



Unequal access to justice: an evaluation of RSPO's capacity to resolve palm oil conflicts in Indonesia

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Abstract

In 2009 the Roundtable on Sustainable Palm Oil (RSPO) established a conflict resolution mechanism to help rural communities address their grievances against palm oil companies that are RSPO members. This article presents the broadest ever comprehensive assessment of the use and effectiveness of the RSPO conflict resolution mechanism, providing both overviews and in-depth analysis. Our central question is: to what extent does the RSPO conflict resolution mechanism offer an accessible, fair and effective tool for communities in Indonesia to resolve conflicts with companies? Our aim is not only to provide a 'reality check' of this mechanism but also to contribute to the wider debate on how communities can seek access to justice when engaged in intractable conflicts with palm oil companies. For data collection, we took three steps. First, we used our own database of 150 conflicts between communities and companies in Indonesia. We identified 64 conflicts that involved RSPO member companies, of which 17 prompted communities to convey their grievances to the RSPO's conflict resolution mechanism. Second, we used the database of the RSPO, which handled 85 complaints against companies in Indonesia in the period 2009–2020. Third, we conducted fieldwork, in total, about 6 months of fieldwork and extensive interviews on three conflicts involving RSPO companies to identify mechanisms leading to (and reasons for) both failed and successful instances of conflict resolution. For our assessment, we used three criteria to assess the conflict resolution mechanism of the RSPO: accessibility, procedural justice, and the outcomes of the process. We conclude that—on all counts—the conflict resolution mechanism is biased in favor of companies. The result of these biases is that the actual capacity of the RSPO's mechanism to provide a meaningful remedy for rural communities' grievances remains very limited. This unequal access to justice sustains conflicts between companies and communities over land.

Keywords Conflict resolution · Oil palm · RSPO complaint system · Indonesia

Abbreviations

CP Complaint Panel

CRM Conflict Resolution Mechanism

DSF Dispute Settlement Facility

FPP Forest Peoples Programme

GPS Global Positioning System

HCVs High Conservation Values

HGU *Hak Guna Usaha* (Commercial Use Right)

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KPA	<i>Konsorsium Pembaharuan Agraria</i> (Consortium for Agrarian Reform)
KKPA	<i>Kredit Koperasi Primer untuk Anggota</i> (Credit for members of Primary Cooperative)
NGO	Non-Governmental Organisation
PT	<i>Perusahaan Terbatas</i> (Ltd)
RSPO	Roundtable on Sustainable Palm Oil

Introduction

Oil palm plantations have expanded rapidly in Indonesia: between 1980 and 2019, nearly 14.5 million ha of land were converted into plantations, most of which (about 55%) are owned by private companies (Direktorat Jenderal Perkebunan 2019). This expansion has contributed to economic growth, but it has also caused environmental problems and widespread land-related conflicts between affected communities and oil palm grower companies in the provinces that are centers of oil palm production (Afrizal 2007, 2013; Colchester et al. 2006; Gerber 2011; Colchester and Chao 2013; McCarthy et al. 2012, p. 532; Afrizal and Anderson 2015; KPA 2019).

To address the negative environmental and social impacts of crude palm oil (CPO) production, in 2004 European food companies and NGOs joined forces with the palm oil industry to launch the Roundtable on Sustainable Palm Oil (RSPO). The RSPO has subsequently taken three measures to address the numerous land conflicts associated with oil palm plantations. First, the RSPO adopted the principle that oil palm growers should recognize and respect land rights, including those based on traditions and culture. Second, the RSPO adopted the principle that, “where there is a conflict on the condition of land use as per land title, growers should show evidence that necessary action has been taken to resolve the conflict with relevant parties” (RSPO 2017a). Third, in 2009 the RSPO introduced its complaint system. This conflict resolution mechanism (hereinafter RSPO CRM) provides avenues for stakeholders to resolve conflicts involving its members and rural communities affected by palm oil production. This mechanism certainly met a ‘demand’: the RSPO dealt with more than 150 conflicts from around the globe in the period 2009–2020 (RSPO n.d.a). On the one hand, NGOs such as Forest Peoples Program (FPP) and Oxfam have hailed the mechanism as a valuable tool for communities (Lomax 2015; Oxfam Novib 2015). Yet, on the other hand, analysts have criticized this mechanism for being ineffective and imperfect (Chao 2013; Macdonald and Balaton-Chrimes 2016).

Addressing this debate, this study engages in the broadest ever assessment of the use and effectiveness of the RSPO’s conflict resolution mechanism. While a number of scholars have studied the RSPO CRM previously (e.g.

Khainur and Hermawansyah 2010; Köhne 2014; Silva-Castañeda 2015; Wielga and Harrison 2021), their studies have relied either on a single case or on a few cases. Their limited generalizability as a result of this approach has thus far prevented a more general assessment. In this study, we not only incorporate data on a large number of cases, but we also attempt to engage in a more wide-ranging review, considering not just the outcomes of these cases but also the accessibility and the actual process of this conflict resolution mechanism. We do, however, limit our focus to cases from Indonesia for the simple reason that the large dataset of cases that we employ in this paper is not available for other countries. Also, the database of the RSPO shows that Indonesia is the country with the most significant number of cases (85) reported to the RSPO CRM since 2009. In our own database of 150 cases, we found 17 cases in which communities tried to solve a conflict by approaching the RSPO—of which 11 ended up being accepted and registered (and, therefore, are also part of the 85 cases of the database of the RSPO that we used).

Such a broad assessment of the use and the effectiveness of the RSPO CRM is vital given the broad support and high expectations among international and national agencies of its capacity to resolve conflicts between communities and oil palm plantations. By highlighting and examining how communities try to access and use this mechanism, our aim is not only to provide a ‘reality check’ regarding this mechanism but also to contribute to the wider debate on how communities can seek access to justice when engaged in intractable conflicts with palm oil companies.

Our central question is: To what extent does the RSPO conflict resolution mechanism offer an accessible, fair, and effective tool for communities in Indonesia to resolve conflicts with companies? To address this question, we employ three data sources. First, we used our own database of 150 conflicts between communities and companies in Indonesia, including 64 companies that are members of the RSPO—of which 11 ended up being taken up by the RSPO. Second, we used RSPO ‘case tracker’, which documents RSPO’s handling of 85 complaints against companies in Indonesia in the period 2009–2020 (including these 11 cases we documented in more detail). Third, we conducted in-depth fieldwork on three conflicts involving RSPO companies to identify reasons for successful and failed conflict resolution.

This article is organized as follows. The next section outlines three key elements and criteria of our analytical framework. The third section contains a description of the research method used. In the fourth section we briefly describe the different components and procedures of the RSPO CRM. The fifth section presents the results of our assessment of this conflict resolution mechanism in terms of accessibility,

procedural justice, and outcomes. We end with a conclusion and discussion.

Framework for assessing the RSPO conflict resolution mechanism

To evaluate conflict resolution mechanisms, many different criteria can be used (Church and Shouldice 2003; Stepanova et al. 2020). Given our focus on the CRM of the RSPO as an alternative, non-judicial mechanism for communities, we have drawn in particular on the literature on the assessment of alternative dispute resolution approaches (Benda-Beckmann 1981; Whytock 2011). We distinguish three criteria for assessing RSPO's conflict resolution mechanism: accessibility, procedural justice, and outcomes. Drawing from both academic and practitioner contributions, we have operationalized these criteria as follows.

The effectiveness of a conflict resolution mechanism like that used by the RSPO depends firstly on its accessibility, that is, the ease with which disputants can succeed in getting this mechanism to take up their grievances. An awareness of the importance of 'access to justice' has stimulated both development practitioners (such as Namati, a movement of grassroots advocates who give people the power to understand, use, and shape the laws that affect them) and academics to address the obstacles people face when trying to use formal or informal justice systems (Anderson 2003; van de Meene and van Rooij 2008; Satterthwaite and Dhital 2019). Aiming to guide its programs in this field, the United Nations Development Program defined access to justice as "the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards" (UNDP 2005, p. 5). In a different but related approach, Bedner and Vel (2010) proposed that we should study the accessibility of justice systems in terms of "the ability [of people] to make their grievances be listened to and to obtain proper treatment of their grievances" (p. 7). This approach has prompted scholars to pay particular attention to the obstacles that people face—varying from financial (costs) and logistical (e.g. travel distance) to procedural (e.g. procedural complexity, required legal knowledge)—when trying to make their grievances heard (Anderson 2003). Lack of power to overcome these obstacles reduces accessibility to conflict resolution through justice systems (Arnstein 1969). In this light, we will pay particular attention to the extent to which rural Indonesians face such obstacles when trying to bring their grievances to the attention of the RSPO.

Our second evaluative criterion to assess the RSPO CRM concerns the 'procedural justice' of conflict

resolution. Social psychologists (e.g. Lind and Tyler 1988) have long recognized that people not only care about outcomes but also about the decision-making process itself. They introduced the term 'procedural justice' to describe fairness in political processes where actors deliberate and negotiate decisions (Lind and Tyler 1988), including environmental decisions in natural resource management and dispute resolution (McDermott et al. 2013). Biases often creep into the rules guiding conflict resolution mechanisms, and the resolution strategy (Benda-Beckmann 1981, pp. 117–145; Gent and Shannon 2011, p. 125), creating a situation where the mechanism favors one side of the dispute (see also Kydd, 2003). Hence an assessment of the fairness of the land conflict resolution mechanism is crucial as the decision-making in this process is likely to have implications for the perceived legitimacy and effectiveness of the outcomes. Some scholars (Lukasiewicz and Baldwin 2017; Paavola 2007) have suggested that the study of procedural justice should focus on interests included in the decision-making process, applicable rules, and mechanisms to ensure an unbiased process. While we cannot engage in an extensive exploration of the RSPO's procedures (but see Macdonald and Ballaton-Chrimes 2016), we will use our detailed case studies of actual conflict resolution processes to assess its procedural justice: we explore the extent to which the RSPO's procedures are fair for communities. The perception of a fair decision-making process (procedural justice) can help build trust, legitimacy, and satisfaction with conflict resolution outcomes (Lind and Tyler 1988; Törnblom and Vermunt 2007).

Our third evaluative criterion concerns the outcomes of the conflict resolution process. Here we build on previous studies of RSPO dispute settlements. Dhialulhaq et al. (2014) and Afrizal (2015) studied outcomes in terms of whether disputing parties reached implementable agreements, while Köhne (2014) studied whether outcomes actually benefitted the affected community. Chao et al. (2012), Silva-Castañeda (2015), and Wielga and Harrison (2021) focused particularly on whether the RSPO succeeded in strengthening the land rights of communities. Indeed, the assessment of the outcomes is not a straightforward matter because of the complex trajectories of these conflicts (they rarely really 'end') and because such an assessment invariably involves subjective assessments about the fairness and beneficial nature of the outcomes. To address these challenges, we have brought together the different approaches of these earlier studies by engaging in a multi-dimensional study of outcomes. We, therefore, look at: (1) the outcomes of the conflict resolution process as reported by the RSPO (using the data from the RSPO's case tracker); (2) the extent to which the companies in question actually implemented the reported agreements and whether this benefitted communities (using our

detailed study of some of these cases); and (3) the subjective satisfaction of villagers with the outcomes (using our interviews).

Research method

To address the aims and research questions above, we gathered both qualitative and quantitative material on the trajectories and outcomes of conflicts and palm oil companies, employing three different research methods. First, as part of our broader study on palm oil conflict (Berenschot et al. 2021), we employed a detailed documentation of the trajectories of 150 conflicts between rural communities and palm oil companies in four Indonesian provinces: West Sumatra, Riau, West Kalimantan and Central Kalimantan. These cases were selected largely randomly from a long list of over 500 conflicts identified by our NGO partners. In developing this database, a team of, in total, 19 researchers traced the emergence, chronology and outcomes of the 150 conflicts by collecting written sources (newspaper articles, online sources, government and NGO documents and academic studies) as well as engaging in total 283 interviews with community leaders. As part of these efforts, we used the complete newspaper archives of four regional newspapers—Padang Express, Pontianak Pos, Kalteng Pos and Tribun Pekanbaru—for the years 2010–2019. We used these materials to write 150 extensive ‘case reports’ of each conflict case on the basis of a shared template. We subsequently coded the trajectories of the conflicts in terms of key characteristics—such as types of grievances, types of conflict resolution mechanism used, types and number of protests, and their outcomes—to arrive at some of the descriptive statistics presented in this paper.

We found out that a total of 64 RSPO member companies were involved in the 150 conflicts. Of the 64 conflicts involving RSPO member companies, we identified 17 conflicts where communities tried to convey their grievances to the RSPO’s conflict resolution mechanism. 11 of them successfully registered their complaints. In this paper, we particularly focus on the ways in which the RSPO has dealt with the request of communities to handle their conflict with RSPO member companies in these 11 cases.

Second, we made use of RSPO’s database—known as ‘case tracker’ (RSPO, n.d.a)—which provides extensive information about the grievances, handling and outcomes of all the 85 Indonesian cases reported to the RSPO in the period 2009–2020. We examined the chronology of the complaint, including the complaint letters that villagers (and their NGOs) submitted to the RSPO, and then coded and counted them in terms of characteristics of the complainant, complaints, status of the complaints, support from NGO’s, the complaint handling process and the outcomes. We used

this coding to produce descriptive statistics about the process and outcomes of the conflicts handled by RSPO’s CRM.

Third, we conducted 6 months of fieldwork, with extensive interviews, on three conflicts involving RSPO companies. We conducted this in-depth field research to identify mechanisms leading to (and reasons for) both failed and successful instances of conflict resolution: PT Mustika Sembuluh (Central Kalimantan) is a case where registration failed, the PT BAS case (Central Kalimantan) involves failures at the implementation stage, while the conflict between PT PHP1 and the Kapa community is an example of successful conflict resolution.

Components and procedures of the RSPO conflict resolution mechanism

The RSPO CRM is set up for handling complaints from individuals and communities affected by its members’ operations in violation of the RSPO’s principles and criteria for sustainable palm oil (Alam and Krishnan 2016). In its complaints and appeals procedure (RSPO 2017c) the RSPO has established rules for handling complaints. A guideline on how complainants can submit their complaints to the RSPO was also produced both in Bahasa Indonesia and English, and made accessible through the RSPO website (RSPO n.d.b).

The complaints system has three key components: a Secretariat, Complaint Panel (CP), and Dispute Settlement Facility (DSF). The Secretariat functions mainly as the complaints coordinator. It is the focal point for receiving and classifying complaints, and facilitating and managing the flow of the conflict resolution process from the complaint intake until the file is closed. The CP deliberates and decides on all complaint cases (Alam and Krishnan 2016). Therefore, the CP is the vital decision-maker in the complaints system (Macdonald and Balaton-Chrimes 2016, p. 5). It consists of ordinary, affiliate and honorary members (from different constituencies of the RSPO, including oil palm growers, NGOs and financial institutions). Authorized by the RSPO Executive Board (Chao 2013, p. 16), the CP makes decisions (including provisional ones) and orders the company to implement its final decision. The CP’s final decisions are called the CP’s directives. The DSF’s role is to arrange mediation if both parties opt for mediation. However, it does not actually mediate; it merely administers the process. In RSPO terms, the DSF is a ‘mediation channel’ to resolve conflicts. The DSF was originally set up to deal with land-based disputes but it has also become a forum to deal with other types of issues such as the clearing of areas with High Conservation Values (HCVs) and the related issue of compensation or remediation, as well as labor rights, human rights, company commitments to communities, and

environmental concerns. The DSF may hire a professional mediator agreed on by the disputing parties to settle and find a solution to their disputes. The RSPO's complaints system also allows a complainant and a respondent (that is, the targeted oil palm plantation company) to resolve their dispute bilaterally through negotiation.

The RSPO CRM processes complaints in three stages. First, the RSPO Secretariat processes and manages complaints and conducts a preliminary diagnosis to determine whether a complaint falls within the jurisdiction of the RSPO. If accepted, the Secretariat notifies the complainant and the respondent of the receipt of the complaint. The company in question is required to respond to the allegations within 14 days. After receiving responses from the company, the CP takes an interim decision on whether the RSPO standard is being violated. The CP gives the complainant and respondent the right to appeal against the interim decision within a stipulated time. The process may stop here or move to the next stage depending on the response of the two parties.

The RSPO conflict resolution mechanism is non-judicial. The mechanism is governed by prescribed written rules (RSPO n.d.c) that direct the RSPO to play adjudication and facilitation roles (Wielga and Harrison 2021, p.9). From analyzing the letters of the Secretariat to the complainants, it can be seen that the CP makes a decision. If one of the parties objects to the decision, the CP offers two options for settlement to the complainant and respondent: settlement through the DSF or bilateral engagement. Both parties should agree on the choice of the settlement method.

Results

Accessibility

Our first evaluative criterion is about the accessibility of the mechanism. Given its ambitious aims, how often do communities rely on the mechanism to find a remedy for their grievances? In our database of 150 conflict cases, 64 conflicts involve RSPO member companies. These are, in other words, cases that local people could potentially bring to the RSPO. Yet, we found that the community wished to send a complaint to the RSPO only in 17 conflicts, that is, 26.6% of the total of the 64 conflicts involving RSPO members companies. However, in six of these 17 cases the community failed to submit a complaint; in only 11 cases did the community actually successfully report their complaint to the RSPO. The records of the RSPO (as kept in their case tracker) show that a total of 85 Indonesian cases were reported to the RSPO between 2009 and the end of 2020. This represents a relatively small portion of the total number of conflicts that emerged during this period in Indonesia. In

the year 2017 alone, Konsorsium Pembaruan Agraria (KPA) recorded 208 ongoing plantation conflicts, the majority of which were conflicts over land conversion due to oil palm expansion (KPA 2017).

A major reason for this limited usage of RSPO's mechanism is the complexities of registering a case. A complainant must fill out an online form to register a case, or download a form to be sent to the RSPO Secretariat. The complainant must also compose a complaint letter, detailing the specific violation of the RSPO's principles and criteria committed by an RSPO member. Furthermore, the complainant must provide scanned documents of evidence in support of the complaint (RSPO 2017b). We found that quite a number of communities stumble at this first hurdle: As noted above, out of the 17 identified cases in which a community tried to submit a complaint to the RSPO, villagers failed to register their complaint in the RSPO complaint system in six cases. They struggled to meet all the procedural and informational requirements of the RSPO.

In our study of 150 conflicts in Indonesia, we found that rural Indonesians have difficulties with the complexity of the RSPO CRM procedures and tend to prefer other mechanisms (Berenschot et al. 2022): they are more likely to rely on informal mediation provided by local politicians and bureaucrats (109 cases, or 73% of our total of 150 conflict cases), or to a lesser extent Indonesia's courts (40 cases, or 27% of our cases).

To further explore the reasons for this relative unpopularity of the RSPO's conflict resolution mechanism, let us briefly discuss two of the 11 cases in which communities eventually submitted a complaint to the RSPO in greater depth. The first example concerns the conflict between villagers of Pondok Damar and PT. Mustika Sembuluh (Wilmar Group) in Central Kalimantan. Among other grievances, the community complained that the company had not provided the joint-venture scheme (*kebun plasma*) promised to them when they gave up their land. They wanted the company to return 600 ha of land belonging to community members that the company had obtained without their consent. Since 2008 they had organized various demonstrations, both at the plantation and in front of the offices of the local government and parliament. After direct negotiations with company representatives had failed to produce any results, in 2013 the community managed to convince local parliamentarians to chair various mediation sessions. As these sessions also proved unsuccessful, in 2016 the leaders of the Pondok Damar community attempted to use the RSPO's CRM. A letter of complaint was sent to the RSPO's Secretariat in July 2016. The use of the RSPO's CRM was possible due to help from NGOs. The community asked three supporting NGOs (Progress, Save Our Borneo, and Walhi Kalteng) for help in reporting their case to the RSPO. NGO Progress and the leader of Pondok Damar farmers' organization acted as

representatives: They are called complainants by RSPO. In March 2017, the RSPO's Secretariat sent a letter to both the farmers' organization leader and Progress to ask for the GPS coordinates of the claimed land and a letter attesting proof of the formal registration of Pondok Damar farmers' organization. The farmers' organization was not formally registered and felt that registration with a registered notary (which can be complex and costly to obtain in such a remote area) was not needed. Consequently, the Pondok Damar community did not meet the 30 days deadline for submitting the registration documents and the GPS coordinates of the claimed land, after which the RSPO decided to dismiss the case and close the file.

Another illustration from Central Kalimantan concerns the conflict between villagers in Biru Maju and PT BAS. In this case the villagers wanted the company to return land to them. They claimed that the company had taken the land without consent and (largely) without compensation, despite some of this land having rubber plantations. Villagers also complained about pollution. They started protesting in 2011. They organized several demonstrations, and engaged in bilateral negotiations with the company. After obtaining only minor concessions (some villagers did get monetary compensation), the villagers asked local government officials to mediate in the conflict. A fact-finding team of government officials sided with the community and recommended that PT BAS should halt its activities until the company had resolved the conflict. As the company did not implement this recommendation, many villagers decided to express their discontent by harvesting oil palm bunches from trees on their land. This protest led to the arrests of two villagers, who were subsequently sentenced to 6 and 18 months in prison. The idea of seeking justice through the RSPO CRM came later, following the suggestion of Sawit Watch. Based on participatory mapping with the community to document their land claims, Sawit Watch and Walhi Kalimantan Tengah filed a complaint with the RSPO CRM on behalf of the community at the end of 2012.

What these two cases illustrate first of all is that the use of the RSPO's complaint mechanism is not the first option that communities consider to address a conflict with a company. In fact, we found that it was not uncommon for a conflict to last more than 10 years, whereby the RSPO CRM was only considered as a final option following a series of attempts to resolve the conflict. The dominant pattern was that communities started with demonstrations, then moved on to bilateral negotiations and third-party mediation, only considering the RSPO CRM as a late option. Second, these two cases and many others show that that rural Indonesians find RSPO's procedures both intimidating and challenging to navigate. Some of the procedural requirements—such as the requirement mentioned above for community organizations to be formally registered—negatively affect the accessibility

Table 1 Number of cases per type of complainant

Type of complainant	Number of cases
Confidential complainants*	8
Individual villager	6
Labor/farmers' union	9
Labor/farmers' union with NGO	6
Representative of the local community	4
Representative of the local community with NGO	5
NGO	43
RSPO Secretariat	4
<i>Total</i>	85

*The complainant requested confidentiality when filing their complaints with the RSPO

Authors' compilation based on RSPO case tracker

of RSPO's mechanism. Out of the 85 cases documented in the RSPO case tracker, NGOs were actively involved in 63 cases (74.1%). As Table 1 shows, in most cases an NGO actually ends up filing the complaint on behalf of villagers: in 48 of the 85 cases in the RSPO's case tracker, NGOs are among the main complainants. Villagers are rarely the sole complainant: individuals submitted a complaint in six cases and a community representative in four other cases (see Table 1).

Our data base of 150 conflicts shows us that in many cases communities obtained support from NGOs: in 94 cases (that is: 62.7%), communities received some support from an NGO. This support was very modest and limited to incorporating communities into the supporting NGO's networks, informing them about community rights to land, and organizational tasks. Extensive NGO support to help and enable communities to deal with conflicts with companies is rare (Berenschot et al. 2022). These two observations—the preference for alternative mechanisms and the relative absence of extensive NGO support—provide explanations for our finding that only about 17.2% of 64 conflicts involving RSPO companies from 150 conflicts end up being reported to the RSPO.

To conclude, access to RSPO CRM is hard for local people. RSPO CRM's administrative requirements constrain it. Under these conditions, they need assistance from external actors, such as NGO activists, to register their case and follow the process.

Procedural justice

For our assessment of the complaints handling procedure, we analyzed how the procedure works out in practice. To start with, based on the RSPO case tracker, we noted that

Table 2 Reasons for dismissal of community complaints

Reasons	Number
Lack of response to the Secretariat's request	6
Failure to appeal	9
Beyond RSPO jurisdiction	1
No breach of RSPO regulations	6
Other/unknown	4
<i>Total</i>	26

CP's decision letters

30.1% of all community grievances reported to the RSPO ended up being dismissed. To interpret this number, we should bear in mind that the cases reported to the RSPO are relatively well documented. Table 2 provides an overview of the different reasons for dismissing the claims as stated in the CP's decision letter. The table highlights two general, recurrent challenges that communities face when submitting a complaint to the RSPO. The first problem concerns administrative requirements: quite often (in six cases) a community's complaint is dismissed because communities (or their representatives) fail to respond to requests to provide documents within the stipulated timeline. This administrative requirement is what led to the dismissal of the complaints against PT. Mustika Sembuluh: when the complainants did not provide GPS coordinates and a notary deed of establishment of the community organization (*akta notaris*), the case was promptly dismissed and considered closed.

A second challenge is how to lodge an appeal. As mentioned earlier, the appeal is not a requirement but an opportunity provided by the RSPO for either party to challenge the CP's interim decision. The appeal against the CP's interim decision is critical for the process in the RSPO CRM as it is necessary for a complaint to proceed to the next stage if communities disagree with the interim decision. In the nine dismissed cases where the CP's interim decision involved a dismissal of community grievances, the CP invited the complainant to appeal against the CP's interim decision. In these nine cases the complainants failed to launch an appeal within 60 days and, consequently, the Secretariat closed the case.

Yet without launching an appeal, the community cannot convey its objections to company claims to the RSPO. When communities submit their grievances, the Secretariat requests a response from the company regarding the allegations and items of evidence presented by the complainants. But the Secretariat does not request a response from the community regarding the claims and evidence provided by the company, nor does the Secretariat itself investigate the veracity of these claims. The reply from the company is in most cases the main basis for the CP's interim decision.

To illustrate the difficulties communities face with the complaints handling procedure, let us briefly focus on two

cases. The first is a conflict between 12 village communities and PT Bumitama Gunajaya Agro (BGA) in Central Kalimantan about *plasma* plantations. In this case, PT BGA proposed a *plasma* agreement with landowners in 12 villages and one sub-village under the KKPA (cooperative) scheme. However, many villagers disagreed with the proposal of entering into the *plasma* scheme agreement with the company. PT BGA found an alternative route and, without consulting with the actual landowners, it entered into a *plasma* agreement with the heads of the 12 villages and one sub-village. Afterwards the company cleared the land, which included the land of several villagers who had not entered into any agreement. In May 2016, about 15 of these villagers (assisted by NGO Sawit Watch) filed a complaint with the RSPO. After a long process of investigation and internal consultation by the RSPO CRM, making use only of responses from the company, the CP decided in March 2020 to dismiss the case. The argument of the CP was that the land being claimed is the *plasma* of the communities through the *plasma* scheme, and therefore not under the control of the company. Therefore, the CP concluded that regarding the *plasma* complaint, the dispute was an internal dispute within the cooperative, between the management and the members, and not a dispute between the community and the company. The RSPO Secretariat sent an interim decision to the complainants and suggested they should appeal if they were not satisfied with the decision.

The second example is drawn from the case of the conflict between the Desa Kapuk community and PT BSK II in Central Kalimantan about financial compensation. In July 2016, the community of Desa Kapuk village (assisted by NGO Progress) filed a complaint with the RSPO that PT Bumi Sawit Kencana II (BSK II) had not yet paid financial compensation for 78 ha of land owned by villagers. In March 2017, the RSPO Secretariat sent a letter to the complainant with the request to provide all items of evidence and relevant documents within 30 days. Then the community sent GPS coordinates and the Secretariat shared them with the company for their review. Based on the company's responses, CP concluded the complaint against PT BSK II was not well-founded because the compensation payment had been made to the local community in 2006 and 2007, and also recorded in several collective statement letters from the local community. After a given time, the complainant did not appeal, so the CP decided to dismiss the complaint. It seems that the CP did not question the company's response at all and it did not verify its claims. To counter the community's allegation, the company provided evidence that the compensation had been paid collectively. However, there were many unresolved issues with the distribution to individual villagers, and therefore the conflict was certainly not over. The company had paid a 'collective' compensation to one

or two ‘coordinators’ or ‘community leaders’. The problem, however, is that this was done without safeguards to ensure that this compensation was distributed to all the community members. Rather than doing the investigation itself, the CP told the complainant that to refute PT BSK II’s claims, it had to launch an appeal.

This tendency of the Complaint Panel to base its interim decision on the company’s response, rather than a comprehensive investigation of the complainants’ allegations and respondent’s objections, complicates the process for villagers. As a result, the RSPO conflict handling procedure does not offer a level playing field to communities in their conflicts with companies and their search for access to justice: before the CP reaches its interim decision, the company has had the opportunity to respond to accusations by communities, but communities have not had a similar opportunity to respond to claims made by the company. Of the 17 cases that we identified, in which a community submitted a complaint to the RSPO, we found that villagers only appealed against the CP’s provisional decision in the Kapa case. Assistance from the NGO Forest Peoples Program (FFP) allowed the traditional Kapa leaders to appeal against the CP’s provisional decision that their allegations were unfounded. FFP’s staff helped traditional Kapa leaders to understand the CP’s interim decree, find weaknesses in the CP’s arguments, prepare an appeal letter, and send it to the RSPO Secretariat. Without such support, it would have been difficult for the traditional Kapa leaders to appeal because they had to understand the CP’s letters and formulate arguments to refute CP’s decision. This appeal letter with strong arguments prompted the RSPO Secretariat to proceed to the next stage: a study by an independent consultant to prove the status of customary rights to the land in question, and facilitation of mediation by the DSF.

Another procedural criterion of the RSPO’s conflict resolution mechanism causing difficulty for villagers (and helping companies) concerns the requirement that villagers’ organizations need to prove their formal legality by having a notary-certified deed of establishment and by being registered with the local government. Failure to submit the requested documents results in a dismissal of the villagers’ complaints. So, while the RSPO stipulates that villagers should be allowed to appoint their representatives (Principle 4, Criteria 4.4, indicator 4.4.5, C), the required formal legality of this representation (as in the case of the conflict between Desa Pondok Damar and PT Mustika Sembuluh in Central Kalimantan) constitutes a considerable obstacle.

To illustrate such observations, it is useful to compare such cases in which the RSPO dismissed a complaint due to failure on the part of villagers to submit the required documents with a case where a company failed to provide requested information. In the case filed by communities in Sanggau (West Kalimantan) against PT MAS (a company

owned by Sime Darby group at that time), the RSPO commissioned an independent legal expert to conduct a review. As a follow-up to this legal review, the Secretariat asked the company in May 2019 to provide evidence of having obtained permission from community members—that is, the letter of handover of land (*surat penyerahan lahan*) from the community members to PT MAS. In response to repeated requests from the RSPO, the company sent several excuses for not providing such evidence, for example that the document was with the government (which is surprising because such a document is needed by the company in case of land acquisition). The RSPO replied politely to all these excuses but in August 2019 issued an ultimatum: a letter was sent to PT MAS that included a ‘threat’ that any failure on the company’s part to provide such document may result in the CP having to exercise its discretion under the powers vested in it by the Complaints & Appeals Procedures 2017 (RSPO 2019). However, even after receiving such a strongly worded letter from the RSPO, the company responded that the requested document had become the property of the Government of Indonesia (as it became the basis for issuing HGU) and had been accorded a confidential status (PT MAS 2019). A remarkable aspect of this example is the lack of teeth of the RSPO in such a situation where the company declined to comply with the RSPO’s request—which contrasts starkly with the prompt dismissal of cases when communities fail to provide a requested document. In this case, the RSPO continued with the legal review even though it lacked a key document from the company. Furthermore, while the conflict remained unresolved, the company managed to sell the plantation to another company and much of the progress had to start anew. This illustrates another weakness of the RSPO in dealing with companies’ behavior—it struggles to deal with conflicts where there is a change of ownership. In short, despite repeated requests and numerous letters and the repeated refusal to provide the requested documentation, there were no severe consequences for the company. At the closing of our field work (in March 2020), the case was still pending at the RSPO’s Secretariat, almost eight years after the complaint was submitted in October 2012.

The case of PT MAS leaves the impression of double standards and biased procedures: when communities fail to provide requested information as required, their complaint is promptly dismissed, but when companies fail to do so, they not only get much more time to provide this information but there are also no consequences if they do not comply. This is particularly jarring given the fact that the status quo benefits companies: a delay in resolving a complaint is always to the benefit of companies because their operations are not affected by an ongoing dispute, while for communities any delay in resolving their claims to land or compensation has a significant effect on their welfare.

In short, from the criteria of the complaint handling procedure, the RSPO CRM process makes it easier for companies than villagers. As presented below, this somewhat unfair process resulted in companies reaping the most positive results from RSPO CRM.

Table 3 Complaints reported to RSPO

Type of complaints	Number of complaints	%
Land right	51	37
•Land taken without consent	27	19.6
•Inadequate land compensation	11	8
•Destruction of valuable trees	13	9.4
Benefit sharing:	42	30.4
•Plasma	25	18.1
•CSR contribution	17	12.3
Labor conditions	15	10.9
Environmental impacts	11	8
Administrative:	9	6.5
•Inadequate licensing process by company	5	3.5
•The company's report did not meet RSPO standards on HCV studies and audits**	4	3
Others:	6	4.3
Total	138*	100

*Some cases involved multiple complaints. We recorded 138 complaints from 85 conflict cases

**This is about the poor quality of the company's report concerning the HCV study and audit

Authors' compilation based on RSPO case tracker

Outcomes

The third dimension of our assessment concerns the actual outcomes of the conflict resolution process. Before presenting the outcomes, we demonstrate kind of grievances communities report to RSPO CRM. The results, presented in Table 3, show that the complaints concern four main issues: land rights, benefit sharing, labor conditions at plantations and the environmental impacts of plantations.

We recorded 138 complaints from 85 conflict cases submitted to the RSPO complaint system up to December 2020, when we finished our data collection. The largest category (37%) concerned with ignoring land rights. The next biggest category was complaints about the poor implementation of benefit-sharing arrangements (30.4%). This claim is related to land. Local people demanded *plasma* plantations (smallholder schemes) because they claimed the land used by oil palm plantation companies is their customary land. Similarly, local people requested corporate social responsibility funds from oil palm companies as the land used by the companies was situated within their village boundaries. Although we have categorized complaints about companies' licensing as administrative complaints, such complaints are also often related to land: these are complaints about a company reportedly operating without an HGU (business use permits).

To obtain a general overview of the outcomes of cases reported to the RSPO, we will start by examining the information the RSPO provided, using the documentation

Table 4 Outcomes of cases as reported in the RSPO's case tracker

Outcomes	Outcome for all complaints	Outcomes for land-related cases
In favor of complainants		
Membership of RSPO revoked	4	2
The company addressed grievance after CP issued a directive	12	9
The CP's directives are in the process of implementation	2	1
Sub-total	18	12
In favor of companies		
RSPO dismissed the complaint	26	16
The company withdrew its RSPO membership	2	0
The company changed ownership to non-RSPO member	3	2
The complainants withdrew their claims	3	3
Sub-total	34	21
In favor of both		
Bilateral agreement reached	13	7
Total	65	40

Cases that are still with the RSPO Secretariat as per November 2020 (20 cases) are excluded

Authors' compilation based on RSPO case tracker

available in the RSPO's case tracker to identify and count reported outcomes. The results are presented in Table 4.

At first glance, this overview contains considerable bright spots: it seems that in 20% (13 out of 65) of the cases reported to the RSPO, the conflict could be resolved through bilateral agreements. In another 18.5% (12 out of 65) of the cases, companies addressed the grievance after the RSPO's Complaint Panel issued a directive. Furthermore, in four cases, the RSPO's panel meted out its harshest punishment of actually expelling the company from the RSPO. However, it is disappointing that some companies seem to go to great lengths to avoid implementing RSPO's directives: in two cases companies withdrew their membership and in another three cases the ownership of the company was transferred.

Our analysis of 11 out of the 17 cases in which villagers wished to report a conflict to the RSPO, provides further detail. Four cases were dismissed by the RSPO CRM. Two cases were closed because the complainant lost the case or died. Two cases ended with a resolution but the directive was not implemented (or not properly). Only one case ended with a resolution that was implemented to the satisfaction of the local community (see Table 5).

Upon closer inspection, it seems that a more sobering reality lies behind these positive numbers. The RSPO sometimes declares a case closed when a bilateral agreement has been reached or when a company has promised to implement the CP's directive. While the RSPO Secretariat monitors such commitments through the Monitoring Unit (IMU), generally the monitoring is not done through field investigation but is based on the analysis of the company's reports of the implementation of the CP's directive over a limited six-month period. The result is that in many cases the RSPO's Secretariat declares a case closed before companies have actually acted on their promises. This limited monitoring has consequences: when, as part of our detailed study of three RSPO cases, we visited affected villages, we found that companies ended up avoiding fulfilling their promises or doing so only halfheartedly. To contribute to a better and more detailed understanding of how and why companies manage to avoid implementing the directives of RSPO's complaints panel, we will briefly present the PT BAS case.

The conflict between Biru Maju village (Central Kalimantan) and PT Buana Artha Sejahtera (BAS) offers an illustration of the importance of closely monitoring the implementation of bilateral agreements. After one year of community protests in 2011 and four years of the RSPO's attempts to resolve this case (starting in 2012), the village head of Biru Maju and PT BAS finally reached an agreement in April 2016. Yet, this agreement turned out to be difficult to implement. The agreement was that the company would keep the disputed land, but in return, the company would provide the community with land planted with oil palms at another location—so-called '*plasma* plots'. The parent

company of PT PT BAS, PT GAR, proudly announced the agreement on its website, stating that, "Following intense multi-stakeholder consultations (...) a formal agreement on resolving the land tenure issues between Biru Maju and PT (BAS) was signed on April 21, 2016" (GAR 2016). Citing this agreement, the RSPO Complaint Panel subsequently declared the case closed. However, it turned out that the *plasma* plots that the company promised to provide in return for the community land that was taken by the company were located in an area that was officially designated as forest. This land could not be converted into a plantation without obtaining a 'forest-release certificate' from the Ministry of Forestry. The company seemed unwilling or unable to apply for and obtain such a certificate. As a result, the promised plots of land have not been provided five years after the agreement was reached. The village head now regrets having entered into this agreement, while the interviewed NGO activists complained that he had not consulted them or his community when making this deal.

Out of the three cases we examined in greater depth through extensive field research, the bilateral agreement was actually implemented in only one case (PT PHP1). While we could only examine a relatively small number of cases, these findings do suggest that the RSPO frequently declares a case closed before a grievance is effectively addressed. It seems that the RSPO pays too little attention to the considerable challenges of implementing either the CP's directives or the bilateral agreements. Some companies even succeeded in using the RSPO's mechanism to leave the impression of engaging with the community without actually addressing their grievances.

Using actual outcomes as criteria, we have shown that the use of RSPO CRM by villagers and their accompanying NGOs to resolve conflicts over oil palm plantations, especially those related to land acquisition and plasma plantations, has not yielded satisfactory results for village communities.

Conclusion and discussion

In Indonesia, there are different types of conflict resolution forums that—at least in theory—can be used by rural communities to resolve conflicts with palm oil companies. Next to state courts, villagers can resort to facilitation and mediation by an NGO or by government officials (Afrizal 2015; Dhiaulhaq et al. 2018). Rural communities have used all these forums but their effectiveness, especially of state courts, in resolving oil palm conflicts has been very low (Berenschot et al. 2022). In such circumstances, the RSPO CRM can be an alternative for villagers seeking justice.

Using a variety of data sources and multiple criteria for assessing the RSPO Conflict Resolution Mechanism,

Table 5 Outcomes of 11 conflict cases reported to and accepted by the RSPO

No	The conflict	Outcomes
1	Communities of Kerunang supported by Transparansi untuk Keadilan (TuK) vs PT Mitra Austral Sejahtera (West Kalimantan)	The case is still with the RSPO. The complainants accuse PT Mitra Austral Sejahtera of not being transparent about land status and partnership agreements and ignoring customary land rights
2	Communities of Entapang supported by Transparansi untuk Keadilan (TuK) vs PT Mitra Austral Sejahtera (West Kalimantan)	The case is still with the RSPO. The complainants accuse PT Mitra Austral Sejahtera of not being transparent about land status and partnership agreements and ignoring customary land rights
3	Komunitas Desa Pondok Damar vs PT Mustika Sembuluh	The RSPO dismissed the case after the initial diagnosis because the complainant did not supply the supporting documents for the complaint as requested by the Secretariat
4	The community of Desa Kapuk Villages & NGO PROGRESS vs PT Bumi Sawit Kencana II	The RSPO dismissed the case. Based on analysis of a certification body's report, the CP decided that the complainant's allegation should be rejected and the complainant did not appeal against the decision
5	Confidential complainant vs PT Susantri Permai, PT Kapuas Maju Jaya, PT Dwie Warna Karya (a subsidiary of Genting Plantations Berhad)	The case was dismissed. The reason was that the CP concluded that the company did not commit the offences in the allegations made by the complainant based on the analysis of the company's certification body report. Neither party appealed against the CP's decision
6	Lembaga Bantuan Hukum Sakai Riau vs PT Ivo Mas Tunggal, a subsidiary of Golden Agri-Resources Ltd (in Riau)	The RSPO dismissed the case on the grounds that, after clarification from the report of a certification body, it concluded the complainant's allegation was unfounded. The complainant made no appeal
7	Link-Ar Borneo on behalf of Asam Besar community vs PT Harapan Sawit Lestari (a subsidiary of Cargill Incorporated)	The case is closed because the claimant lost: The claimant's allegation was declared false by the CP based on the company's certification body report analysis. The complainant could not appeal against the CP's decision because the CP judged that the NGO Link-Ar Borneo did not represent the residents
8	Kelompok Tani Penghijauan Tingang Menteng vs PT Kapuas Maju Jaya (a subsidiary of Genting Plantations Berhad)	The case is closed. The complaint was accepted, but in the process of initial diagnosis by the Secretariat, the complainant died. There was no replacement, so the CP decided to stop the process
9	Sawit Watch vs PT Bumitama Gumajaya Abadi	The case is closed. The CP recommends that both sides make bilateral efforts, and that the CP monitors the implementation. However, there are no results from the recommendations of the CP
10	Desa Biru Maju community vs PT. Buana Artha Sejahtera (Central Kalimantan)	The case is closed with a solution, but local people are not satisfied because it is proving challenging to implement the decision
11	Kapa community vs PT. Permata Hijau Pasaman I	The case is closed. Generally, traditional leaders are satisfied with the solution, which is being implemented successfully

Own fieldwork and RSPO case tracker

we conclude, however, that this mechanism in practice is biased in favor of companies and against the interests of communities in three different ways. First, we find that its' accessibility is poor for communities. The complexity of the procedures and the considerable information requirements are perceived or experienced by communities as a big hurdle that discourages and actually stops them from accessing the RSPO CRM. Second, the actual process of handling complaints does not involve equal treatment of communities and companies when there are failures to provide requested information: companies are given ample time and communities very little. Third, the RSPO's monitoring of outcomes is often inadequate, and in consequence, companies often get away with avoiding the implementation of both the RSPO's directives to companies and the companies' bilateral agreements with communities. These limitations reinforce the already weak land rights of rural communities in Indonesia.

The result of these three biases is that the actual capacity of the RSPO's mechanism to provide a meaningful remedy for rural communities' grievances remains very limited. This unequal access to justice is not very helpful in resolving conflicts between companies and communities over land, but rather sustains these conflicts. In conflicts with palm oil companies over land, communities often lack official documents that secure their rights and access to land. The requirement of these same official documents by the RSPO CRM means that the intractability of their conflict with palm oil companies is sustained. In this way, the communities lose the battle with companies both at the concession level and in the alternative non-judicial arena of the RSPO. Not surprisingly, the RSPO's CRM—which is hailed by the international community and showcased by the palm oil industry—is less popular as a conflict resolution mechanism among communities in Indonesia. Due to the experienced or perceived complexity of procedures and the considerable information requirements, communities prefer other mechanisms to try and resolve their conflicts with companies. For Indonesian communities, the CRM is not really an option. In a way, this means that their room for forum shopping is limited further, which again points to the very reason why the communities are in conflict with the companies, and the deeply rooted causes of these conflicts: they face a lack of secure land rights, as they lack proper documents, particularly documents that define their land rights in terms of Indonesian laws and regulations, and consequently have a weak bargaining position in dispute settlement.

These conclusions largely correspond with findings of earlier studies that have relied on a single case study or focused on one particular dimension to assess the RSPO's conflict resolution mechanism (Khainur and Hermawan-syah 2010; Köhne 2014; Silva-Castañeda 2015; Wielga and Harrison 2021). By engaging in a broad assessment involving a large number of conflicts, we have provided a

more generalizable and more comprehensive assessment of how and to what extent the design and functioning of this mechanism is biased against the interests of communities. In doing so, we proposed an evaluative framework involving three key dimensions—accessibility, procedural justice, and outcomes—that could be applied to evaluate other conflict resolution mechanisms elsewhere.

We conclude that there is a real risk of RSPO's CRM turning into a mere public relations exercise. Given the observed limited effectivity in resolving conflicts, there is a risk that the CRM will only serve the palm oil industry to showcase its commitment to resolving conflicts and improve its public image, without actually supporting many communities to address their grievances. We wrote this article also with the hope of convincing the RSPO and its members to strengthen their efforts to ensure that their lofty words will actually translate into more effective results. We distinguish two ways in which the RSPO CRM could become more meaningful for communities as a remedy for rural communities' grievances. The first way is a reform of the RSPO procedures: the RSPO could take the difficulties of communities in accessing the RSPO as a starting point to improve accessibility for communities and to put procedural justice into practice. For instance, the RSPO should not require claimants to be legal entities when receiving complaints from the community. The second way is to strengthen the capabilities of communities and supporting NGOs to access and use the RSPO CRM. Without significant support from professional NGOs, communities struggle to access this mechanism. The RSPO, for which social and environmental NGOs are two key constituencies, could increase the chance that a decision of the RSPO CRM is actually implemented by formulating bilateral engagement guidelines that assign key roles to NGOs in monitoring. In line with other studies on the importance of independent monitoring (Oya et al. 2018), we conclude that a more extensive effort to monitor the actual implementation of RSPO CRM's decisions is needed.

Due to the insecure rights and access to land of rural communities in Indonesia, the challenges facing communities that are in conflict with palm oil companies are enormous, if not intractable. A route towards establishing equal access to justice through the RSPO CRM can only begin when this non-judicial body recognizes that a lack of official documents and secure rights and access to land is one of the root causes of the conflict between communities and palm oil companies.

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