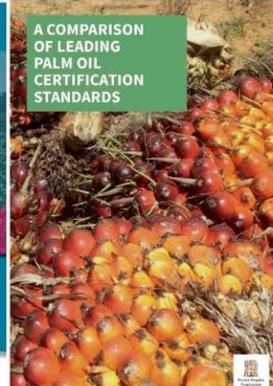
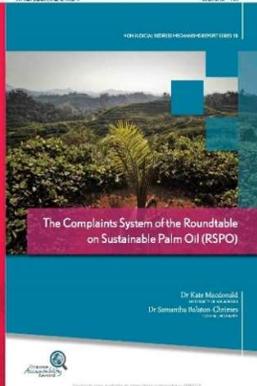
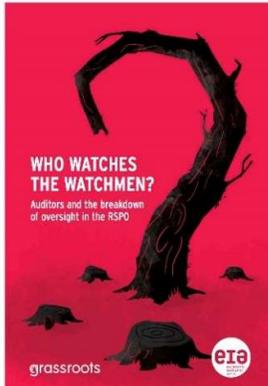
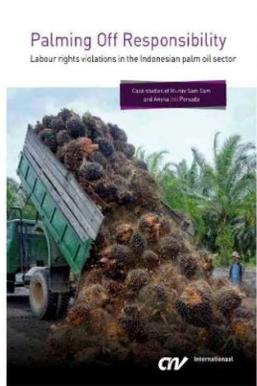
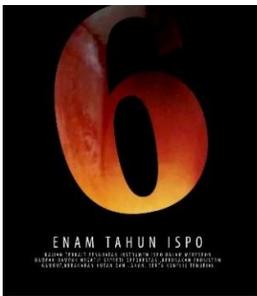


# External Concerns on the RSPO and ISPO Certification Schemes



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 21 January 2018

## About this report

This report has been commissioned by Friends of the Earth Europe

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This report was researched and written by Retno Kusumaningtyas, with contributions of Anselm Iwundu. Correct citation of this document: Retno Kusumaningtyas, (2017 December), *External Concern on the ISPO and RSPO Certification Schemes*, Amsterdam, The Netherlands: Profundo.

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## Summary

A coalition of Indonesian and European NGOs has initiated the writing of a position statement to address their concerns about the possible consequences of incorporating palm oil into a Comprehensive Economic Partnership Agreement (CEPA) between the EU and Indonesia, with the inclusion in CEPA to be based on certification schemes such as RSPO or ISPO. Against this background, the research within this report was conducted for Friends of the Earth Europe with the objective to strengthen their insight into the RSPO and ISPO certification schemes. To this end, Profundo performed an independent controversy scan of external concerns relating to RSPO and ISPO. The external concerns refer to opinions, quotes, reports and experiences from key stakeholders in the palm oil sector about problems with these certification schemes. The research is limited to desk study and an interview.

The most identified external concerns on the RSPO and ISPO are related to weak certification standards and poor governance. Certified companies are still violating the standards imposed by these certification schemes, and both RSPO and ISPO have failed to conduct proper monitoring and implement sanctions with members that commit violations. ISPO has received far less media attention and criticism than the RSPO, because it only refers to Indonesia and was introduced more recently. Summarily, the following concerns were identified:

- **RSPO:**

- The RSPO is ineffective in addressing land grabbing practices in the palm oil sector. Many RSPO members and certified members are involved in the land conflict with local communities. World Rainforest Movement (WRM) stated that RSPO has failed to prevent land grab in the palm oil sector, instead RSPO facilitates the expansion of this industry regardless massive land and other resources conflicts. Furthermore, WRM indicated that RSPO give much more benefits only to big plantation companies than to local communities.
- Its principles and criteria are weak, as it falls short of protecting fundamental issues such as:
  - *Labour rights:*  
Serious human rights violations such as forced labour, child labour and salary below minimum wage are occurring in the RSPO member or certified plantations; Furthermore, NGOs such as SOMO, Amnesty International, RAN, OPPUK and IRLF found that workers of RSPO member or certified plantation are experiencing abuses, exposure to highly hazardous chemicals (even to paraquat, which is banned in the EU), discrimination to female workers and suppression of independent labour union.
  - *Forest protection:*  
RSPO does not prohibit the conversion of secondary forests. RSPO certification allows the clearance of any forest that are not identified as primary or high conservation value (HCV). However, many secondary or degraded forests in Kalimantan and Sumatra are crucial from both a species conservation and a climate perspective.
  - *Peatland protection and forest fires prevention:*  
RSPO does not fully ban plantation development on peatland. Greenpeace pointed out that the standards only include voluntary guidelines to report greenhouse gasses (GHG) emissions from forest conversion and specific rules on peatland development.

Greenpeace also disclosed that fires occurred within the concession of RSPO members. A group of researchers from the United States found out that that RSPO standards don't appear to be saving a very large area of forest. The RSPO certification had no causal impact on forest loss in peatlands or active fire detection rates. In Addition, another research from Columbia University concluded that RSPO is not effective in preventing fire occurrence in the plantations when it is needed. RSPO has the potential to reduce fires, though it is only effective when fire likelihood is relatively low.

- The RSPO complaints panel is said to be unreliable and inefficient. Its independence from the interests of influential members is challenged and transparency of the entire complaints procedure remains an issue. The complaints and resolution process of filed complaints often takes years without reaching a satisfactory solution.
- Some accredited RSPO certification bodies (CB) and auditors are considered non-credible. The Environmental Investigation Agency (EIA), reported that the RSPO system is critically flawed. Furthermore, the RSPO's auditors are fundamentally failing to identify and mitigate unsustainable practices by oil palm firms. A coalition of NGOs (Finnwatch, ICCR, ILRF, OPPUK, PANAP, RAN, Sawit Watch, Sum of Us, Tenaganita, TURC and Walk Free) questioned whether audits carried out by RSPO were robust enough to root out members that used slave labour.
- RSPO certification does not guarantee that the palm oil is sustainable. Greenpeace pointed out that RSPO certification offers no traceability of the origins of fresh fruit bunch (FFB) supply to a CPO mill. In addition, an investigation by Eyes of the Forests (EoF) revealed that RSPO supply chain certificate holders (subsidiaries of Raja Garuda Emas (RGE), GAR and Wilmar) were trading tainted CPO from mills which purchased illegal FFB that were grown/harvested inside a protected area in Sumatra.
- NGOs called on RSPO to be more active in monitoring its certified members. Amnesty International alleged that "RSPO is acting as a shield which deflects greater scrutiny of its members' practices". Amnesty International found that the implementation and monitoring of RSPO criteria (especially regarding labour issues) is extremely weak and based on a superficial assessment system. Based on the case mention in this report, Amnesty International stated that its certification assessment system is not credible.
- NGOs called on RSPO to be more strict in implementing sanctions to members that commit violations of RSPO's Principles and Criteria. RSPO fails to implement sanctions against member companies that repeatedly violate RSPO Principles and Criteria. The FECONAU case, where a company (Plantaciones de Pucallpa in Peru) withdrew from RSPO before a final ruling had been issued, shows structural failings of the RSPO complaints mechanism. Similar actions have been used elsewhere by member companies to avoid accountability. These include the sale of company assets to non RSPO members, the creation of new companies or the withdrawal of membership.
- **ISPO**
  - Forest People Programme (FPP) considers ISPO standards the weakest among a range of certification schemes.
  - ISPO adheres only to Indonesian laws and regulations, which in some cases, appear too general and without essential detailed guidance for practices in the field.
  - ISPO fails to recognize key instruments on community rights, such as FPIC. This has made ISPO to be considered poor in protecting basic customary rights of local/indigenous communities.

- ISPO does not effectively protect the rights of labourers, women, children and smallholders in the palm oil sector. It lacks many basic labour and human rights indicators in its criteria and standards. ISPO does not clearly state the prohibition of using forced labour and child labour. The standards do not contain indicators that specifically define labour policies or human rights policies and procedures relating to temporary workers. Furthermore, the standards contain no grievance mechanism for workers.
- ISPO also does not protect all HCV forests that it should. ISPO only obliges the protection of biodiversity in protection zones defined by the national government. However, there are areas that may contain HCV forests without being designated as protected zones. Furthermore, ISPO's weak supervision and deficiency in government policies related to HCV forests have led to ISPO certified companies often being found to have violated laws as well as ISPO standards.
- ISPO offers a complaints system related to land disputes, whereby complaints and grievances can be addressed to the Secretariat of the ISPO Commission. However, the process is unreliable and non-transparent.
- Many palm oil businesses in Indonesia do not consider ISPO important (helps them to keep and attract buyers coming to them) and many companies do not have ISPO certification regardless of the binding and compulsory nature of ISPO
- ISPO's implementing organization lacks strong authority to implement and enforce the ISPO certification. This is visible in coordination problems related to different policies of different ministries, and in the division of responsibilities between the national government and local governments.
- ISPO's lack of strong authority also leads to poor monitoring and enforcement of standards. Forest Watch Indonesia (FWI) identified several companies that have received certification despite them having unresolved conflicts with local communities in the area that they operate in (Lonsum in North Sumatra); have cleared forests outside their concession areas (Jabontara Eka Karsa, a subsidiary of KLK in East Kalimantan); and have developed new plantations on peatland while using fire to clear the lands (Gawi Bahendep Sawit Mekar in Central Kalimantan).
- The ISPO process is not transparent in its standard development and auditing results.
- ISPO lacks independent third-party verification mechanism to maintain accountability of its certification scheme.
- The Indonesian Chamber of Commerce and Industry (KADIN) has complained that ISPO lacks sufficient resources to provide certification for all palm oil companies.
- ISPO certification offers no traceability.

Both RSPO and ISPO were called upon to implement fundamental reforms. RAN, in a press release in November 2016, emphasized the need to reform RSPO standards, as well as auditing and enforcement of standards on its members. The RSPO complaints system needs to be more transparent, and consistent, as well as needing to uphold its integrity and independence in its complaints handling processes. The UK Climate Change Unit of the British Embassy in Jakarta stated that the British government won't recognize ISPO as a sustainability program until it can provide foreign governments with proof of independent oversight. Furthermore, the embassy's spokesperson added that the way ISPO standards were developed and the system is run, is not credible. A study by Maastricht University and Bogor Agricultural University, implies that to become a reliable alternative in the global market, ISPO needs a more convincing balance between sustainability objectives and economic interests, combined with a more authoritative and better equipped implementation and enforcement mechanism. Furthermore, the study recommended that the ISPO certification process needs a redesign, particularly if it aims to include millions of smallholders.

## Introduction

Recently the EU Trade Commissioner and the Indonesian Minister of Trade agreed to officially launch the negotiations for a Comprehensive Economic Partnership Agreement (CEPA) between the EU and Indonesia to enhance the bilateral trade relationship.<sup>1</sup> The negotiations will cover trade of various sectors and commodities including palm oil. Palm oil is one of the commodities many non-governmental organizations (NGOs) in Indonesia and Europe (e.g. Friends of the Earth, FERN, WALHI, etc.) have raised concerns about. They believe that palm oil should not be covered in CEPA. They believe that existing certification schemes of palm oil are not yet effective enough to assure sustainable production practices in the palm oil sector. With CEPA likely to lead to an increase in the export of unsustainable palm oil to European countries, a coalition of Indonesian and European NGOs have agreed to prepare a position statement to raise their concerns about the consequences of incorporating palm oil, based on certification schemes such as RSPO or ISPO, into CEPA at this time. To strengthen their insight, Friend of the Earth Europe asked Profundo to perform an independent controversy scan of the RSPO and ISPO certification schemes.

The objective of the research is to provide an overview of external concerns on the RSPO and ISPO certification schemes. The external concerns refer to opinions, quotes, reports and experiences from key stakeholders in the palm oil sector, about problems of the certification schemes.

Based on the research objective, the following activities were undertaken:

- Identification of criticisms regarding RSPO and ISPO certification schemes that have seen media or NGO attention;
- Identification of the information regarding how RSPO and ISPO have dealt with the identified controversial practices;
- Identification of suitable persons to be interviewed on the possible influence on European imports of palm oil upon the inclusion of palm oil in CEPA.

For the RSPO, the research covered significant cases over the past ten years, while for ISPO, the research covered cases over the past three years. Within the research, cases identified in Indonesia were given priority, while high profile instances that have attracted media attention elsewhere in the world and are therefore of interest to Friends of the Earth Europe were also included.

The research used sources such as company information, NGO-reports, local and international media, and reports by academic and research institutions. Desk research was the main methodology used. The research relied heavily on credible online publications and sources (both in English and Bahasa Indonesia). Profundo used advanced search techniques within Google and the LexisNexis data base to generate useful and wide-ranging information.

The identified publications were analysed and grouped according to 3 subjects, which are Labour and human rights (Chapter 1); Environment (Chapter 2) and Governance (Chapter 3). Results of each subject are discussed in the last section of each chapter. Chapter 4 contains a transcript of interview with Ms. Khor Yu Leng, Head of Research for Southeast Asia, LMC International, about possible influence on European imports of palm oil upon the inclusion of palm oil in CEPA. A summary of the findings of this report can be found on the first pages of this report.

## Chapter 1 Labour and human rights

This chapter presents some identified concerns and a general discussion on RSPO and ISPO regarding labour and human rights violations. Topics considered under labour and human rights include: child labour, forced labour, discrimination, unfair working hours, poor and indecent wages, unjust treatment of migrant workers, gender inequality, lack of freedom of association, land grabbing and community conflicts

### 1.1 Concerns on RSPO

The identified concerns on RSPO related to labour and human right issues can be grouped into two main topics, which are land conflict and labour right violations. On both topics, the concerns were mostly originated by violations committed by RSPO certified or member companies. Table 1 presents list of findings from reports and publications addressing labour and human rights violation for RSPO. Further discussions of each report/publication are provided in the section 1.1.1.

**Table 1 Concerns on RSPO related to labour and human rights**

Issue area	Specific issues in identified concern	Author/critic	Reference
Land conflict	Fail to prevent landgrab/land conflicts	World Rainforest Movement (WRM)	2
	Fail to prevent landgrab/land conflicts (Wilmar)	Forest Peoples Programme (FPP)	3; 4; 5
	Fail to prevent landgrab/land conflicts (GAR)	FPP, AwasMIFEE	6; 7; 8; 9
	Fail to prevent landgrab/land conflicts (Melka)	FPP	10
Labour rights violations	Insecure and unfair employment conditions, no proper contract for workers, long working hours, no payment of minimum wages or living wage, poor occupational safety and health, discrimination and marginalisation of female workers.	Centre for Research on Multinational Corporations (SOMO)	11
	Forced labour, no payment of minimum wages or living wages, child labour, poor handling of toxic chemicals, inadequate personal protective equipment (PPE) and long working hours.	Amnesty International	12
	Fail to prevent labour right violation	Rainforest Action Network (RAN), Indonesian labour rights advocacy organization (OPPUK), and International Labour Rights Forum (ILRF)	13
	Fail to prevent labour right violation, need systemic reform of RSPO Principles and Criteria	RAN, OPPUK, ILRF, The Indonesian Institute for Policy Research and Advocacy (ELSAM), PUSAKA Foundation, and Transformation for Justice in Indonesia (TUK)	14

### 1.1.1 Discussion

#### • Landgrabbing

An interview with the international coordinator of the World Rainforest Movement (WRM) uncovered that RSPO has failed to prevent land grab in the palm oil sector. According to her, RSPO plays a role of facilitating the continued expansion of this industry regardless massive land and other resources conflicts (such water, pollutions, soil erosion etc.) that occurred from this expansion. Furthermore, she stated that the limitations and the problems of RSPO in the long term, are much bigger and more significant than its benefits to communities. WRM stated that the RSPO provides large companies with significant benefits compared to negligible costs, and that mechanisms like the RSPO strengthen the position of companies while making the struggle of communities to resist against land grabbing more difficult.<sup>15</sup>

Forest Peoples Programme (FPP) reported several land grab cases involving Wilmar International, one of the focal members of RSPO. These cases among others were:

- Willmar was reportedly involved in criminalising the community leader of Kapa, Minangkabau, West Sumatra (Gampo Alam) and of intimidating indigenous communities in the area over a case of land conflicts;<sup>16</sup>
- In Central Kalimantan, Wilmar's subsidiary, Mustika Sembuluh, was also reported by FPP to have land conflicts with the Dayak Temuan community;<sup>17</sup>
- Another subsidiary of Wilmar in Papua, Anugerah Rejeki Nusantara (ARN) was reported to be involved a conflict with local communities in Southern Merauke, West Papua. This company is planning to establish plantations there as part of the Indonesian Government's plan "Merauke Integrated Food and Energy Estate (MIFEE)". Forest Peoples Programme reported that the company is failing to respect the right of the indigenous Malind people in Merauke. It did not get consent to land conversion from some members of the community, and the community gave their consent to land conversion based on deceptive information and restricted freedom of choice.<sup>18</sup>
- Furthermore, Wilmar's concessions in Nigeria (around Biase, Ibiae and Calaro) was also reported to be involved in conflicts with local communities.<sup>19: 20</sup>

Golden Agri Resources (GAR), another pivotal member of RSPO (one of the members of the RSPO Board of Governors is from GAR), has been reported to be involved in many land conflicts with local communities. The identified land conflicts were, among others:

- Forest People Programme (FPP) filed a complaint (October 13, 2014) to RSPO concerning PT Kartika Prima Cipta (KPA), a GAR subsidiary, for violations of RSPO standards. The complaint listed the following violations:<sup>21</sup>
  - KPA was reported to have developed new plantations without a prior HCV assessment;
  - KPA had been taking over community lands without proper communication and without following proper procedures; and
  - Eighteen of GAR's subsidiaries were operating without the appropriate Hak Guna Usaha (HGU) permit, which is in breach of the legal requirements to operate an oil palm plantation in Indonesia.

GAR has suspended new planting plans for the 18 companies listed in the FPP's complaint. However, according to the last progress monitoring report by FPP concerning this case, GAR was still not addressing the community demands for remediation in terms of securing their land rights and has still not provided smallholdings as required by the RSPO Complaints Panel.<sup>22</sup>

- GAR's subsidiary, PT Sinar Kencana Inti Perkasa, was reported to have developed new oil palm plantations on the land of the Kaureh-Yapsi people in Jayapura regency. The company was reported to have paid unfair compensation to the local community. The compensation arrangement did not include all the community members (clans) in the area. Several protests occurred over the last few years.<sup>23</sup>
- Golden Veroleum Liberia (GVL) is an oil palm plantation company in the south-eastern part of Liberia. It is not a direct subsidiary of GAR. GAR invests in this company via a private equity fund, being Verdant Fund. In 2015, Global Witness published a report stating that GVL had caused serious environmental and social fall-out in the region. The company holds a vast concession area on forested land on which local communities originally depended for their livelihood.<sup>24</sup> FPP also published a report on GVL that stated that the company converted community land without obtaining the Free Prior and Informed Consent (FPIC) of local communities. Local communities from the Sinoe county filed a complaint to RSPO regarding this and other violations.<sup>25</sup>

In December 2015, the indigenous organisation FECONAU filed its' first complaint to RSPO against a Peruvian member, Plantaciones de Pucallpa, a subsidiary of Melka Group in Peru. The complaint concerned the destruction of forests and the violation of the rights of the community of Santa Clara de Uchunya. RSPO facilitated the purchase and sale of agricultural lands from migrant farmer groups since 2013. The development of palm oil plantations has led to bad environmental and territorial impacts on the lands traditionally used by indigenous peoples. In addition, the company has violated RSPO standards by deforesting vast swatches of primary and secondary forest without the necessary permits and disclosures. The land acquisition has violated the community's fundamental rights to territory and associated rights to a clean environment and access to subsistence resources. In April 2016, the RSPO complaints panel ordered a temporary stop work, but the company withdrew from RSPO in October 2016 before a final ruling had been issued. In the initial analysis, it was concluded that "The RSPO Complaints Panel has found that the company was violating RSPO Code and Conduct and RSPO Principles and Criteria during its membership period (14 October 2013 to 12 October 2016)." Subsequently RSPO has refused to publish any additional findings.<sup>26</sup>

- **Labour rights violations**

SOMO's report (2017) showed that labour rights and human rights are being violated by companies who are members of RSPO. According to this report, two of the palm oil companies, which are also RSPO certified, structurally violated labour rights, breach not only RSPO's ethical standards, but also international law and Indonesian law. The labour rights violations reported were following:

- insecure and unfair employment;
- many workers without proper contracts;
- work long hours;
- being paid at times below the Indonesian minimum wage or with no salary increase over a period of years;
- poor occupational safety and health (OSH) policy that led to toxic chemicals exposure; and
- discrimination to female workers.<sup>27</sup>

Amnesty International published an investigative report on labour conditions in palm oil plantations in 2016. The report was based on field work at five palm oil plantations – three of which are RSPO-certified. The report points out how RSPO certification and its mandatory third-party audits have little or no effect on working conditions in the researched palm oil plantations. The findings of Amnesty were the followings:

- Women are forced to work long hours under the threat of having their pay cut. They are paid below minimum wage and kept in insecure employment without pension or health insurance;
- Children as young as eight are doing hazardous, hard physical work, sometimes dropping out of school to help their parents on the plantation;
- Workers are suffering severe injuries from paraquat, an acutely toxic chemical still used in the plantations despite being banned in the EU and by the company itself;
- Workers are being made to work without adequate safety equipment; and
- Workers are having to work long hours to meet unrealistically high targets, some of which involve highly physically demanding tasks.

The report mentions a number of pivotal members of RSPO are involved in the violations mentioned above. These companies are Wilmar (the group who owns the subsidiaries that commit the violations); ADM (buyer of Wilmar's palm oil); Colgate-Palmolive ((buyer of Wilmar's palm oil); Elevance Renewabe Sciences ((buyer of Wilmar's palm oil); The Kellogg Company ((buyer of Wilmar's palm oil); Nestlé ((buyer of Wilmar's palm oil); Reckitt Benckiser ((buyer of Wilmar's palm oil); Unilever ((buyer of Wilmar's palm oil) ; and Procter & Gamble ((buyer of Wilmar's palm oil).<sup>28</sup>

Rainforest Action Network (RAN), the Indonesian labor rights advocacy organization (OPPUK), and the International Labor Rights Forum (ILRF) have filed a formal complaint against palm oil giant Indofood with the Roundtable on Sustainable Palm Oil (RSPO) in September 2016. Indofood is a prominent member of RSPO. The complaint was based on the findings of a number of labor violation by two of Indofood's subsidiaries (PT. PP London Sumatra Indonesia Tbk. and PT. Salim Ivomas Pratama Tbk). These violations were labour abuses, child labor, exposure of workers to highly hazardous pesticides, payment below the minimum wage, long-term reliance on temporary workers, and suppression of independent labor union, etc., which violates both RSPO Principles & Criteria, as well as RSPO Code of Conduct.<sup>29</sup>

One year after the complaint to RSPO was sent, RAN, OPPUK, ILRF, The Indonesian Institute for Policy Research and Advocacy (ELSAM), PUSAKA Foundation (an Indonesian NGO), and Transformation for Justice in Indonesia (TUK Indonesia, an Indonesian NGO) highlighted again the labour right violations by RSPO members. The NGOs called on RSPO to be more active in monitoring its certified members and more strict in implementing sanctions to members that commit violation of RSPO's Principles and Criteria. RSPO member companies (and their labour violations) cited by the NGOs in this statement include: Felda (palm oil producer); Indofood Agri Resources (palm oil producer); Golden Agri Resources (palm oil producer); Sime Darby (palm oil producer); Sinar Mas (palm oil producer); IOI Group (palm oil producer); Goodhope (palm oil producer); and Pepsi Co (buyer).<sup>30</sup>

## 1.2 Concerns on ISPO

The identified concerns on ISPO related to labour and human right issues cover four topics, which are customary rights; smallholder protections; labour standards and access to remedy. Different from concerns of RSPO, concerns of ISPO are mostly addressing the principles and standards applied by the ISPO certification system. Table 2 presents list of findings from reports and publications addressing labour and human rights violation for ISPO. Further discussions of each report/publication are provided in the section 1.2.1.

**Table 2 Concerns on ISPO related to labour and human rights**

Issue Area	Identified concern	Author/critic	Reference
Customary rights	Fail to protect customary rights	FPP	31
		Forest Watch Indonesia (FWI)	32
Smallholder protection	No protection for smallholders	FPP	31
Labour standards	No protection against slavery, no accessible grievance mechanism for workers and no protection of migrant labour. Not enough protection for women, no protection against sexual harassment, and no protection of reproductive rights. No indicator to assess the food and water security needs of communities	FPP	31
Access to remedy	No transparency, no ombudsman-type processes for resolving complaint, and no local community representation.	FPP	31

### 1.2.1 Discussion

- **Lack of protection of customary rights**

In 2017, Forest and Peoples Programme (FPP) published a report that compares seven leading certification standards in the palm oil sector, which were RSPO, ISCC, ISPO, MSPO, SAN, HCS and RSB. This report describes that ISPO provides the weakest protection for customary rights. ISPO does not require any proof or documentation of legal right to use land, and instead it advocates consultations with communities, making it the weakest standard in upholding basic customary rights. This report also states that ISPO standard does not require no land conflicts in the development of palm oil plantations and does not adopt the FPIC (free prior and informed consent) requirements. Despite Indonesian laws and regulations on human rights, ISPO makes no explicit reference to respecting these rights. Furthermore, the report states that ISPO also does not require open and transparent methods of communication and consultation between affected parties or other interested parties.<sup>33</sup> This non-transparent process does not provide access to public controls.

Based on the findings in the field, Forest Watch Indonesia (FWI) stated that ISPO certification does not protect customary rights. FWI found that Lonsum in Deli Serdang, North Sumatra, received ISPO certification, even though the company has unresolved conflicts with local communities in the area. When the local communities demanded land restitution, the company accused the local community of criminal activities.<sup>34; 35</sup>

- **Unfair treatment of smallholders**

The FPP report also states that ISPO provides the weakest protection to smallholders compared to other certifications such as RSPO, ISCC, ISPO, MSPO, SAN, HCS and RSB. The assessment is based on 4 subjects, which were:

1. Fair treatment of smallholders: ISPO has no specific measurable indicator or standard for smallholders. Not all smallholder palm oil plantations are eligible for an ISPO audit or certification program. ISPO certification can only be filed by large palm oil plantations. There are no specific measurable indicators for partnerships with farmers, or that there must be resources allocated to improve the productivity or welfare of smallholders.
2. Fair credit for smallholders: ISPO provides no information on whether credit agreements between the smallholders and the nucleus company or mills they sell their fresh fruit bunch (FFB) to, are in place and ISPO does not have guideline what these agreements may look like.
3. Fair prices for smallholders: ISPO provides no significant provisions that require that smallholders receive fair prices for FFBs.
4. Smallholder access to market: ISPO provides only little guidance on smallholder access to markets.

ISPO receives a total score of "0" for all 4 subjects assessed by FPP, which means that ISPO standards do not address or clearly define requirements for smallholder protections.

- **Poor labour and social standards**

On labour standard, the FPP report states the following<sup>36</sup>:

1. ISPO standards do not mention forced labour, or require the prohibition of use of forced labour. The standards do not contain an indicator that specifically defines labour policies or human rights policies and procedures relating to temporary workers.
2. ISPO standards do not provide guidance or protection of migrant workers; and
3. ISPO standards contain no grievance mechanism for workers. The only grievance mechanism is related to land disputes and compensation. Indonesian national law does provide protection to workers, but this is not referenced in the standard.

The FPP report states the following regarding gender and discrimination<sup>37</sup>:

1. Though ISPO mentions gender issues in their non-discrimination policies, within their standards there is no acknowledgement of the need for specific indicators to be in place to protect women in the workplace.
2. ISPO standards is lacking in indicators relating to harassment or violence against women, again. It only relies on Indonesian law to act as the guide.

The FPP report shows that ISPO offers no indicator to assess the food security needs of communities, nor require any consideration of the positive and negative changes to the source of livelihood of communities resulting from planned plantation activities. Additionally, ISPO only states within it that "water is to be monitored". There are no clearly defined requirements.<sup>38</sup>

- **Lack of access to remedy**

The FPP report states the following on access to remedy<sup>39</sup>:

1. ISPO does offer a complaints system related to land disputes and compensation. The complaints and grievances can be addressed to the Secretariat of ISPO Commission, but documentation and results of the process are not published.
2. ISPO does not make reference to ombudsman-type processes for resolving complaints and does not make reference to an appeal process within its grievance mechanisms.
3. Indigenous peoples or local communities are not represented in the standards' governance structures of ISPO.

### 1.3 Discussion and conclusion on labour and human rights concerns

RSPO certified companies and RSPO members are often involved in land conflicts with local communities. International and local NGOs recorded that even largest members of RSPO, such as Wilmar and Golden Agri Resources, which often take the lead in stating their commitment to sustainability, are involved in land conflicts. Because the RSPO is considered ineffective in addressing land grab practices in the palm oil sector, WRM suggests that RSPO has played a role in facilitating these conflicts and that limitations and problems within RSPO will be, in the long term, much bigger and more significant than its benefits to communities. They stated that the RSPO provides large companies with significant benefits compared to negligible costs, and that mechanisms like the RSPO strengthen the position of companies while making the struggle of communities to resist against land grabbing more difficult.

Amnesty International alleges that “RSPO is acting as a shield which deflects greater scrutiny of its members' practices”. Amnesty International finds that the implementation and monitoring of RSPO criteria (especially regarding labour issues) is extremely weak and based on a superficial assessment system. It further states that its certification assessment system is not credible.<sup>40</sup>

Research and investigations by SOMO, RAN, OPPUK, ILRF, ELSAM, PUSAKA, and TUK Indonesia also concludes with similar results and findings. RSPO members (and certified members) are often found to be involved in labour rights violations. The NGOs call on RSPO to be more active in monitoring, and to be more strict in implementing sanctions to members that commit violations of RSPO's Principles and Criteria.

The FECONAU case, where the company withdrew from RSPO in October 2016 before a final ruling had been issued, has resulted in the RSPO decision being of moral and persuasive value only, without the possibility of it being enforced.<sup>41</sup> This shows that the RSPO complaints mechanism is so weak that the violating member can ignore RSPO decisions and the company can simply withdraw its membership while a complaint is ongoing. This FECONAU case has exposed structural failings of the RSPO complaints mechanism, which have also been used elsewhere by other member companies to avoid accountability. These include the sale of company assets to non RSPO members, the creation of new companies or the withdrawal of membership.

ISPO standards are based on Indonesian laws and government regulations. Land ownership is also based on these laws and regulations, for example forests are considered as state land, without ensuring that there are no local communities already living in that area. The Indonesian government keeps nationwide maps that are rife with overlapping concessions and inaccurately marked forest lands. Often development of plantations by big companies are located on these contested lands. The problem is so significant that inaccurate maps are the cause of hundreds of land conflicts and through this remain one of the leading causes of human rights violations in Indonesia. In addition, ISPO fails to recognize key instruments on community rights, such as FPIC. It has made its criteria and standards to be considered poor in protecting basic customary rights of local/indigenous communities.

An FPP report points out that ISPO has the weakest standards to protect smallholder and labour rights in the palm oil sector. The criteria are too general, do not provide the necessary detailed guidance to guarantee the protection of labourers, women, children and smallholders in the palm oil sector. Furthermore, the system does not include a complaints system for addressing labour disputes.

ISPO has received far less media attention and concern than the RSPO, because it only refers to Indonesia and was introduced more recently. Nevertheless, both the RSPO and ISPO have weaknesses and as such leave crucial gaps in addressing labour and human rights violations in the palm oil sector. This is more severe in the ISPO as it lacks many basic labour and human rights indicators in its criteria and standards.

## Chapter 2 Environment

This chapter presents some identified concern and a general discussion on RSPO and ISPO regarding environmental degradation. Topics considered under environment include: deforestation, conversion/destruction of high conservation value (HCV) forest and peat, greenhouse gas emission, peat/forest fires, pollution, etc.

### 2.1 Concerns on RSPO

The identified concerns on RSPO related to environmental issues can be grouped into two main topics, which are habitat or forest and greenhouse gas (GHG) emission. On both topics, the concerns point out that RSPO principles and criteria are inadequate to prevent deforestation of forests and peatlands and that it has failed to prevent occurrence of forest fires in palm oil plantations. Table 3 presents list of findings from reports and publications criticizing RSPO related to environmental issues. Further discussions of each report/publication are provided in the section 2.1.1.

**Table 3 Concerns on RSPO related to environmental issues**

Issue area	Identified concern	Author/critic	Reference
Habitat/forest	Inadequate protection against deforestation	Greenpeace	42
	Fail to protect HCV	Environmental Investigation Agency (EIA), Greenpeace, Aidenvironment and IAR Foundation.	43
GHG Emission	Fail to protect peat forests and prevent forest fires	Greenpeace	44
	Fail to prevent forest fires in dry season	Carlson, et al., EU Parliament Cattau, M.E., Marlier, M. E., and DeFries, R.	45; 46 47

#### 2.1.1 Discussion

- **Habitat protection**

Greenpeace International (Greenpeace) stated that RSPO does not prohibit forest conversion. RSPO members are supposed to ensure that forests are assessed for high conservation values (HCV) and to consider high carbon stock areas before new plantings. However, RSPO certification allows ongoing clearance of any forest not identified as primary or HCV. RSPO standards are considered inadequate to protect forests e.g. in Kalimantan and Sumatra which are secondary or degraded and may not be identified as HCV; while from both a conservation and a climate perspective it is crucial to protect such forests.<sup>48</sup>

On May 16, the Environmental Investigation Agency (EIA) filed the first-ever complaint against a licensed HCV assessor. The complaint was submitted to the HCV Resource Network (HCVRN). HCVRN is a member-based organization that supports the consistent implementation of the HCV approach. The complaint was produced in partnership with Greenpeace, Aidenvironment and The Institute for Policy Research and Advocacy (IAR Foundation). The HCV assessor is an active auditor for RSPO, and it has assessed more than 520,000 hectares of land across a range of Indonesian ecosystems. EIA found that the auditor's HCV assessment methodologies display fundamental deficiencies, sampling and factor-assessment bias, and contained untrue information.<sup>49</sup>

- **GHG Emission**

RSPO standards allow peatland forests to be cleared for the expansion of plantations. The standards include voluntary guidelines to report GHG emissions from forest conversion and provide firmer rules on peatland development, still it is not a full ban and the palm oil produced from plantations on peatlands can still be RSPO certified. Based on these considerations, Greenpeace maintains that the RSPO is failing to protect peat forests.<sup>50</sup>

Greenpeace also stated that RSPO has failed to prevent peatland and forest fires within the concession of its members. Fire and haze disasters have occurred repeatedly in areas where plantations are developed. RSPO bans deliberate use of fire for land clearance, but it has failed to address the source of fires as it still allows its members to clear and drain peatland. Drained peat is like a tinderbox: When a peatland is dry, the dense and carbon-rich soil can catch fire easily and once it lit, the fire can spread rapidly. Greenpeace's mapping analysis showed that concessions affiliated with RSPO members accounted for 39% of the fire hotspots on palm oil concessions in Riau during January-June 2013 – a total of 720 hotspots in RSPO-related concessions. The report further stated that a major overhaul of the standards and enforcement of RSPO is urgently needed.<sup>51</sup>

In September 2017, a group of researchers from several universities in the United States published a research result on the impact of RSPO certification on deforestation and fire in Indonesia. The study used a comprehensive dataset of RSPO certified and noncertified oil palm plantations in Indonesia and analysed annual remotely sensed metrics of tree cover loss and fire occurrence on those areas over the period of 2001 to 2015. The study concluded that RSPO standards don't appear to be saving large areas of forest from fire. Moreover, the RSPO certification had no causal impact on forest loss in peatlands or active fire detection rates.<sup>52; 53</sup>

A study comparing the occurrence of fires in RSPO certified and non-certified plantations by researchers from Columbia University concluded that RSPO is not effective in preventing fire occurrence in the plantations when it is needed. The researchers found that fire activity is significantly lower on RSPO certified concessions than non-RSPO certified concessions when the likelihood of fire is low (i.e., on non-peatlands in wetter years), but not when the likelihood of fire is high (i.e., on non-peatlands in dry years or on peatlands). These results provide evidence that RSPO has the potential to reduce fires only when fire likelihood is relatively low. They also imply that, for effective fire reduction, the current approach is insufficient and additional strategies are needed to control fires in oil palm plantations in dry years and on peatlands.<sup>54</sup>

The Committee on the Environment, Public Health and Food Safety of the European Parliament “observes with regret that RSPO, ISPO, MPOCC and all other recognised certification schemes do not currently prohibit their members from converting rainforests or peatlands into palm plantations, and that they fail to limit greenhouse gas emissions during the establishment and operation of the plantations, and as a consequence of this they have been unable to prevent massive forest and peat fires”.It urges the RSPO to modify its certification criteria and to implement the updated criteria strictly.<sup>55</sup>

## 2.2 Concerns on ISPO

Identified concerns on ISPO related to environmental issues only address habitat/forest protection and to some extent peatland protection. The concerns point out two types of instances, which are:

- ISPO principles and criteria are inadequate to prevent forests and peatlands deforestation;
- ISPO certified companies continue to deforest.

Table 4 presents list of findings from reports and publications criticizing ISPO related to environmental issues. Further discussions of each report/publication are provided in the section 2.2.1.

**Table 4 Concerns on ISPO related to environmental issues**

Issue area	Identified concern	Author/critic	Reference
Habitat/forest	Fail to protect HCV forests	Mutuagung Lestari (Auditor), WWF	56; 57
	Fail to protect HCV forests and peatland	FWI	58
	Fail to protect HCV forests and peatland, and prevent pollution	Kaoem Telapak	59

### 2.2.1 Discussion

#### • Habitat/forest

A study was conducted in 2016, by Mutuagung Lestari, an auditor company, as part of the Sustainable Palm Oil (SPO) Initiative launched by the Indonesian Ministry of Agriculture, UNDP and members of the private sector. The study result highlight that one of the significant differences between ISPO and RSPO certification schemes is the definition and the treatment of High Conservation Value (HCV) areas within concession zones. ISPO offers less protection of HCV areas relies on the government’s own assessments of the country’s forest cover. The problem is that the government map of forest cover is often inaccurate and has many overlaps with other land use. HCV forests are also often found inside the area designated for agricultural/plantation use. (The official position is that any land available as a concession by the agriculture ministry has already been marked for plantation use and is therefore free of forests in need of protection).<sup>60</sup>

WWF Indonesia states that it would support ISPO, but remains wary of its looser environmental standards. NGOs question the weakness of ISPO supervision and deficiency in government policies related to HCV forest protection in oil palm plantations.<sup>61</sup>

Forest Watch Indonesia (FWI) states that ISPO has failed to protect the Indonesian forest and peatland. From field investigations, FWI found the following cases:<sup>62</sup>

- Jabontara Eka Karsa (JEK), an ISPO certified plantation company and subsidiary of Kuala Lumpur Kepong, has cleared forest outside their concession in Berau Regency, East Kalimantan. This forest is an important habitat for orangutan. The company also cleared areas that should be protected according to ISPO standards, such as areas on mountain slopes, near rivers and conservation areas.
- Gawi Bahendep Sawit Mekar (GBSM), an ISPO certified plantation company in Seruyan, Central Kalimantan has developed new plantation on peatland. This company also used fire to clear the land for planting preparation.

In March 2017, Kaoem Telapak (an Indonesian NGO), on behalf of Indonesian civil society groups, published a Position Paper on Sustainable Palm Oil Industry. This position paper expresses that the increased issuing of ISPO certificates has not been followed by improvement of palm oil industry governance. The position paper marks the following problems<sup>63</sup>:

- Legality issues related to Business Use Rights (HGU)/ Plantation Business Permit (IUP) in forest areas in relation to the Provincial Spatial Plan, including the issuance of permits through non-procedural practices;
- Unsafe hazardous and toxic (B3) waste management;
- Planting on the riparian area;
- Bad policy implementation on peat land ecosystem protection;
- Inadequate protection of high conservation values (HCV) and high carbon stock (HCS) areas.

### 2.3 Discussion and conclusions on environmental concerns

Similar to concerns on labour and human rights, ISPO has received far less media attention and criticism on environmental issues than RSPO. The difference in media coverage and stakeholder concern is probably a consequence of ISPO being relevant only to Indonesia and introduced more recently than RSPO.

Recent cases related to water pollution, pollution from waste and harmful pesticides could not be found. However, this does not mean that no cases have occurred related to these issues. Often in the plantations where pollution or use of harmful pesticides have occurred, there are also other bigger conflicts such as land tenure conflicts. For example, the cases of Wilmar's plantations in Kalimantan (Mustika Sembuluh) and Nigeria and the case of GAR's plantation in Liberia (previously discussed in 1.1.1) also involved water pollution in the nearby water resources. However, since more urgent or fundamental violations such as land conflicts or forest resource conflicts occurred in those locations, the attention given to issues such as water pollution were far less than the actual occurrence should have perhaps necessitated.

NGOs (e.g. Greenpeace, EIA, Aidenvironment, IAR Foundation and FWI) and the European Union consider both RSPO and ISPO unable to protect HCV forests and peatlands. Criteria and standards of these certifications fail to protect forests and peatlands sufficiently. RSPO does not prohibit the conversion of secondary forests and does not fully ban plantation development on peatland. Many forests in Kalimantan and Sumatra (where most plantations are being developed) are considered secondary forests, yet from both a conservation and a climate perspective, it is crucial to protect such forests. ISPO supports the government's own assessments of the country's forest cover. The official position is that any land made available as a concession by the Ministry of Agriculture has already been marked for plantation use and is therefore free of forests in need of protection. However, HCV forests are often also found inside areas designated for agricultural/ plantation use.

Two separate studies on the topic of fire occurrences in certified plantations by a group of researchers from Universities in the United States, both concluded that RSPO certification does not play a significant role in preventing fires on peatland. RSPO has the potential to reduce fires only when fire likelihood is relatively low. In the dry season, when the likelihood of fire is high, RSPO has no causal impact in reducing fires. Furthermore, one of the studies concluded that RSPO standards save only small areas of forest.

As previously mentioned, ISPO is based on Indonesian laws and regulations. It is straightforward, and in theory at least, demands legal compliance. ISPO provides only general guidance, which raises challenges for consistent application across Indonesia's diverse geography. Furthermore, ISPO's weak supervision and deficiency in government policies related to HCV forest protection in oil palm plantations have led to ISPO certified companies often being found to have violated laws as well as ISPO standards.

## Chapter 3 Governance

This chapter presents some identified concern and a general discussion on RSPO and ISPO regarding governance issues. Topics considered under governance include: general certification system, criteria and standards, enforcement of the standards, monitoring, complaints system, auditors, transparency, etc.

### 3.1 Concerns on RSPO

The identified concerns on RSPO related to governance issue can be grouped into six main topics, which are: certification system; enforcement of the standards; complaints system; auditors; monitoring and resolution; and illegal activities. Table 5 presents list of findings from reports and publications governance issues for RSPO. Further discussions of each report/publication are provided in the section 3.1.1.

**Table 5 Concerns on RSPO related to governance issues**

Issue area	Identified concern	Author/critic	Reference
Certification system	Does not guarantee 100% sustainable palm oil	Greenpeace	64
	RSPO is not credible	RAN, Palm Oil Investigation (POI)	65; 66
	Cannot address problems of various growers	Centre for International Forestry Research (CIFOR)	67
Enforcement of the standards	RSPO fails to act on breaches of its standards	Amnesty International	68
Complaints System	Inefficient and unreliable	Macdonald K., and Balaton-Chrimes, S.; FPP	69; 70
	Complaints Panel is non-transparent, inefficient and inconsistent.	Natural Justice	71
Auditors	RSPO accredited auditors and assessors are not reliable	EIA; Finnwatch, Humanity United, Interfaith Center on Corporate Responsibility (ICCR), ILRF, OPPUK, Pesticide Action Network Asia & the Pacific (PANAP), RAN, Sawit Watch, Sum of Us, Tenaganita, Trade Union Rights Centre (TURC) and Walk Free	72; 73; 74
Monitoring and resolution	RSPO fails in maintaining its credibility to detect and respond to violations	RAN, OPPUK and ILRF	75
Illegal activities	RSPO fails to prevent illegal sourcing of FFBS	Eyes on the Forests (EoF)	76

### 3.1.1 Discussion

- **Certification system**

In 2013, Greenpeace highlighted that Greenpalm certificates of RSPO fails to provide a 100% guaranteed of sustainable palm oil to end buyers. Greenpeace stated "Certificates are traded anonymously and the actual palm oil in the end user's products is bought on the open market. This system offers no traceability: end users usually do not know which plantation either the Greenpalm certificates or the physical palm oil came from."<sup>77</sup>

When RAN, OPPUK and IRLF filed a complaint to RSPO against Indofood for labour violations (listed in Table 1), the three organizations were also concerned about the credibility of the RSPO system in detecting and responding to labor violations in RSPO member plantations. RSPO's response to the complaint has been relatively slow. There have been a number of meetings and emails/letters exchanges between RSPO and complainant (RAN, OPPUK and IRLF). However, a year after the complaint was filed, there has been no significant developments/resolutions. The latest activity concerning this case was in November 15, 2017, when RSPO sent a letter to complainant requesting to reveal the details of the name of the estate to the RSPO Complaints Panel. The report of RAN, OPPUK and IRLF did not disclose detailed information of the location and workers that they interviewed in the report for safety reasons.

RAN emphasized the need to reform RSPO standards, as well as auditing and enforcement of its members in its press release in November 2016. RAN stated that there is an increasing lack of credibility in RSPO's so-called "sustainable palm oil" brand. This statement was based on the following reasoning:

1. RSPO continues to certify companies that violate human and workers' rights,
2. RSPO fails to implement an independent audit of the systemic human and labour rights abuses (recently documented in FELDA's plantations); and
3. RSPO also fails to uphold the rights of communities across Indonesia, Malaysia, Liberia, Latin America and Papua New Guinea who are saying 'No' to palm oil development by its members.

RAN recommended RSPO to undertake three key actions, including:

1. Fast-track a review and update of the Principles & Criteria, and adopt recommendations by December 2016;
2. Commission an independent investigation of RSPO's current auditing system against best practices, with a focus on human and labour rights, and adopt a time-bound plan to reform RSPO auditing procedures by March 2016; and
3. Adopt a transparent and enhanced mechanism for enforcing sanctions against member companies that repeatedly violate RSPO Principles and Criteria and Code of Conduct by June 2016.<sup>78</sup>

No response to RAN's concern by RSPO was not identified in this particular instance.

Palm Oil Investigation (POI) is a NGO based in Australia. POI works focus on raising awareness among palm oil consumers and brands that use palm oil about sustainability in this sector. In September 2016, POI released a statement withdrawing its support for RSPO as the organization has lost confidence in the ability of RSPO's leadership to manage a credible certification system due to repeated systemic and governance failures. POI's decision was based on several violations cases committed by RSPO members and NGOs reports highlighting the flaws in RSPO certification system.<sup>79</sup>

In January 2017, a group of researchers from Centre for International Forestry Research (CIFOR) published a research results which pointed out that the existing certification schemes, such as RSPO, need to be better adapted to the various actors targeted. The current criteria are considered too general to enable compliance by various growers. For example, in the case of smallholder growers, RSPO has proven to be inefficient because the original criteria do not account for the very variable backgrounds and assets of the various smallholders. Furthermore, new criteria, specific to smallholders' constraints and opportunities should be defined together with smallholder representatives, who can feed the debate with relevant insights.<sup>80</sup>

- **Enforcement of the standards**

In its 2016 investigative report on how global brands are profiting from forced and child labour, Amnesty International stated that "RSPO is acting as a shield which deflects greater scrutiny of its members' practices". It maintains that the implementation and monitoring of RSPO criteria is extremely weak and based on a superficial assessment system. It further stated that RSPO has failed in implementing and monitoring of RSPO criteria, and that its certification assessment system is not credible.<sup>81</sup>

- **Complaints System**

A report by Macdonald (University of Melbourne), and Balaton-Chrimes (Deakin University) provided a detailed analysis of the successes and the failures of the RSPO complaints system and suggested recommendations for the improvement. The report stresses the need for reforms to strengthen the transparency, consistency, integrity and independence of the complaints handling processes. This report also highlights challenges faced by RSPO complaints system, which are:<sup>82</sup>

1. Challenges of establishing independence from the interests of influential members;
2. 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;
3. 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; and
4. Challenges of establishing legitimacy of the organization's voice within broader policy debates oriented towards preventing recurring forms of grievance.

FPP has expressed concern that the RSPO complaints process, including its appeals mechanism, is under-resourced and very slow in ruling on complaints and appeals. The concern was expressed when FPP assisted Kapa Community in Minangkabau, West Sumatra, in a land conflict with Wilmar. FPP also mentions that other cases of complaints against RSPO members by communities were made more than eight years ago but remain unresolved.<sup>83</sup>

Natural Justice Malaysia, a NGO active in environmental and human rights law, published a review report of the Complaints System of RSPO in 2014. The report highlighted key issues identified in the Complaints system. The RSPO's Complaints System faces a significant backlog of unresolved complaints (including several long-standing complaints), the limited pool of Complaints Panel members is overburdened, and complainants and responding RSPO members alike raise fundamental concerns with transparency, efficiency and procedural consistency. There are also increasing numbers of external critiques about the Complaints System. This has led to a growing frustration and declining trust in the Complaints System and in turn affects confidence in the RSPO brand.<sup>84</sup>

- **RSPO Auditors**

Environmental Investigation Agency (EIA) stresses that the capacity and performance of RSPO auditors and assessors have been partly to blame for the most high-profile complaints against RSPO members' practices. EIA had reviewed 34 HCV assessments that have been prepared for RSPO and found "fundamental deficiencies, sampling and factor-assessment bias, and contained untrue information". EIA reported that RSPO system is critically flawed. RSPO's auditors are fundamentally failing to identify and mitigate unsustainable practices by oil palm firms.<sup>85</sup>

A coalition of international labour rights and environmental groups questioned whether audits carried out by the RSPO were robust enough to root out members that used slave labour. This was in response to RSPO's claim that despite a Wall Street Journal report on this issue, "the auditor found no evidence that forced or trafficked labour would be used in the Felda estates included in the assessments". The coalition included Finnwatch, Humanity United, Interfaith Center on Corporate Responsibility (ICCR), International Labour Rights Forum (ILRF), *Organisasi Penguatan dan Pengembangan Usaha-usaha Kerakyatan* (OPPUK), Pesticide Action Network Asia & the Pacific (PANAP), Rainforest Action Network (RAN), Sawit Watch, Sum of Us, Tenaganita, Trade Union Rights Centre (TURC) and Walk Free.<sup>86</sup>

- **Illegal activities**

An investigative report by Eyes on the forest (EoF) demonstrates how Crude Palm Oil (CPO) tainted by illegally grown Fresh Fruit Bunch (FFB) from government protected areas deep inside Sumatra entered the supply chains of several of the most well-known palm oil suppliers in the world. Eyes on the Forest (EoF) investigations found subsidiaries of the Royal Golden Eagle (RGE) group, Golden Agri- Resources (GAR) Wilmar, Musim Mas and many other smaller companies receiving illegal fresh fruit bunch (FFB) or crude palm oil (CPO) tainted with illegal FFB. EoF found four RSPO supply chain certificate holders who are subsidiaries of RGE, GAR and Wilmar to be involved in the trade of tainted CPO from mills which purchased illegal FFB. EoF stressed the necessity to include verification and transparency on the origins of all FFB supply for a CPO mill, not only for certified but also for non-certified oil in RSPO standards.<sup>87</sup>

### 3.2 Concerns on ISPO

The identified concerns on ISPO related to governance issue can be grouped into four main topics, which are: certification system; accountability; transparency; and human resource. Table 6 presents list of findings from reports and publications addressing governance issues for ISPO. Further discussions of each report/publication are provided in the section 3.2.1.

**Table 6 Concerns on ISPO related to governance issues**

Issue area	Identified concern	Author/critic	Reference
Certification system	Fail to be effective and reliable	Hidayat, N.K., Offermans, A., and Glasbergen, P.; Coalition of NGOs from West Papua and Moluccas	88; 89; 90
	Majority of companies disregard ISPO	Indonesian Conservation Community (Warsi) Association of Palm Oil Companies (GAPKI),	91

Issue area	Identified concern	Author/critic	Reference
	Fail to be effective and does not guarantee 100% sustainable palm oil	FWI	92
	Credibility of ISPO is in question	British Embassy Jakarta	93
Accountability	No independent monitoring	Oil Palm Farmers Union (SPKS)	94
Transparency	The system is not transparent	FPP	95
	The system is not transparent	FWI, NGOs coalition	96; 97
Human resource	Limited human resource	Indonesian Chamber of Commerce and Industry (KADIN)	98

### 3.2.1 Discussion

#### • Certification system

A recent study by researchers from Maastricht University and Bogor Agricultural University concluded that, although ISPO has initiated a process of change, it has not yet developed its full potential. The main reasons are ISPO's rather loose problem definition, weak authority of the implementing organizations, and the fact that the reliability of ISPO is still too low to convince (parts) of the global market. The study shows that one of the fundamental flaws in ISPO is the lack of authority to implement and enforce the ISPO certification. This is visible in coordination problems related to different policies stemming from different ministries, and in the division of responsibilities between the national government and the local governments. ISPO may therefore face difficulties in meeting its own targets and solving palm-oil related problems, such as deforestation, biodiversity loss, greenhouse gas emissions, and social conflicts between big plantations and local communities. The study implies that to become a reliable alternative in the global market, ISPO needs a more convincing balance between sustainability objectives and economic interests, combined with a more authoritative and better equipped implementation and enforcement mechanism. Furthermore, the study recommended that the ISPO certification process needs a redesign, particularly if it aims to include millions of smallholders.<sup>99</sup>

In August 2017, a coalition of NGOs from West Papua and Moluccas published a position paper addressing the current state ISPO certification. The position paper states that the recent improvement of ISPO certification have not accommodated the needs of indigenous community in Papua. The position paper puts forward the following recommendations<sup>100</sup>:

1. Resolving basic issues in the palm oil sector, which are land grabs and the rights of indigenous peoples. Current ISPO certification cannot solve this problem.
2. Conduct a moratorium on permits for large-scale plantations with conflict and implement remediation of affected areas.
3. Preparing preconditions that ISPO certification can only be granted to conflict free companies. Currently, there are still companies whose operations cause social conflicts and whose activities create environmental degradation and yet receive ISPO certification.
4. Overall improvement of ISPO criteria as a certification system. ISPO should have an inclusive, participatory, systematic and transparent process.
5. ISPO certification should:
  - require companies to set up a grievance mechanism;

- properly monitor the implementation of its principles and criteria;
  - implement proper sanctions for violations;
  - be more open to local community and plantation workers participation;
  - have independent, transparent and accountable external supervision.
6. Assist the bargaining position of smallholder farmers (versus nucleus companies)
  7. Improve ISPO Principles and Criteria in the topic of legality; local/indigenous community rights; plantation management; protection of natural forests and peatlands; protection of worker rights; smallholder, indigenous/local communities, women and children empowerment; traceability and transparency;
  8. ISPO standards should not only be based on existing international norms, but include national and regional policies.
  9. ISPO should be more accountable, open and transparent.

Warsi, a local NGO based in Jambi, Sumatra stated that ISPO certification does not guarantee to protect forests, reduce greenhouse gas emissions from land use change and compliance with legal requirements. It is proven that many ISPO certified companies do not necessarily implement the ecological, social and economic standards that ISPO holds. In addition, the binding and compulsory ISPO also does not make the companies consider it important. This was shown by only few of the companies hold ISPO certifications, even two years after the deadline set by the government.

Association of Palm Oil Companies (GAPKI) in Jambi said that less than half of its members hold ISPO certification. GAPKI claimed that the organization encourages all members to have an ISPO certifications. However, it has no authority to force members to get the certification. Many companies still think that ISPO certification is expensive and only raise their operation cost.

Forest Watch Indonesia (FWI) said that ISPO appears to be ineffective. Six years after the enforcement of ISPO certification for Indonesian plantations, it is still not able to eliminate the negative impacts caused by the development of oil palm plantations. ISPO certified plantations do not necessary mean free from deforestation and social conflict. Furthermore, the principles and criteria developed within the ISPO standards have not been able to address common problems in the development of plantation in Indonesia, such as deforestation, overlapping land use permits, conflict of land tenure and peatland conversion.<sup>101</sup>

The UK Climate Change Unit of the British Embassy in Jakarta said that the British government won't recognize ISPO as a sustainability program until it can provide foreign governments with proof of independent oversight. The spokesperson of the Embassy, Andy Roby (senior forestry advisor for the UK Climate Change Unit), said that there is credibility issue about the way the standard was developed and the way the system is run. The lack of independent monitoring, and the Indonesian government's lack of policies on the protection of HCV forests within palm oil concessions, has left people to question why the word "sustainable" was included in the program in the first place. Furthermore, he said that ISPO is not a sustainability standard, it is just the law, and he did not agree with is the Indonesian government attempt to promote it as a sustainability standard. Roby said, "The law hasn't caught up with best practices in sustainability. For instance, on the topic of peat, planting on peat, high conservation value [forests], social issues, the law simply isn't good enough."<sup>102</sup>

- **Accountability**

The leader of Indonesian Palm Oil Farmers Union (SPKS) stated that ISPO needs an independent monitoring mechanism to maintain accountability of this certification scheme. Civil society organizations and market observers should be represented in this independent monitoring mechanism. SPKS leader also stated that the Indonesian governments should incorporate the independent monitors within the ISPO institutional structure to improve ISPO credibility.<sup>103</sup>

- **Transparency**

The previously mentioned FPP report (discussed in 1.2.1) considers ISPO the least transparent certification system. ISPO maintains full control over the entire certification process, including whether certification is granted, which raises questions about transparency and the independence of supply chain verification. Other palm oil certification standards for instance, require their members to demonstrate the legal right to use lands. ISPO, on the other hand, only advocates one-off consultations with local communities without the requirement of documentation/publication on this issue.<sup>104</sup>

FWI also stated that to be reliable, ISPO needs to be transparent and increase public involvement in its processes. In addition, the Indonesian Civil Society Groups for Sustainable Palm Oil Industry published a position paper (March 2017) which stated that there is a need for active participation and transparency in the process of 'strengthening' the certification system for Indonesian Sustainable Palm Oil (ISPO). In the recent process to strengthen ISPO, the role that the civil society group has was not fully recognized. With this, it removed important principles, namely; traceability and transparency, and respecting Human Rights. The situation clearly has undermined the ongoing multi-party process. The Civil Society Groups believe that the improvement of ISPO certification system must be done thoroughly and the processes must be redesigned in a participative, inclusive, transparent and accountable manner.<sup>105</sup>

- **Human resource**

Vice leader of the Indonesian Chamber of Commerce and Industry (KADIN) stated that ISPO commission has inadequate staff members to implement auditing and assessment for all plantations in the country. This problem led to the slow process in the implementation of certifying plantations.<sup>106</sup> In April 2017, only 30% of the palm oil plantations in Indonesia are ISPO certified, while the Indonesian government initially aimed to achieve 100% certification in 2014.<sup>107</sup>

### 3.3 Discussion and conclusions on governance concerns

Various NGOs doubt the credibility of the RSPO certification scheme: Many (certified) members have violated RSPO Principles and Criteria regularly, and RSPO has repeatedly failed to implement sanctions for members that commit violations. Furthermore, NGOs identified the following important issues that urgently need to be addressed by RSPO:

- Weak enforcement of standards and monitoring of breaches;
- The complaints panel is unreliable and inefficient (the process often takes years without reaching a satisfactory solution; the panels' independency is often challenged; transparency of the process remains an issue);
- Questions have been raised about RSPO appointed auditors' methodology and accuracy in collecting data on which the certification is being based.

In 2013, Greenpeace pointed out that the RSPO certification system offers no traceability and is incapable of providing a full guarantee on the sustainability of palm oil to end buyers. This issue was raised again in 2016, when Eyes of the Forest (EoF) uncovered that RSPO Supply Chain Certificate holding companies received CPO from mills which purchased illegal FFB. Both Greenpeace and EoF stressed the necessity to include verification and transparency on the origins of all FFB supplies to a CPO mill, both for RSPO-certified and non-certified palm oil.

Similar to RSPO, the ISPO certification system was considered ineffective and unreliable. Many certified companies are often found violating ISPO standards. However, in the case of ISPO, the majority of the palm oil businesses do not consider the certification to be important for their interests, regardless of the binding and compulsory nature of ISPO. In addition, a study by Maastricht University also pointed out that ISPO's implementing organisation lacks a strong authority. Because of these reasons, ISPO is facing difficulties in meeting its own targets and solving palm-oil related problems, such as deforestation, biodiversity loss, lowering greenhouse gas emissions, and limiting social conflicts between big plantations and local communities.

Additionally, NGOs have raised the following central issues that need to be addressed within ISPO:

- ISPO standards have not been able to address common problems occurring in the development of plantations in Indonesia, such as deforestation, overlapping land use permits, conflicts on land tenure, human rights and peatland conversion.
- The ISPO process is not transparent in its standard development and auditing results. The certification scheme also disregards the subject of traceability. ISPO must be redesigned to increase public involvement.
- ISPO needs an independent monitoring mechanism to maintain accountability of its certification scheme.

## Chapter 4 Interview with Ms. Khor Yu Leng, M.Sc.

Ms. Khor Yu Leng is an independent economist based in Singapore. Currently she is Research Director Southeast Asia at Segi Enam Advisors Pte Ltd, a research consultancy company specialized in Southeast Asian political-economy, business research, sustainable supply-chains and data services. Previously, she was the Head of Research for Southeast Asia at LMC International, a leading independent economic consultancy company for agro-industrial commodities, based in the UK. She is a specialist in palm oil, sugar cane and sustainable supply-chains.

*Q: Do you follow the current developments in the CEPA negotiations between the Indonesian Government and the European Union?*

A: Not in detail, Obviously I am aware that it is on, when I contact my Indonesian associates in palm oil, they do talk about it, I am aware of who is the trade negotiator, I have some ideas on the some of the issue they cover, but not in details.

*Q: How do you view the influence of these CEPA negotiations on the future of palm oil trade between Indonesia and the European countries?*

A: I guess it is obvious that palm oil is very important in the negotiation. When I spoke with people analyst, especially who are involve in this kind of trade negotiations, they are expecting a big chapter on palm oil. What I hear from some of the industry experts, in term of expectations, there is a talk of whether they could implement FLEGT like what they have done in timber. Even though there is also an argument that it would be difficult to implement FLEGT in liquid cargo. I guess Indonesian industries are hoping for some mechanism like that, but I am not sure how that has evolved in the las 2 months, since I have not been visited Jakarta since November (2017). And I suppose ISPO is evolving try to adapt for that, try to be more open to more public stakeholders. I think MSPO also doing the same things. They are trying to get more public stakeholder feedbacks to be more amenable to the mechanism that EU/key markets interested in seeing.

*Q: What is your view on the current state of certification systems commonly used in the palm oil sector, particularly RSPO and ISPO for Indonesian palm oil?*

A: I think the key popular ones are the RSPO and ISCC, these are currently certifications that the buyers in Europe tend to except. ISCC has been very well established for the energy side, and in term of the non-energy use, the voluntary RSPO system is more popular. However, unfortunately the RSPO system is not suitable for the SMEs, (small and medium enterprises) and has not able to serve the smallholders in this sector. I think in RSPO, the stakeholders involved have been mostly large companies, so it has been designed more to suit the large companies. So, it has not been inclusive enough. If CEPA would like to adopt a single certification, I think Malaysia and Indonesia would like to work on in same front, they would like their ISPO and MSPO as part of that or as an equivalent. Then I suppose it will be some political negotiations. How they going to adjust this, I guess ISPO and MSPO must upgrade some of their aspects to become more acceptable, I guess that would be the main effort for Indonesia, would be having ISPO as being accepted or become some sort of FLEGT to be add on.

*Q: What do you think the prospects are for civil society organizations in Indonesia and Europe for influencing CEPA negotiations to leave out palm oil trade from CEPA?*

A: For Europe perspective, I guess they want to be fair about it. For example, if they decided to stop using the palm oil, I guess the industry will have to replace the oil, they will use the sun flower oil, and the sun flower country will start buying palm oil, so it will not stop the palm oil. Some other country will buy it anyway. It will just divert the trade into more complex things. I think it is clear, and a lot of people understand that a boycott is ineffective. That is one practical consideration that it is not a real outcome, this is from an economical perspective. From political perspective, it will send a strong message, and Europe will get a strong reaction from Indonesia politically. And I think it will get very difficult, because palm oil is such key product for Indonesia, it touches millions livelihood in Indonesia.

*Q: What is the best way for Europe to be able to prevent purchasing unsustainable palm oil?*

A: I guess in term of trade they want a simple solution, if you ask me whether RSPO will work? I don't think so, because RSPO is too exclusive (only for big companies). About ISPO? I don't know how they will adjust it, obviously in a way ISPO is just the implementations if the existing regulations. I do not think there is a short cut for this. I personally prefer European stakeholder do a direct analysis of which area they would like to support or to source more on the zonal basis. I guess it is a bit of a landscape approach, but taking recognition and preference of sourcing from smallholders and trying to upgrade the sustainable practice of that sector. Because I think using certifications with big companies as intermediaries is not useful enough. Because of that then you lack clarity of who you trying to help. What happened (in RSPO) is very natural, if you ask a big company to implement sustainability, they will do it first for their own plantations. This is a commercial entity, they would like to make sure their own product sold first before helping others, and nobody helping the SMEs or smallholders. As an economist, I think it would be useful to directly engaging the smallholders and bringing their produce to the market in Europe. In a way this approach will be more constructive. Rather than locking out palm oil, you keep the door open for smallholder in a direct way. Of course, this approach need to be refine and everything, but directly reaching smallholder. Do not go through the intermediaries such RSPO, big companies, etc. I can see this happening in other product/commodity, such as cocoa, coffee, etc. I know the industry structure is different, difficult and it is not a cheap way to do business. May be use ten indicators that they feel strongly about, and work with independent smallholders to improve practices to meet these indicators. This will help not to escalate the negative situation (politically) that is happening right now (between Indonesia and Europe). If you look at the cocoa sector, you can see Mondelez directly engaging with hundred thousand of cocoa smallholders. That is what you need. You can use the big company to help a little bit, but you should not use them as the gate keeper. RSPO has been exist for 13 years, and until today they don't have hundred thousand independent smallholders directly engaged (currently smallholders engaged by RSPO are mostly plasma). Everyone has been distracted, the resource to me has been misallocated. We need to fundamentally change the engagement to directly to smallholder. I know this might be sound too idealistic, but I don't think anyone really tried this. Because otherwise everything will be filtered through a commercial calculus of the big companies, and we might lose another ten years of time.

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