and experience in mediating disputes with local communities through participation in RSPO complaints processes—though new skills or experiences don’t necessarily lead to substantive shifts in company approaches to handling future complaints. The 2014 Review of the RSPO complaints system cited some complainants suggesting that “sharing experiences with others about similar complaints and/or the same RSPO member had helped them better understand and engage with their own complaint process” (Jonas 2014, p.11). In the context of individual disputes, the RSPO Secretariat can sometimes offer minor forms of technical advice or assistance through the work of technical support staff, for example in relation to management of HCV land or habitat of endangered species (interview, Participant D, February 2013). Learning amongst individual companies through their involvement in RSPO complaint handling processes can thus potentially support learning in ways that prevent recurrence, or facilitate more productive negotiations around remedy in the case of future complaints. A number of observers cited a recent case in West Kalimantan involving the Wilmar subsidiary PT Agro Nusa Investama, where several NGOs with prior experience engaging with Wilmar in relation to past complaints supported communities to bring complaints under the RSPO’s New Planting Procedure procedures. One NGO involved in this process suggested that the relative success with which disputing parties were able to negotiate an agreed settlement in this case regarding distributions of land between the company and communities may have been due in part to Wilmar’s prior experience of negotiating land disputes through the RSPO, as well as other grievance handling processes (interviews, Participant D, February 2013; Participant S, February 2013; Participant L, February 2013).

The networks and relationships linking communities, NGOs and companies that can be formed in the course of complex grievance handling processes can also help facilitate **learning amongst participating NGOs**. One NGO described how relationships and experiences formed through engagement with prior grievances have made it easier for them to subsequently contact the RSPO directly to help resolve future disputes (interview, Participant S, February 2013). Nonetheless, in many cases opportunities for poorly resourced NGOs based in remote geographical locations to form such relationships remain significantly constrained, limiting potential impacts of these kinds.

Some also point to broader corporate policy changes in companies such as Wilmar who have been the target of multiple protracted disputes within the RSPO, as evidence that exposure to grievance procedures can help generate both incentives and learning opportunities to support internal policy change within companies. Wilmar has introduced a number of changes to its internal sustainability and human rights policies in recent years, incorporating aspects of the RSPO Principles and Criteria, but also including issues such as ‘no development of High Carbon Stock (HCS) Forests’, designed to protect natural forests storing high levels of carbon and biodiversity, which arguably go beyond RSPO requirements (Wilmar n.d.). However, others have expressed greater skepticism about the extent to which meaningful change has occurred within companies such as Wilmar (Forest People’s Programme 2015), and certainly such processes have failed to induce behavioural change within many individual subsidiaries. One NGO we spoke with described the Wilmar subsidiary Asiatic Persada as “one of the most stubborn companies we have ever worked with” saying that [during the time the company upheld its RSPO membership] they “hid behind the RSPO to defend their practices and they never learned from these incidents [of grievances]” (interview, Participant P1, September 2012).

Beyond the specific boundaries of the complaints system, RSPO Working Group processes have also played some role in supporting broader sectoral dialogue and learning in relation to specific policy issues. For example, the RSPO has convened multi-stakeholder dialogue on issues such as the Free, Prior and Informed Consent (FPIC) of communities in relation to land transfers—an issue with important implications for the prevention of recurring conflict. Learning from disputes and conflicts on the part of RSPO members and stakeholders can feed indirectly into the ongoing development of policy positions and working groups. The promotion of policy agendas such as recognition of collective land title, support for FPIC, protection of HCV areas and so on have all been supported by RSPO working group processes at various times, and policy positions on these issues have in turn sometimes been informed by experiences associated with individual grievances.

Such processes of learning can also translate into strengthening of **RSPO staff capacity and policies**. Learning among RSPO staff can result directly from their participation in complaint handling processes—not only through direct experience of the complexities of disputes, but also through learning from more experienced mediators outside the RSPO. Exposure to cumulative experience in handling complaints can also feed into ongoing development of RSPO policies and procedures. RSPO policies designed to control the clearing of HCV land, including policies on Remediation and Compensation Procedures for land cleared without HCV assessment, were reportedly developed in part in response to learning from issues raised through RSPO grievance cases.

Although numerous *ad hoc* examples of learning within the RSPO can be identified, more systematic or **institutionalised processes of learning**, about both dispute handling processes and recurring sources of human rights grievance, appear much less developed. Although one of the Complaint Panel’s designated responsibilities includes capturing wider lessons and making recommendations to the BoG on systemic improvements, there appears to have been insufficient capacity or prioritization of this objective for such processes to have been institutionalized to date. This is compounded by the lack of formalisation and documentation of reason giving processes, noted earlier, and the tendency for the “institutional memory” of the complaints system to rest with a small number of individuals. Lack of systematic engagement with other rel-

evant complaints systems, such as the CAO or OECD National Contact Points (NCPs), also impedes opportunities for more systematized learning (Jonas 2013, p.33).

Influencing sectoral change through direct engagement with government policy

RSPO grievance-handling processes—if appropriately connected with broader elements of the organisation’s work—have the potential to promote broader change in human rights practices of business in the palm oil sector by facilitating **engagement with government policy** on issues identified as important for preventing recurring conflict. Such engagement may occur directly, or via the RSPO’s provision of a focal point for the operation of broader policy networks. The specific contribution of the RSPO’s complaint handling system to such processes has been limited by the weak channels for institutionalizing learning from processes of complaints; nonetheless, the RSPO’s overall contributions in this area are worth briefly documenting.

One area in which **direct** RSPO engagement with government has been widely regarded as significant has been policy in relation to protection of HCV land. RSPO standards require protection of HCV land, but there were several instances where RSPO certified companies who did not develop this land for palm oil then had the land taken back by district governments to give to other non-RSPO members to convert the land for palm oil production. This problem was brought to the attention of the RSPO, leading the RSPO to develop a concerted strategy to engage government to address this issue (interview, Participant D, February 2013). Particularly productive links have been built between key RSPO NGO and corporate members, and members of the Central Kalimantan Provincial government, with the specific aim of strengthening protections of Indonesian HCV in relation to palm oil production, through legal and procedural reforms (RSPO 2011). There are further examples of direct collaboration between RSPO programs and key government agencies, such as programmatic collaborations between the RSPO and the Ministry of agriculture in Indonesia in relation to smallholders (WWF 2013). Similarly, the Sustainable Palm Oil (SPO) Initiative has been formed as a public private partnership by the UNDP in Indonesia, with the involvement of the RSPO and the Ministry for Agriculture among the SPO partners.¹⁹ These examples are the exception rather than the rule, however.

Some further hope that ‘progressive’ positions on key issues developed within the RSPO and its networks may subsequently be taken to government **indirectly**, via the leadership of key companies, though there are many external political constraints that make this difficult to achieve in practice.²⁰ Where such processes of indirect influence have been successful in the past, they seem to have rested importantly on the capacity of RSPO members to build coalitions amongst

¹⁸ The survey gathered 15 completed questionnaires (13 from complainants, and 2 from defendants), some of which concerned multiple cases, such that feedback covered individuals and organisations involved in 18 cases of the 27 cases identified in the Beyond Certification research (RSPO n.d.(j)), *ibid*, p.16).

¹⁹ Aims of this initiative include increasing smallholder capacity and improving livelihoods (RSPO 2013(e); UNDP n.d.).

²⁰ The role of Golden Agri Resources in advocating on issues such as regulatory reform regarding high conservation value land is often cited as an example of this.

reform-minded actors within the RSPO, and sympathetic actors within relevant government agencies. Such indirect processes of policy influence can sometimes be encouraged through relationships that have been built between RSPO participants in the context of individual disputes. A widely cited example in this regard is the example of the company Golden Agri Resources (GAR), whose engagement on reforms to its sustainability and human rights practices was incentivized in important ways as a result of sustained NGO campaigning against GAR's contributions to deforestation, and subsequent processes of dialogue and pressure from NGOs and key supply chain buyers (Unilever and Nestle) (REDD Monitor 2012)(Grassroots 2013, p.22). Although much of this pressure took place outside of RSPO processes, the RSPO Executive Board used the 'public domain information' provision as a basis for triggering an RSPO complaint. This process is widely acknowledged to have resulted in significant changes in the company's internal policies, as well as its engagement in wider coalitions of businesses and NGOs within Indonesia seeking to influence government policy on protection of HCV land.

To the extent that the RSPO has contributed to processes of learning and policy change in the palm oil sector, such processes tend to depend on contributions from networks of business, NGO or government actors extending well beyond the RSPO itself. The international Palm Oil Innovation Group (POIG)—which was formed in 2013, and involves collaborative work amongst a number of international NGOs and palm oil producing companies—is one example of a broader network of actors which has been facilitated in part through the network infrastructure supported by RSPO activities. The group's formation resulted directly from debates surrounding potential reforms to the RSPO P&C, which POIG members wanted to extend, especially on issues of deforestation, carbon stocks, biodiversity and social relations (interview, Participant X, September 2012). The group has aimed both to influence broader corporate practices in the sector, and relevant areas of government policy. As one participant described the idea: "We [felt] for the last two years the government is not moving anywhere in terms of sustainability or having a good buy in on RSPO. Then the idea came up earlier this year ... why don't we put other pressure so NGOs and good companies are in the same platform to ... engage directly with the government agencies to talk about what sort of reforms are needed in the law to secure high conservation values areas" (interview, Participant U, July 2012). Subsequently, similar initiatives have been undertaken, such as an initiative titled the Indonesia Palm Oil Pledge, involving the Indonesian Chamber of Commerce (KADIN) and a number of major companies involved in the palm oil sector (Wilmar, GAR, Cargill, Asian Agri and Musim Mas). Under the terms of the initiative, the signatories committed to lobby the government to codify key elements of the pledge into law—particularly with regard to protections for high conservation value areas of land.²¹

Nonetheless, such commitments have remained limited,²² and have faced significant challenges of operationalization.²³ It is particularly noteworthy that the scope of reform promoted through coalitions of these kinds necessarily remains limited by the core underlying goal of the RSPO to improve and legitimize economic activity and production within the palm oil sector.²⁴ Forms

²¹ See <http://www.palmoilpledge.id/en/program>, last accessed 11th April 2016

²² See for example: <http://news.mongabay.com/2015/04/jokowi-must-strengthen-indonesias-forest-moratorium-not-just-extend-it-activists/>

²³ See <http://blog.cifor.org/39085/zero-deforestation-in-indonesia-pledges-politics-and-palm-oil?fnl=en>



Palm oil plantation area in Jambi, Sumatra, Indonesia

Photo: Samantha Balaton-Chrimes

of policy change that would prevent human rights problems by shifting away from palm oil towards alternative forms of land use are therefore unlikely to be supported by such coalitions (except in relation to issues such as protection of HCV land by the sector itself). In June 2016 it was announced that the Indonesia Palm Oil Pledge was to be officially terminated, amidst a push from President Joko Widodo's administration to assert visible government control over the terms of initiatives designed to combat deforestation.

Despite these limits to the RSPO's potential contributions to wider processes of learning and policy change, the RSPO's high profile in the sector, and associated capacity to bring together a critical mass of multi-stakeholder actors, creates the potential for it to help coordinate processes of policy learning and agenda setting amongst wider networks of business, NGO and government actors—at least within the structural limits defined by the interests and power of its participants. There is evidence for example that the RSPO can sometimes help create an **entry point** for raising the visibility and political salience of either specific grievances or broader contested policies affecting recurring conflict in the sector. In this way, as one NGO involved in this case observed, “when the issues are at a certain stage [the RSPO] can be used to push the improvement of the problem that is being handled ... [some NGOs] have big networks and members to get messages out but [we] don't have that, so RSPO can be useful to let people know

²⁴ The desire amongst Malaysian and Indonesian grower groups and governments to support the RSPO as a basis for protecting the 'image' of the sector, and to counter negative NGO campaigns, has been explicit (interview, Participant C, February 2013).

about the issue and get the message out there” (interview, Participant R & Participant T, September 2012). Similarly, other international NGOs have described the potential value of RSPO certification and grievance processes as “provid[ing] political space for issues to be raised” (interview, Participant U, September 2012), or providing “an entrance door to educate people” (interview, Participant R, September 2012). Again, however, such effects are usually limited—significant and sustained energies are usually required to get a new issue on the agenda and to negotiate an agreed position, limiting the range of issues able to be addressed.

Factors enabling and constraining effectiveness of the RSPO complaint system

Up to this point, much analysis has focused on specific roles and functions associated with the RSPO’s internal organisational structures and procedures. In understanding the overall operation and performance of the RSPO complaints system, it is also important to consider the underlying factors that enable and constrain the capacity of RSPO procedures and activities to achieve intended effects. Discussion below considers in turn the effects on the RSPO complaint system’s operation of: organisational capacity; external market and regulatory conditions; and complex external politics surrounding the RSPO’s relationship with sovereign governments.

Organisational capacity

One very basic problem faced by the RSPO complaints system is a lack of **financial and human capacity** to handle the number of disputes that exist in the sector amongst member companies. As of late 2014, the RSPO had a Complaints Coordinator and Dispute Facilities Manager based in the Kuala Lumpur office, as well as dedicated counterparts for each based in the RSPO’s Indonesian office. However, concerns have continued to be expressed by many stakeholders regarding what is perceived as “insufficient personnel and capacity to deal with the volume and complexity of complaints” (Jonas 2014, p.28). According to one report, 67% of RSPO stakeholders surveyed perceived the RSPO complaints system to have a lack of capacity and resources, especially for ground investigations (Grassroots, 2013, p16). Although many of these constraints operate most directly at the level of the Secretariat, human resource constraints within the Complaints Panel are also notable, given that participants in this process operate voluntarily, while also holding down full time jobs for their own employers – RSPO member organisations. As a result, the Secretariat has reportedly experienced difficulties in trying to “build a large and diverse enough pool of capable and willing Panel members” to serve on the Complaints Panel (Grassroots 2013, p.28). The RSPO itself has acknowledged this issue publicly, viewing their capacity to handle grievances as ‘make or break for the RSPO’, and highlighting the need for more human resources within the RSPO to handle such processes (RSPO n.d.(s)).

The **complexity of the disputes** handled by the RSPO complaints system places particular demands on levels of resourcing required to manage disputes adequately. As one practitioner involved in mediations in the Indonesian palm oil sector stressed: “There are a lot of costs to doing it properly, doing the research, proper documentation around the substance of the dispute, most

Table 2: Enabling and Constraining Factors

<p><i>Organisational Capacity:</i></p>	<p>A basic problem of the RSPO complaints system is lack of financial and human capacity within both the Secretariat and the Complaints Panel to handle the number of disputes. Capacity constraints influence various aspects of the grievance handling process, including adherence to clear timelines and deadlines, capacity to carry out fact-finding, monitoring and implementation activities, and capacity to provide meaningful forms of community outreach and capacity building to facilitate access of marginalized groups.</p>
<p><i>External Market & Regulatory Conditions:</i></p>	<p>An important constraint on the functioning of the RSPO complaints system that is external to the RSPO's own control results from the voluntary nature of RSPO membership, and corresponding ability of members to exit the RSPO. Its unwillingness to use sanctions can be understood in part as reflecting awareness of such constraints. These constraints are in part dependent on the strength of incentives for members to remain engaged with the RSPO, and in turn on patterns of financing in the palm oil sector, and regulatory frameworks in consumer countries.</p>
<p><i>The Politics of Sovereignty and Legitimacy:</i></p>	<p>The capacity of the RSPO to operate effectively is dependent in important ways on its ability to secure support from key state and business actors within host countries. Its office locations in Indonesia and Malaysia allow it to maintain close relationships with key interest groups in the local sector. However, the RSPO must compete for influence and legitimacy with other standard setting mechanisms in the broader political space, limiting the RSPO's authority and influence over processes of policy dialogue. Establishing legitimacy in such processes requires the RSPO to counter perceptions that their work threatens the integrity of government sovereignty, requiring accommodation of local political sensitivities.</p>

often relating to land disputes. That is the initial part of it. Also the actual management of the process, bringing the stakeholders together, which needs a third party. Then the formal mediation or conflict resolution process ... The point is that this stuff can't be done on the cheap. ... it isn't possible to do these things properly with no money – to do it properly you need a commitment to fund a proper system” (interview, Participant A1, February 2013). The RSPO complaints system has often lacked sufficient resources to manage complex disputes of this kind.

The RSPO has also been criticised for a **lack of capacity to adhere to clear timelines or deadlines**, with 93% of stakeholders surveyed perceiving this to be a feature of RSPO's procedures (Grassroots, 2013, p16). Stakeholders we spoke with similarly cited numerous cases that had “gone on for years, but it is always postponed and no serious decision is ever made” (interview, Participant E, October 2013). The protracted and often costly nature of many disputes raises challenges not

only in relation to overall resourcing and capacity, but also questions of **fairness in the distribution of costs**: “In the RSPO also there is a constant question about who is paying for what, when you have a big company and a small community. They haven’t really worked out how that is going to be managed with a dispute management process. ... there needs to be clear delineation of responsibility for who is paying for what” (interview, Participant A1, February 2013).

Such capacity challenges can present significant obstacles for the RSPO’s ability to perform designated functions. Resource constraints present particular obstacles to the Secretariat’s ability to take on **fact finding or investigation functions**—given the frequently resource-intensive nature of such functions. One NGO we spoke with commented that “the secretariat has very limited capacity to follow so many different cases. In [one case that has been going on over a 4 year time period] they have been only once been able to go to the field I believe” (interview, Participant U, July 2012). Such capacity constraints have similarly impacted the RSPO’s **implementation and monitoring capability**. The RSPO website states that one of the key responsibilities of the Secretariat is to provide “assurance that conditions or corrective actions imposed by [RSPO complaint] systems are followed” (RSPO n.d.(p)). However practically performing such a function would require significant outreach and investigative capacity that the Secretariat currently lacks.

Capacity constraints also generate significant challenges for performance of **community outreach** functions—undermining both the accessibility of existing RSPO complaints mechanisms to affected communities, and trust of communities and NGOs in the process more broadly. The RSPO website has stated, in relation to responsibilities of the RSPO Secretariat (RSPO n.d.(p), Section 2.1), that “the Secretariat may commission capacity building of companies and other stakeholders, notably local communities, through trainings or guiding materials etc. to help them participate in the complaint process fairly and equally” (RSPO n.d.(p), Section 2.1) There does not appear to be much capacity to provide these kinds of assistance in practice, however, except in very rare cases involving serious, protracted and highly politicized disputes. An interview with the RSPO Secretariat clarified that they lacked sufficient resources to provide such capacity building for communities, though provision of such support was viewed as part of their planned ‘roadmap’ of future activities (interview, Participant D, February 2013).

Weak capacity, backlogs and delays often have the further effect of eroding the **trust and confidence** of communities in RSPO processes. According to one NGO who had worked to support communities bringing cases: “Communities expect some changes at least within a year or so, or they lose energy, and lose belief that the process in RSPO can change anything ... So a lot of energy and effort that has been put into organising communities and getting evidence together, formulating a complaint and trying to trigger action by RSPO has been in vain so far, very much to the frustration of many local NGOs, and to the communities [for whom] so far there has been next to no result” (interview, Participant E, October 2013).

Capacity constraints can also intensify broader challenges around **procedural integrity**, as discussed above. In relation to the principle of transparency, for example, many of the transparency gaps documented earlier in this report are at least in part attributable to low capacity for effective information management and consistent stakeholder communication. Significant backlogs in

processing cases, together with a lack of consistent outreach for communities and associated reliance on NGO intermediaries, may also contribute to perceived tendencies for the RSPO to prioritise cases that are receiving significant activist attention. According to one NGO seeking to support communities to bring cases, campaign pressure is sometimes strategically used as a means to “ensure the RSPO pays attention to the case”, in the presence of significant backlogs elsewhere in the system (Participant C, February 2013). To some extent such pressures are difficult to avoid altogether, but they are intensified by current capacity constraints.

External market and regulatory conditions

One important external constraint faced by the RSPO—of particular relevance to enforcement functions—takes the form of constraints on the RSPO’s leverage over members. The RSPO’s *unwillingness* to use sanctions against members needs to be understood at least in part as linked to a strategic awareness amongst RSPO decision makers of structural constraints on the scope of their leverage over members. Such constraints are in turn linked to the voluntary nature of membership, and the capacity of members to exit.

The strength of incentives for members to engage and comply with RSPO processes are in part a product of the **external market environment**—varying with the extent to which companies are pressured by external market actors to achieve RSPO certification. According to one Indonesian NGO engaged with the palm oil sector: “There is an idiom in activist circles that companies are not afraid of the government – but they are only afraid of the markets and consumers and finance institutions. ... So ... it is better to use the market or institutional financial channel to pressure the company ... if you just went to the government or land agency, you are just wasting your time” (interview, Participant S, February 2013). According to another observer “it is fair to say that without the pressure that has been exerted on retail in Europe the RSPO would not exist and the RSPO would not have any teeth at all.” (interview, Participant U, July 2012). Pressure of this kind plays an important role in creating incentives for companies to join the RSPO, and to take its decision making processes and authority seriously when subject to complaint procedures.

There are, however, significant structural limits on the scope and strength of market leverage of this kind— which correspondingly limits the authority of RSPO decisions and enforcement systems. One significant structural limit on the market leverage underpinning the RSPO’s authority results from limits to the scale of the market for certified sustainable palm oil. According to one industry source, commenting on the incentives for planters to engage with the RSPO: “since we have certified sustainable palm oil ... the brand – the image of these companies is better ... although ... there is no ... significant premium price. This is because of over-supply, and because there is no commitment from the buyers to buy sustainable palm oil (interview, Participant B1, September 2012).” Correspondingly, there is a certain amount of resentment among producers that some certified product remains unsold (Gunasegaran 2011).²⁵ As of June 2014, the volume of certified palm oil sold was only about half of that produced, limiting the price premiums received for the production of certified palm oil products (RSPO 2014(d)). 18% of palm oil is now

²⁵ According to 2013 figures, RSPO certified palm oil represents about 10 percent of global palm oil production, with around half of this traded and bought as certified palm oil (Netbalance Foundation 2013, p.5-6).

RSPO certified globally (RSPO 2014(e)), and only around 10% of Indonesian companies operating in the palm oil sector are signed up to the RSPO (interview, Participant X, September 2012).

The way in which enforcement authority of the RSPO is limited by the capacity of companies to leave the RSPO if they feel that the obligations of membership are becoming too demanding is illustrated in the Indonesian context by the palm oil producer association GAPKI leaving the RSPO in 2011 in response to disagreement with certain standards. In another case in Cameroon, a case against Herakles Farms Cooperatief UA was closed when the company chose to withdraw from the RSPO altogether rather than continue with the complaints process, following a number of complaints against it alleging failures to comply with the New Planting Procedures, as well as incomplete and inadequate HCV assessment (RSPO n.d.(r)).

Changing market patterns of financing in the palm oil sector also have implications for the degree of leverage that the RSPO can realistically expect to bring to bear on members. One participant in the sector highlighted the importance of international banks in promoting sustainability standards in the sector (interview, Participant X, September 2012). Others stressed however that pressure from buyers such as Unilever or financiers such as the Dutch bank Rabobank can be capricious—playing a significant role only at particular moments in time when consumer or regulatory pressure on these companies in their home markets is itself particularly acute (interview, Participant E, October 2013). Moreover, the leverage of international banks has tended to decrease in recent years compared with Indonesian and other regional banks (such as Mandiri, BNI and BRI), which now hold significant investments in the Indonesian palm oil sector. The influence of international banks has also been diminished by the capacity of some large firms such as Sinar Mas to self-finance large investments using retained capital. According to one observer: “the challenge for international finance is how to make their credit attractive, let alone compet[e] with local banks who get support from the Indonesian government. I heard that there is an instruction that all strategic industries including palm oil should be prioritised by national banks rather than going to foreign credit. [As a result] some foreign banks are also struggling to get clients” (interview, Participant X, September 2012).

The balance of pressures coming from these kinds of market forces are in turn influenced by **regulatory frameworks in consumer countries**. According to one Indonesia-based NGO involved in the palm oil sector: “Pressure from [purchasing] countries ... is an issue. Australia was trying to pass a bill on labelling, [and there were] Dutch government [proposals] that include requirements for not violating human rights, and for companies to comply with ILO conventions. It is important to use these as a channel ... the only way to move the producers quickly is through the market. Since the Indian and Chinese markets are way too slow in adopting sustainability, countries like Australia and Europe are the most possible countries to do the pressure in the short run” (interview, Participant X, September 2012). This comment made reference to an unsuccessful private member’s Bill in Australia that would have required development of food labelling standards for food containing palm oil (Food Standards Amendment (Truth in Labelling—Palm Oil) Bill 2011). The Bill was voted down based on concerns that the proposal would cost industry AUD \$150 million, and breach Australia’s international legal obligations under the World Trade Organisation (Minister for Trade and Competitiveness, 2011). The example of EU biofuels legislation is also often cited as a possible regulatory source of market incentives to improve social and environmental standards in palm oil production.²⁶ International

commitments by Indonesia to reduce greenhouse gas emissions are viewed by some as generating further incentives within the palm oil sector for tighter regulation of land use practices (Indonesian Palm Oil Commission, 2011, p.4).²⁷

The politics of sovereignty and legitimacy

As we have seen above, the capacity of the RSPO not only to influence processes of learning and systemic change in the palm oil sector as a whole, but also to influence the negotiation and implementation of settlements in the case of individual disputes, can depend in important ways on its ability to secure support from key state and business actors within host countries. The RSPO's capacity to engage closely with companies directly involved in palm oil production is importantly facilitated by the geographical location of the RSPO's Secretariat in Malaysia, with a satellite office in Jakarta. This enables it to maintain close connections to key interest groups in the local palm oil sector—helping ensure that the “RSPO is down to earth and connected to the issues” (interview, Participant C, February 2013). However, these links constrain the RSPO's action within the terms of prevailing political interests and dynamics in these specific political settings—making it more difficult for the RSPO “to be independent from ... vested interests” in palm oil producing countries (interview, Participant C, February 2013).

RSPO programs that relate to standards and changed business practices in the palm oil sector exist alongside other standard-setting initiatives led by host country governments, and it must compete for influence and legitimacy within this broader political space. In both Indonesia and Malaysia, there have been prominent attempts to establish government-controlled rivals to the RSPO. In Indonesia, development of the Indonesian Sustainable Palm Oil system (ISPO) has been ongoing since 2011, and a Malaysian Sustainable Palm Oil (MSPO) certification scheme has been in development since 2013 (New Straits Times, 2014)(Raghu 2014). Such initiatives were catalysed in significant ways by external pressure from international NGOs and regulatory frameworks, including the RSPO. The ISPO's pamphlet “The Introduction of ISPO” contextualised its creation by stating that “In recent years, Indonesia's palm oil sector has faced various problems, including never-ending allegations by NGOs, the limited demands from the Member of RSPO and conditions imposed by the EU” (Indonesian Palm Oil Commission, 2011, p.4).

Both the RSPO and the Indonesian Sustainable Palm Oil Association (ISPO) are eager to publicly highlight complementarities between them (Yulisman 2014). According to one proponent of ISPO: “Although I said we're different from RSPO, we're not trying to stop them, we have no intention to undermine them or to stop RSPO. So our companies can be certified by anyone else too” (interview, Participant C1, September 2012). Nonetheless, in practice the ISPO does generate additional complexities for the RSPO's operations—challenging its status as the central focal point for networking and agenda setting around standards in the sector. In the judgement of some observers we spoke with, existence of the ISPO also makes it easier for firms to exit the RSPO when they have disagreements with RSPO policies or procedures, through creating an alternative that asserts its own legitimacy alongside that of the RSPO. Some interpreted the business association GAPKI's exit from RSPO in favour of engagement with ISPO as evidence of such competitive dynamics. Reasons given for GAPKI's departure varied considerably

²⁶ The EU's Renewable Energy Directive places limits on the sourcing of biofuel grown on land containing high biodiversity or land containing a high carbon stock.

²⁷ See also <<http://www.rspo.org/certification/rspo-red>>

amongst different observers. Grievances concerning the feeling that planters were outnumbered by other constituencies, and were being asked to take on excessive burdens around new planting and greenhouse gas emissions requirements without provision of corresponding market incentives for participation played an important role. However, according to one participant in GAPKI: “the more important consideration why we withdrew [from the RSPO] is that the Indonesian government already issues ISPO, and this is mandatory for palm oil producers in Indonesia” (interview, Participant B1, September 2012).

Such competitive dynamics can limit the RSPO’s authority and influence over broader processes of policy dialogue in significant ways. According to one company representative, the capacity of RSPO to influence broader policy issues has been limited by their failure to keep key coalition members from the grower constituencies inside: “they don’t have the capacity, don’t have muscles, don’t have connections with government. To do that you would need the support of GAPKI – but they have shifted to the ISPO” (interview, Participant M, February 2013).

In competing for influence with other standard-setting forums, a major challenge the RSPO must tackle is the ongoing establishment of its legitimacy to operate within a political space dominated by the authority of sovereign host country governments. To attract support for its own initiatives, and avoid criticism and resistance from outside actors, the RSPO must try and counter perceptions that their work threatens the integrity of **government sovereignty**.²⁸ Some were explicit in asserting the authority of ISPO vis a vis RSPO with reference to claims of state sovereignty. According to one participant in the ISPO initiative: “We’re a sovereign country. We’re in a much higher position than any organisation could ever be ... They’re trying to undermine Indonesia, saying that we have the regulations but we’re not implementing them properly. So the Ministry of Agriculture decided to have its own organisation. We are the biggest producers, exporters and consumers of palm oil so we should control ourselves. We don’t need outsiders - NGOs to control us” (interview, Participant C1, September 2012). According to another observer: “the government also sees that palm oil is contributing significantly to the national economy and globally Indonesia has become the largest palm oil exporter since 2007. So it creates a kind of nationalistic pride that as a major producer of palm oil, Indonesia has to have its own standard” (interview, Participant X, September 2012). One producer representative we interviewed suggested similarly that: “the definition of sustainability must be defined from our own perspective – not people outside without knowing the history, the problems and the context ... it’s important to define sustainability from our own perspective ... as a sovereign country with our own policy ... It may not be sustainability for the perspective of others, but it is in accordance with our own law” (interview, Participant B1, September 2012).²⁹

²⁸ This is a challenge not only for the RSPO itself, but sometimes also for European companies in their relationships with host country governments when they are seen to be taking a strong position on shaping policy in the sector. According to one NGO closely involved in the sector: “In 2010 [Unilever] bent to Greenpeace’s campaign in the UK because they were buying palm oil from Golden Agri Resources in Sinar Mas, and eventually Unilever decided to instate a moratorium on palm oil purchases from Sinar Mas. Now that decision of course was warmly welcomed by Greenpeace and all sorts of policy makers in Europe, but here in Indonesia they entered into deep shit. All of the government ministers here, of course the Ministry of Home Affairs, the Ministry of Agriculture, they started pressuring Unilever”.

²⁹ Similar forms of resistance have sometimes been expressed towards other sustainability initiatives viewed as being influenced by foreign interests. For example, the Indonesia Palm Oil Pledge, discussed earlier in the report, was publicly criticised by members of President Joko Widodo’s administration on the basis that it “usurps the government’s authority and might constitute a cartel dominated by foreign interests”. See: <https://news.mongabay.com/2015/09/indonesian-officials-resist-movement-to-end-deforestation-for-palm-oil/>, accessed October 2016.

Such perceptions and sensitivities surrounding the need for an organisation such as the RSPO to compete to secure legitimacy have significant implications for its strategies of dialogue, prevention, and learning, and its capacity to draw on external market and political leverage as a basis for achieving sectoral change. According to one observer: “this is a huge challenge, to avoid any perception that the North is trying to increase pressure to the South – Indonesian and Malaysian speakers always bring this up [at RSPO forums]” (interview, Participant X, September 2012). In response, the RSPO often attempts to avoid challenges to its legitimacy by highlighting subordination of its own authority to that of sovereign host state governments—demanding sensitivity when engaging with government on relevant policy issues. According to staff from the RSPO we spoke with, “you might not see this written anywhere, but the RSPO has strict understandings that we don’t get involved in national legislation because we are not elected, we are strictly voluntary, so we don’t interfere in government legislation or rules and that sort of thing. That is for members to do. We don’t have anything to do with government” (interview, Participant D1, March 2013).

This creates significant dilemmas, to the extent that the RSPO has a clear mandate from its own constituencies to promote RSPO standards, which in some respects differ from or go beyond those promoted or institutionalised by relevant governments. Attempting to prevent conflicts and to resolve them in line with international standards endorsed by the RSPO requires that international standards be promoted. However such activities need to be carried out in ways that accommodate political sensitivities. As one observer remarked: “international standards ... have the potential to have leverage, but if it is a colonial approach—you must do this or that—it can piss off more governments than it embraces” (interview, Participant A1, February 2013).

In view of such sensitivities regarding perceptions of RSPO or foreign agendas being pushed onto government, collaborative initiatives or influencing efforts have tended to be more successful where they have emerged somewhat organically, around areas of shared interest – or at least where they have been perceived in that way. According to one observer: “The only successful cases [of engagement with government] are where it has been organic – where district governments have been able to see the benefits in engaging with international frameworks. Often the benefits are not very clear ... But where there have been local communities, or forward thinking local governments who see opportunities to align – they are interested in one thing, for example, like environmental management or reducing conflict, and if they see that international standards could help, then there can be opportunities” (interview, Participant A1, February 2013).

Institutional reforms and political constraints

This analysis of external enabling and constraining factors is important to bear in mind as discussion now turns to considering the question of what kinds of ‘institutional reforms’, broadly defined, are implied by the above analysis. We are interested here in implications both for the formal institutional design of the RSPO complaints system, and more informal and strategic questions about how the RSPO complaints system is used in practice. In addition to considering lessons for specific institutional reforms that might be expected to improve institutional functioning under enabling market and political conditions, we also need to reflect on the external constraints within which any such reforms to the RSPO would need to be negotiated, implemented and sustained.

Our reflections here are necessarily schematic, though we draw out possible implications for concrete reforms and strategies where possible. The below discussion highlights several key issues that we suggest require attention in order to build capacity in the RSPO’s complaint system. Addressing such issues requires attention not only to internal and formal institutional reforms, but also development of skills and strategies relating to external strategies of managing relationships with stakeholders and the wider economic and political environment. Many of these issues are addressed in some form in the proposed new Integrated Complaints System (ICS), a draft of which was under public consultation at the time of this report’s writing (in June 2016). We comment on the relationship between these proposals and our own findings in the course of the below discussion.

Procedural integrity

The above analysis has identified a significant cluster of concerns regarding procedural questions such as transparency, consistency, integrity, and independence in the operation of RSPO complaint handling processes.

Concerns about the transparency of RSPO complaint handling processes have related to multiple dimensions of transparency including: updates on progress and outcomes of individual cases, reasons for decisions made in individual cases, overall patterns of complaint handling in a given time period, and changes made to the complaint handling system over time. Some of these con-

Table 3: Implications for Institutional Reforms

<p><i>Procedural Integrity:</i></p>	<p>There are a variety of opportunities for addressing concerns regarding procedural questions such as transparency, consistency, integrity, and independence in the operation of RSPO complaint handling processes. Many of these have the potential to be addressed by reforms envisaged as part of the RSPO’s proposed new Integrated Complaints System (ICS), though the effectiveness of any such reforms will be highly dependent on attendant levels of resourcing.</p>
<p><i>Community outreach and capacity building:</i></p>	<p>Inadequate outreach and capacity building for affected communities may be addressed to some degree as part of a proposed new ICS, though again the efficacy of these measures will depend strongly on adequate financial and human resourcing. Further to these measures, there may also be value in creating a new autonomous entity to perform a variety of roles in the tradition of a Public Defender or Public Advocate—acting as a central contact point for advice about the RSPO and other complaint systems, and offering assistance to communities considering using the complaints system.</p>

<p><i>Investigation and evidence-gathering</i></p>	<p>Provisions within the proposed ICS envisage use of externally commissioned experts to undertake expanded inquiries and fact-finding activities. Ensuring the independence of these experts would be crucial; this could be aided by transparency in the selection process, and offering parties the power of veto over experts. Support could also be offered to communities to produce their own evidence via, for example, participatory land mapping, and facilitating dialogue on contested forms of evidence.</p>
<p><i>Monitoring and implementation</i></p>	<p>To increase the Secretariat’s ability to follow up and monitor compliance, further work needs to be done, as the proposed ICS does little to clarify responsibility for this issue in the new structure. Greater clarity about lines of responsibility and resourcing is needed. Establishing more structured processes for follow up and monitoring procedures, including multi-stakeholder committees, could increase the robustness and credibility of these processes, and embed learning more widely outside of the RSPO.</p>
<p><i>Lesson learning</i></p>	<p>The ICS articulates a commitment to increased support for lesson learning with regard to effective operation of grievance mechanisms, and underlying drivers of recurring conflicts, though the latter would benefit from significantly more attention. Lesson learning could usefully be more institutionalized through more systematic documentation and dissemination of lessons learned, and such lessons could also be more actively shared within multi-stakeholder forums outside of the RSPO.</p>
<p><i>Resourcing</i></p>	<p>A number of weaknesses in the RSPO complaint system’s current functioning relate directly to deficiencies in financial, organisational, and human resourcing. This is dependent to a significant extent on the RSPO expanding membership fees or attracting additional donor funding, though there is also potential for the RSPO to draw more on wider networks of external actors to support their work.</p>
<p><i>Enforcement capacity</i></p>	<p>Clear codification of escalating consequences for non-compliance may make non-compliance more visible and costly. Nonetheless, significant structural limits to the RSPO’s leverage over members will persist—remaining dependent on changes in the wider market and regulatory environment, such as stronger home country regulations on labelling of sustainable palm oil, or more demand from purchasers of sustainable product, governments, or financial institutions.</p>

cerns have the potential to be addressed by reforms proposed within the RSPO's proposed new ICS. In particular, this draft proposes creation of a Clearinghouse function within the RSPO complaints system, which would offer a potential means of strengthening transparency by recording and acknowledging complaints in a timely manner, providing information about procedures to parties, maintaining and regularly updating publicly available databases, systematizing reporting within detailed annual reports on operation of the complaints system in the course of each year, and listing older documents in a separate section on the RSPO website to ensure transparency regarding changes made over time to the complaints system. For this to serve its desired function it would clearly need to be provided with adequate human and financial resources; the proposed scale of resourcing to support such functions is unclear.

Another set of practical concerns documented above has related to the consistency and integrity of RSPO complaint handling procedures. Such concerns have included lack of transparency in reason giving with regard to RSPO decisions to accept, reject or prioritize individual cases, or to prioritization of different issues raised within a given complex complaint. Moreover, lack of formalised codification of certain procedures and timelines has in the past increased the scope for arbitrary or inconsistent treatment of different cases, contributing to confusion and weakened confidence in processes. There have also been concerns that stated rules, procedures and timelines in the handling of disputes have often not been followed. Such difficulties suggest the need for clarification of procedures used by the Secretariat in filtering complaints, as a means of increasing consistency. Similarly, with regard to ongoing changes to rules and procedures used within the system, clear and transparent communication about changes is required to guard against the risk that continually shifting goalposts can undermine transparency and predictability of RSPO processes. We note that the proposed new ICS would potentially incorporate a number of measures to address such concerns, including clarity around timelines in responding to disputes, more explicitly codified procedures, and greater transparency of reason giving behind decisions. Such provisions have the potential to help constrain arbitrary or inconsistent decision making, thus increasing consistency and integrity of RSPO complaints processes.

Past concerns about independence of key decision makers within the complaint handling system from parties involved in disputes have focused in particular on concerns about absence of an independent appeals mechanism, lack of independence of the Complaint Panel from the RSPO Board, and conflicts of interest on the part of Complaint Panel members. To tackle concerns about independence and conflicts of interest, there are a number of relatively straightforward procedural shifts that could be made, such as establishing an independent appeals mechanism, a procedure to handle conflict of interests in the Complaint Panel, measures to prevent overlap between BoG and Complaints Panel members, and a strict limit on BoG's role in the complaints procedure (Grassroots, 2013, Jonas 2014, Colchester and Chao, 2013). The proposed draft Integrated Complaints System accordingly incorporates a number of proposals to create an Independent Appeals mechanism, and measures to guard against conflicts or interest or involvement of the BoG in the complaints process.

Community outreach and capacity building

Our above analysis has suggested that to date there has been inadequate outreach and capacity building for affected communities, weakening the capacity of communities to: access information about those mechanisms that are formally available; make informed collective choices about if and how to make use of them; and sustain sufficient capacity in community organising and leadership to effectively represent and negotiate their interests throughout any complaint process they may choose to undertake.

The proposed new Integrated Complaint System for the RSPO incorporates some specific and constructive provisions with regard to community outreach and capacity building. These include provisions for information dissemination, availability of support from a DSF Support Fund, and provision of training or experience sharing forums to assist marginalised communities develop relevant technical and strategic knowledge and negotiation skills. Our analysis strongly supports the case for these provisions, though we note that the impact of such provisions will depend significantly on the comprehensiveness of their scope across relevant communities, and the adequacy of their financial and human resourcing.

We further suggest that there may be potential value in incorporating a new, autonomous entity as part of the proposed Integrated Complaints System, mandated to perform a cluster of functions often associated in other contexts with Public Defender or Public Advocate offices. Such a Public Advocate entity could act as a central contact point to provide advice to people on the scope and operation of the RSPO complaint system, as well as alternative or complementary avenues available to individuals or communities seeking resolution of their problems. Those planning to bring a complaint through the RSPO system could apply for active accompaniment or technical advice and support, as required on a case by case basis. Provision of advice and accompaniment on a kind of legal aid model may be the primary function in some cases, though a facilitation role to support internal community organising and decision making may also be required for more complex cases.

Such an entity would need to operate at arms-length from other parts of the RSPO complaints system, to ensure its independence. For example, as a minimum, it could have a separate budget and staff, with separate reporting lines directly to the Board of Governors, thus creating some independence from the Secretariat, and other elements of the complaint handling system. Where commissioning of additional external support was appropriate, this could be facilitated via a register of outside individuals or organisations with required skills in mediation and community engagement in the relevant local context. Where external commissioning was used, clear internal systems to ensure protection of institutional memory, consistency of support and advice across cases, and facilitation of institutional learning, could usefully be put in place.

Investigation and evidence-gathering

Another important finding from our research relates to the importance of equipping complaints handling mechanisms with independent investigation capacities. Such capacities are important in part because evidence underpinning disputes is itself often vigorously contested. Moreover,

there are often significant disparities between the capacities of conflicting parties to generate evidence of kinds that are suitable for use within formalised complaints systems. Such independent investigation capabilities have been absent from the RSPO system to date.

The proposed new Integrated Complaints System contains some provisions that could contribute constructively to building capabilities of this kind. There is explicit recognition of the need for independent inquiries and fact finding activities, which are envisaged to be carried out by externally commissioned experts. If this model is to achieve the objective of generating ‘facts’ that have a good chance of being accepted by all parties as credible, then the perceived independence and credibility of these experts will be crucial. In securing broad-based recognition of the authority of independent experts, we suggest that transparency in the selection processes for relevant experts may play a useful role. Additional protections could be provided by giving disputing parties the opportunity to veto nominated experts prior to an investigation occurring, to make it harder for evidence generated through this process to subsequently be questioned on the basis of conflict of interest or inadequate technical, cultural or other contextual knowledge.

We suggest that there may also be value in providing support for communities (as appropriate on a case by case basis) to produce their own evidence, for example via participatory land mapping in the case of land disputes. This could then provide an additional input into deliberations, alongside findings of external experts. No matter how ‘independent’ an investigator is, in some complex cases evidence will continue to be contested, and to this extent it is still important to make some contribution towards balancing power disparities between parties in their capacity to bring their own versions of the facts to the negotiating table. Facilitation of direct dialogue between parties with regard to contested forms of evidence may also usefully be facilitated in those particularly difficult cases where independent investigations are unable to yield versions of the facts that all parties will find themselves able to accept. Such forms of support could potentially be provided through a Public Advocate function along the lines outlined above.

Monitoring and implementation

In complex cases where a settlement has been reached, it is important to have in place follow up and monitoring processes to ensure that conditions or corrective actions specified by RSPO decisions are implemented and sustained in practice. In theory, providing assurance of such compliance is the responsibility of the RSPO Secretariat, but in practice our research has suggested that the Secretariat lacks the capacity to actively follow up and monitor individual cases. Reliance appears to be placed mainly on ongoing external audit processes, together with direct communications from complainants and respondents to call the RSPO’s attention to any ongoing problems.

This is an issue that has received little explicit attention in the proposed draft Integrated Complaint System, which provides little clarity as to how responsibilities for monitoring are to be divided under the new proposed system between the RSPO Secretariat, Complaints Panel, and possibly also the DSF Advisory Group or the proposed Clearinghouse. There is a corresponding lack of clarity in this draft proposal regarding the levels of resourcing that are to be provided to support monitoring functions. Greater clarity regarding both lines of responsibility and associated form of resourcing would be beneficial. We further suggest that there would be potential

value in establishing more structured processes for follow up and monitoring, at least in relation to more complex complaints. For example, in some cases there may be value in establishing multi-stakeholder monitoring committees including relevant RSPO stakeholders and government officials at the local level. Not only could this help to make monitoring more robust and credible in relation to complex disputes; it could also help to embed learning more widely outside of the RSPO. The companion report in this series on the Compliance Advisor Ombudsman contains a discussion of the CAO's monitoring and evaluation activities that offer some positive examples in this regard.

Lesson learning

Another important issue identified by our research relates to the capacity of the RSPO complaint system to contribute to institutionalized lesson learning amongst both RSPO members and the organisation itself. Our research has shown that past performance of the RSPO complaints system with regard to lesson learning has been weakened by lack of resources and clear processes to support institutionalized learning. The above analysis has documented a number of mechanisms through which the RSPO complaint system contributes indirectly to processes of broader changes in policy and practice in the palm oil sector, in ways that can help to prevent human rights related business-community conflicts. However, the RSPO currently lacks a mechanism with formal responsibility for translating lessons learned into changes to RSPO processes and policies, and for disseminating these more broadly within policy and business networks in the palm oil sector.

Two dimensions of lesson learning were highlighted by our research as particularly important: lesson learning with regard to effective operation of grievance mechanisms, and lesson learning with regard to underlying drivers of recurring conflicts. A commitment to supporting both kinds of learning is clearly articulated in the draft new Integrated Complaints System.

With regard to lesson learning about the more effective future management of disputes, a number of concrete measures to give effect to lesson-learning goals are outlined. In this regard, the ICS Draft includes provisions such as: involvement of a DSF advisory group to monitor and provide guidance and advice on mediation processes under the DSF; publishing by the RSPO Secretariat of annual reports including syntheses of lessons learned, and engaging with other commodity roundtables and international complaints mechanisms, where relevant, to share and mutually develop good practices and innovative approaches. Reference is also made to the Impacts Division working with the Complaints Panel to document and issue wider lessons and guidance to RSPO members on complaints related matters. These different forms of documentation, dissemination and structured sharing of learning amongst RSPO members, the organisation itself and other dispute handling mechanisms can play a useful role in supporting lesson learning regarding dispute handling, though of course the impact of such measures would depend in part of the their scope and resourcing.

The ICS Draft provides less information about specific measures through which the complaints system may support lesson learning regarding drivers of recurring disputes. Lesson learning of this kind can be particularly challenging, in part because many drivers of recurring disputes are beyond the direct control of the RSPO and its members, and in part because such drivers are inherently more political in character, often being linked to wider social conflicts over dis-

tributions of land and resources. There would be significant value in the RSPO's proposed new Integrated Complaints System adopting a more explicit strategy for promoting systematized lesson-learning of this kind. This would first require clear identification and analysis not only of drivers linked to behaviour of RSPO members, but also those drivers that are beyond the reach of individual members of the RSPO, such as behaviour of other actors in palm oil supply chains and markets, and government actions and policies.

Such lessons could then be usefully be shared at a number of levels. At a sector-wide level, such lessons could be fed more systematically into multi-stakeholder forums and coalitions in which many RSPO members already participate with the aim of promoting sustainability practices in the palm oil sector. There may also be some scope for the RSPO to undertake a more pro-active role in convening policy forums to bring relevant government actors into dialogue on identified policy issues or blockages of particular importance to prevention of conflict in the sector.

More institutionalised and intensive coordination could also be pursued with participants in relevant regulatory and policy networks, such as key government agencies in Indonesia, and certain individual companies and NGOs operating in these jurisdictions. For example, engagement on questions of proposed policy reforms with district or provincial government authorities, or National Human Rights Institutions such as Indonesia's Komnas Ham, may be appropriate in certain contexts. The negotiation of any specific cooperative arrangements would need to take into account variable capacities, agendas and sensitivities of relevant actors, in varying political contexts. In building such networks and coalitions, differing configurations of political power and interest prevailing in different national and sub-national contexts would continue to place limits on what could be achieved.

There could also be more active pursuit of opportunities (where appropriate and feasible) to build relationships with specific sub-national government actors involved in handling individual disputes in a particular locality. For example, our analysis of the Wilmar case suggested that coordination, communication and mutual learning between the RSPO and CAO could have been strengthened in the context of individual grievances in which they were both involved. Bolstered efforts of this kind may help support ongoing conflict prevention and implementation of any agreed settlements in particular locations, and potentially help to facilitate strengthened skills in dispute handling amongst local government actors.

Direct engagement with government is not always possible or appropriate, in view of both a need for the RSPO to protect its own independence, and the need to be sensitive to concerns about respect for sovereignty of national government authorities. Nonetheless, directing lesson-learning more explicitly towards external as well as internal audiences could usefully help to stimulate broader debate and dialogue about different interpretations of underlying drivers of disputes in the palm oil sector, and the responsibility of specific actors to support conflict prevention separately and/or collaboratively. Lesson learning of these kinds is something that an established multi-stakeholder initiative like the RSPO is particularly well-positioned to undertake, in view of its physical location in key producing countries—enabling strong understanding of local context, and strong links to key players in the local sector—and its established presence as a central focal point or forum for convening dialogue between multiple stakeholder groups.

Resourcing

One of our findings about which straightforward recommendations regarding institutional reform are difficult relates to the importance of adequate levels of resourcing to support intended institutional functions. A number of the procedural weaknesses noted in the above analysis can be attributed to some extent to deficiencies in available financial, organisational and human resources to support designated functions. Inadequate resourcing has particular implications for: adherence to designated processes and timelines; fact-finding and investigation functions; outreach and capacity building for affected communities; and the adequacy of implementation and monitoring. Clearly the process would benefit from more investment in Secretariat staffing, as well as funds to support stronger community outreach and capacity building programs, and other resource-intensive functions. Such additional resource mobilization depends importantly on the capacity of the RSPO to expand membership and subscription fees, and to attract additional donor funding. The RSPO currently relies little on donations, although it relied on them more in the past, and funding from donors remains a possible channel through which capacity in key areas could be strengthened.

In addressing certain capacity gaps, there is also potential for the RSPO to draw more actively on wider networks of external actors to support their work, such as professional mediators, community-oriented NGOs or public interest lawyer organisations. To this extent, strengthening relationships with such external organisations is one way systemic capacity of the complaints system could be increased. Again, a certain amount of investment in building and sustaining these relationships and networks would clearly be required before improvements in performance could be expected. From the perspective of external actors such as foreign development organisations or consumer country governments with potential interest in helping to strengthen the RSPO complaints system, attention to the capacities and resourcing of these wider networks is therefore important, alongside direct support for the RSPO itself. For example, many NGOs working in the palm oil sector to support communities and the broader activities of the RSPO are heavily dependent on donor funding from a relatively small number of countries and sources. As a result, the capacity, reach and sustainability of external networks of actors is often fragile, and highly vulnerable to shifting political priorities and agendas amongst donors.

Enforcement capacity

As we have seen, past performance of the RSPO's complaints system has been impeded by the weakness of enforcement mechanisms applied in instances where disputing parties fail to comply with designated procedures or decisions of complaint handling bodies. This not only affects the prospects of ongoing implementation and compliance after a given settlement, mutual recognition of weak enforcement capacity also influences bargaining power between parties in the course of disputes. In turn, this influences calculations communities make about whether it is worth their while taking on the costs and risks of bringing a complaint.

Our research supports proposed provisions in the new draft Integrated Complaints System that would clearly codify escalating consequences of non-compliance with RSPO procedures and decisions, helping to make evasion of RSPO processes and/or non-compliance with RSPO decisions more visible and costly. For example, transparent and formalised procedures regarding

applicable sanctions for different forms of evasion or non-compliance can make it harder for disputing parties to evade RSPO procedures while maintaining claims of compliance. In this regard, it is beneficial that the ICS document clearly lays out applicable sanctions and conditions under which sanctions are to be used, including relevant timeframes.

Nonetheless, procedural provisions of this kind can only make a small contribution to addressing constraints to enforcement capacity currently experienced by the RSPO complaints system. This is due to persistent *structural* limits to enforcement capacity that are linked to the voluntary, multi-stakeholder character of the RSPO as an institution. Motivation of disputing parties to adhere to RSPO processes and decisions is closely linked to their overall market or regulatory incentives to remain within the RSPO. The enforcement capacity of the RSPO complaints system is therefore limited by perceived costs to parties of exiting the process. If incentives to remain within the process were stronger (e.g. as a result of home country regulations requiring labelling of sustainable palm oil, or more demanding policies of large purchasers of palm oil products), then the RSPO would in turn have greater authority to place more demanding obligations on its members.

Significant constraints in this regard result from the **market and regulatory environment** in which the RSPO operates. In a context in which the process as a whole rests on the voluntary participation of parties, there are structural limits to the leverage that they can exercise over conflicting parties. The RSPO is founded on a quite fragile coalition of actors, and it is clear that key actors are willing to walk away from the initiative entirely if they are pushed too hard on certain issues and/or they perceive that they lack the kind of influence over the process that they hope for. Moreover, on an ongoing basis the RSPO must navigate and respond to an array of often conflicting criticisms and challenges to its legitimacy and authority—from NGOs unhappy with the functional and procedural limits of RSPO performance, from companies dissatisfied with the costs and demands of participation, and from host country governments concerned about perceived intrusions on state sovereignty. To this extent, tackling functional constraints within the RSPO complaints system ultimately requires attention not only to internal RSPO structures and procedures, but also to changes within the wider market and regulatory environment, in which the RSPO's authority and capacity is structurally constrained. Highlighting the origins of such constraints has potential practical implications.

For example, leverage over buyers could be strengthened as a result of legislative or other policy incentives for companies to demand certified products from producers—for example along the lines of the ultimately unsuccessful proposed labelling legislation in Australia. Although the impact of such reforms on market leverage would clearly depend on the size of palm oil markets in relevant jurisdictions, even the contributions of smaller markets and jurisdictions are important, in a context in which no one actor has sufficient resources or authority to achieve reformed practice acting alone. From this perspective, widening the coalitions of market and government actors in investor home country and consumer country jurisdictions who take these kinds of issues and responsibilities seriously and deploy their leverage accordingly is crucial. The more companies, financial institutions and governments higher up palm oil supply chains that can add their weight to pressure for compliance with RSPO (and equivalent) standards, the greater the RSPO's structural capacity to strengthen enforcement in the case of individual grievances.

Working within structural limitations

As we have seen then, structural limits to resourcing and enforcement capacity can potentially be addressed over time at least to some extent, by strengthening the RSPO's external support in the form of increased financial resourcing, as well as market, investor and consumer pressure for companies to remain within the RSPO. This has significant practical implications for actors external to the RSPO, with capacity to influence levels of resourcing and enforcement as a result of their own support for RSPO processes.

Recognition of such external leverage can however generate difficult dilemmas for NGOs and other external stakeholders weighing up how best to engage with the RSPO. For many stakeholders, support for the RSPO is conditioned on its ability to promote compliance with designated standards in meaningful ways. Such stakeholders are often particularly concerned about the RSPO's failure to decertify companies that neglect to deal properly with ongoing disputes. Even those NGOs that are more sympathetic and supportive of the RSPO are themselves often under pressure from their own constituents to take a strong stance on this issue.³⁰ Yet how key NGOs respond to the RSPO, and their willingness to confer legitimation on RSPO processes amongst consumer, investor and government audiences, can in turn influence the market incentives of the companies to stay involved.

Where the RSPO is able to deliver on key elements of its mandate for a given audience, then this can lead to strategies by these actors that confer further resources and authority on the RSPO. For example, campaigns by NGOs can provide authorization for the RSPO's role. Companies (including supply chain buyers and financial institutions) can be specifically targeted by NGO campaigns and asked to join RSPO (see, for example, Oxfam 2014). Companies can also be pressured to shift their positions on key issues within the RSPO. Moreover, NGOs can pressure bilateral aid agencies in their countries or from other international agencies to provide programmatic support. Even where campaigning does not directly take positions on such external sources of support, campaign positions can still influence the reputation of the RSPO in ways that more indirectly influence the same result. Securing external sources of authorization and resources in this way can in turn bolster the capacity of the RSPO to deliver on its designated purposes, creating virtuous cycles. The same can of course happen in reverse. Where such authorization is undermined, this creates the potential for a destabilizing vicious cycle, whereby a withdrawal of NGO legitimation weakens the market value of remaining in the RSPO, and thus the incentives for companies to bear costs to comply with RSPO standards, in turn further weakening the capacity of the RSPO to exercise leverage in support of its mandate.

For the RSPO itself, recognizing persistent structural constraints to its leverage also has practical implications. As long as significant structural constraints persist, there is value in more openly recognizing associated limits to the capacity of the RSPO complaints system, and adjusting institutional strategy accordingly. In the absence of strong unilateral leverage and enforcement capacity, there is particular value in an outward-looking orientation, which actively seeks

³⁰ There are a number of examples in which NGOs such as Oxfam Novib and WWF who have been supportive of the RSPO have been attacked by the media and other NGOs for failing to push the RSPO hard enough on such issues (Grassroots 2013).

opportunities to work collaboratively with external organisations. There may be scope for the RSPO to adopt a more explicit focus on collaborative strategies involving shared responsibilities for both sector-wide conflict prevention and case-based dispute resolution—working with others in the sector who possess resources, skills or sources of leverage that the RSPO lacks. For example, when complainants pursue a complaint simultaneously through more than one transnational complaints handling mechanism (such as the RSPO and the CAO), the RSPO could take a more active role in supporting or supplementing dispute handling functions provided by other mechanisms. Even where a respected external body such as the CAO has taken the lead on a particular mediation process, there may be potential for the RSPO to collaborate more actively. For example, it might negotiate a more prominent role in relation to specific functions that its multi-stakeholder status and geographical location equips it distinctively well to undertake, such as lesson-learning, sectoral engagement on prevention, or monitoring of outcomes.

The RSPO recognizes the importance of multiple grievance mechanisms operating outside of the RSPO, and affirms that the RSPO system is intended to be a support and complement to other systems, rather than a replacement for them. Nonetheless, there is a degree of ambiguity regarding how interactions are understood to occur, and which are seen as permissible or desirable. Use by complainants of multiple, simultaneous channels for pursuing disputes seems generally to be frowned upon, as reflected for example in the draft new Integrated Complaints System, which notes that once a mediation is underway, complaint parties are encouraged to refrain from initiating other grievance mechanisms outside of RSPO at the same time. Interplay between multiple complaint handling forums can certainly be problematic. Concurrent complaint processes may lead to duplicated, conflicting or otherwise overlapping processes that can place costly demands on parties, and generate confusion and frustration. Where one party takes a complaint to a rival forum without the knowledge or agreement of other parties, parallel processes may further undermine trust and good-will between parties, which may be particularly problematic when mediation efforts are ongoing.

However, parallel use of multiple claim-making strategies can sometimes be an important strategy for weaker actors, enabling them to build webs of cumulative influence—drawing together multiple sources of external pressure (e.g. through markets, campaigns and external complaint mechanisms) to generate increased incentives for timely and appropriate resolution of complaints. In view of the disparities of bargaining power between parties to many disputes, and the structural limits to the RSPO's capacity to bring about an appropriate resolution acting alone, there is therefore a need for sufficient flexibility with regard to parallel proceedings to ensure that provisions designed to protect the integrity of internal RSPO processes do not operate in practice to disadvantage weaker parties by limiting capacity for external campaigning or claim making outside the RSPO.

Concluding reflections on voluntary multi-stakeholder complaint systems

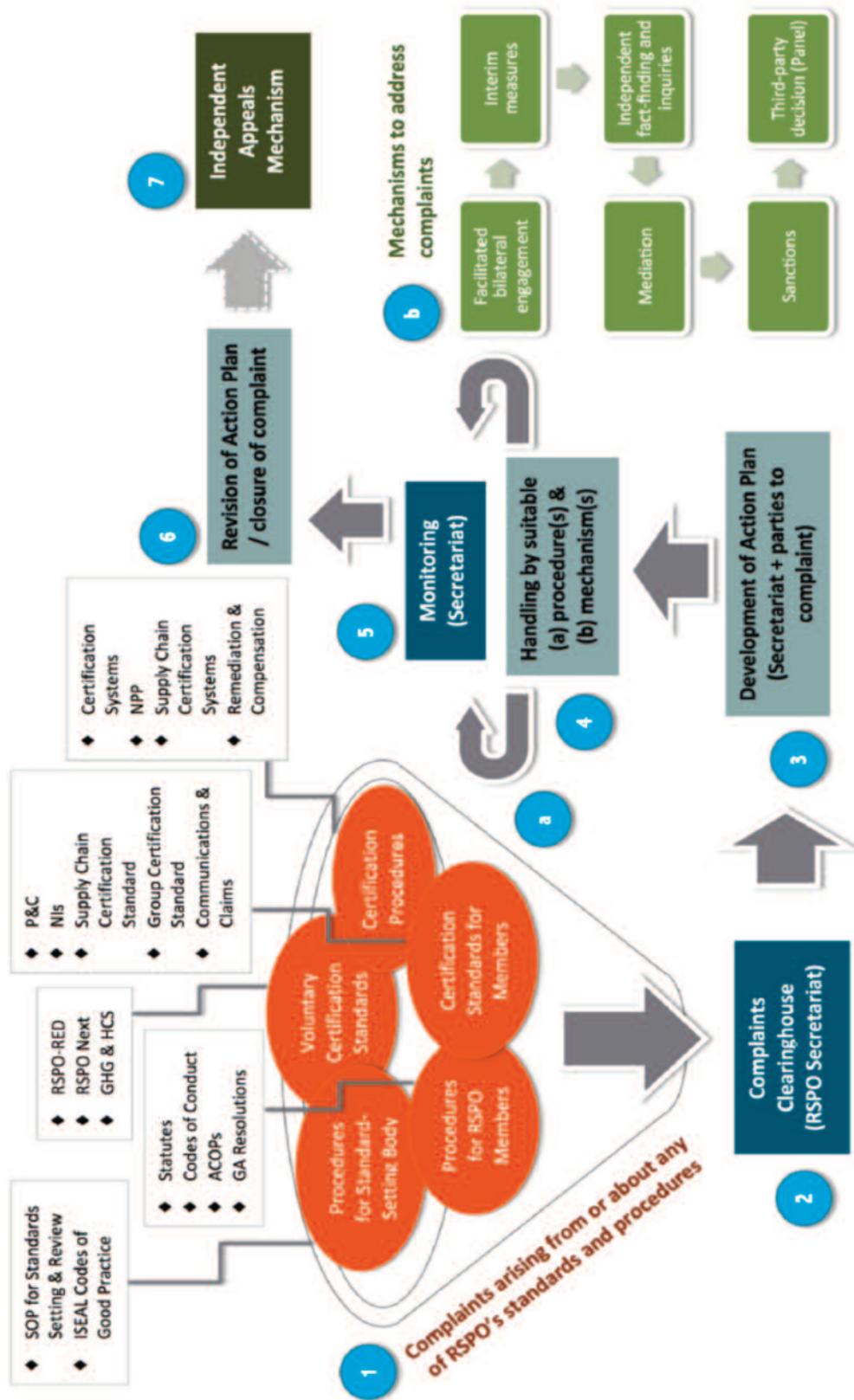
The above analysis has highlighted a number of significant challenges faced by the RSPO's complaint handling system. Resource conflicts such as those surrounding land disputes in the palm oil sector are notoriously difficult to regulate—particularly so within complex and highly de-

centralized legal and regulatory environments such as that of Indonesia. However, the challenges faced by the RSPO also reflect deeper constraints associated with voluntary, multi-stakeholder processes—especially those operating over transnational scale. In this regard, our analysis has highlighted some distinctive challenges experienced by multi-stakeholder complaint-handling systems like the RSPO, associated with constrained operational resources and enforcement capacity, contested legitimacy, and the need to balance conflicting demands from different stakeholder audiences.

It might be tempting to infer from this that governments must therefore adopt a reinvigorated role to help re-assert rights, constrain unbalanced relations of power and interest, and so on. For example, one critic of the RSPO commented to us that: “we don’t engage [with the RSPO] because even though it has guidelines, they are only voluntary . . . Our position is that the world needs one good standard that must be legally binding” (interview, Participant J, September 2012). Certainly, the analysis presented above has highlighted the importance of the wider market and regulatory environment – at local and international levels – in shaping and constraining the ability of the RSPO to put in place effective and legitimate grievance handling processes. To this extent, it is important to reiterate the interdependence between voluntary and multi-stakeholder grievance processes, and broader systems of government policy and law. Nonetheless, our analysis has also highlighted the potential contributions that voluntary multi-stakeholder mechanisms can make—particularly in a context in which state regulatory institutions are also constrained in their effectiveness and legitimacy by distributions of power, resources and interests within local and international markets and political institutions.

Although the RSPO complaints system offers channels of intervention that—under certain, currently quite constrained, conditions—has the capacity to constructively influence processes of dispute handling, the RSPO process can certainly not substitute for other mechanisms. Indeed, its capacity to influence outcomes is in some respects crucially dependent on its interactions with other channels, including state institutions. The RSPO’s role is often most useful when it is able to enhance the capacities of governments, NGOs, communities and companies—facilitating new forms of collaboration, supporting the development of new coalitions inside and outside of the state and private sector in support of behavioural change. As a result, any effort to strengthen the RSPO’s conflict management system should be attentive not only to internal procedures and structures, but also to means of strengthening its relationships with other actors and networks; strengthening the capacity of external actors to provide such a supportive role; and strengthening the external market and regulatory environment in a way that incentivizes continued engagement with these difficult processes. Such efforts could help to facilitate the development of new coalitions inside and outside of the state and private sector in support of constructive dialogue and ongoing behavioural change in the palm oil sector—in support of human rights.

Appendix 1: Proposed framework for new integrated complaints system



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