

RSPO

Roundtable on Sustainable Palm Oil

ROUNDTABLE MEETING ON SUSTAINABLE PALM OIL



SUSTAINABILITY
WHAT'S NEXT?
FPIC!



Forest
Peoples
Programme



Revising the RSPO Guide on **Free, Prior and Informed Consent** conclusions and questions

Marcus Colchester and Sophie Chao

Forest Peoples Programme

RT12, Kuala Lumpur, 18th November 2014



Forest
Peoples
Programme

Halting 'land grabs' by respecting land rights



Tongod, Sabah, August 2013

Land disputes over plantations not new

European tobacco and later rubber planters in Indonesia and Malaysia encountered long term resistance to the takeover of customary lands:

'it will not be believed by a single native that land which has fallen into the hands of those companies has been given with the consent of the uleebalang, unless with persuasion from government officials'

Abdul Latif, 17 November 1920.

(Emphasis added. Cited in Anthony Reid, 2014 (1979), *Blood of the People: Revolution and the End of Traditional Rule in Northern Sumatra*, NUS Press, Singapore: 53)

Process: why revise the Guide?

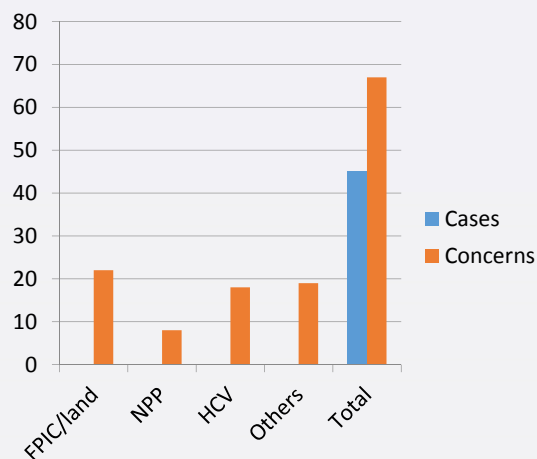
- P&C Revision: requirements for FPIC and related provisions were strengthened
- Global thinking about FPIC has evolved: many other new Guides
- RSPO members (producers and NGOs) have learned a lot since 2007
- Some companies have adopted new and relevant SOPs
- NGOs have made assessments showing up some serious problems
- Auditors and consultants have learned lessons about how to assess FPIC
- Complaints Panel has received many complaints related to lands and FPIC

Revision process

- Board passed task to Human Rights Working Group after RT 11
- HRWG asked to include lessons from participatory ESIAs
- FPP contracted by Secretariat to revise Guide
- Literature review
- Assemble materials from companies, auditors, NGOs and communities
- Review revised P&C carefully
- Learn lessons from the complaints
- Two workshops in Kuala Lumpur and Jakarta to review Discussion Paper
- Translations of Guides & Discussion Paper: circulated twice for comments
- Final text edited up and submitted to Board

Main concerns of complainants

- By July 2014 there had been 45 formal complaints made to RSPO of violations of the RSPO standards
- These include 67 separately identified concerns
- Main concerns are about land and FPIC (22), High Conservation Values (18) and lack of adherence to NPP (8) (which is also about land, FPIC and HCV)
- In other words concerns about improper land allocation make up almost three quarters of the issues raised in complaints



Source: adapted from Jonas and Lanash 2014

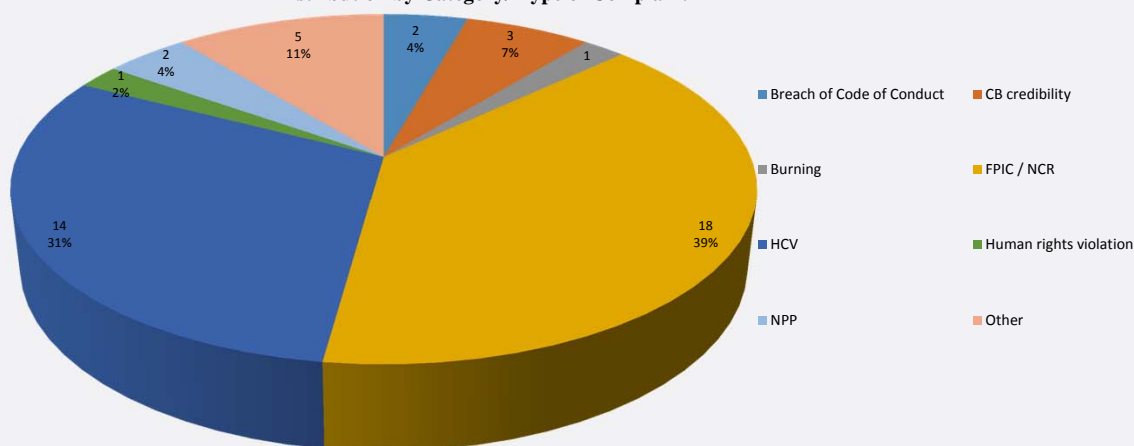
RSPO

Roundtable on Sustainable Palm Oil

Key Statistics for RSPO Complaints



Distribution by Category/ Type of Complaint



Summary as of April 2014

Alleged non-compliances in complaints

- Customary land rights ignored
 - No process to allow self-chosen representatives
 - No study of community land tenure
 - No participatory mapping
 - No negotiated agreements (no 'consent')
 - Legal non-compliance: eg no SEIAs before permitting (not 'prior')
 - Lack of information sharing (not 'informed')
 - No participation in HCV assessments
 - HCV 5 areas not identified
 - Management of HCV areas not agreed (no consent)
 - Coercive use of security forces (not free)
- Source: Review of publicly available documentation on complaints. Note: data are partial as RSPO website does not provide much information on many complaints

Addressing complaints: retro-fitting FPIC

- Useful lessons for what comprises an adequate process to recognise right to FPIC comes from the way companies have sought to address complaints
 - It is our observation that more progress has been made in resolving land and FPIC concerns using **NPP** or in early phases of plantation establishment than in more long standing cases
 - NPP is thus to be valued
 - Prior consent saves everyone trouble
- Why is it harder to address older land disputes?**
- Breakdown of trust
 - Entrenched divisions within communities
 - Company feels investments are in jeopardy

Improved outcomes for communities

- Renegotiations have led to for example:
 - improved smallholder allocations for communities (Pangean, Riau, Wilmar and Sajingan Kecil, Sambas, Wilmar)
 - Compensation for lost lands (numerous cases)
 - Restitution of lands (CAO, Senuju, Sambas, Wilmar)
 - Payment of compensation for damages (CAO, Senuju, Sambas)
 - Establishment of community trusts (Sime Darby, Liberia)

Lessons from participatory ESIA's

- Agree the form of participation
- Establish base-lines against which impacts are measured
- Assess positive and negative impacts: **share this information**
- Develop 'mitigation hierarchy' for dealing with negative impacts (**make this part of negotiations**)
 - Avoid impacts
 - Find alternatives
 - Minimise impacts
 - Compensate for damages
- What happens when governments discourage participation?

Key points in New Guide

- Self representation: freely chosen representatives and inclusive processes
- Identifying rights to lands and resources
 - land tenure surveys, participatory mapping or community mapping
 - 'Users' and not just legal and customary owners
- Making sure information is shared (two way process)
 - ESIA's and HCVAs only one source
- Agreeing how consent will be articulated
 - Consent is a community decision and not subject to individual 'veto'
 - Avoiding coercive circumstances
- How prior is 'prior': how deal with complex permitting sequences? NIs.
- Iterative negotiations to build community consensus and explore options between company and community
- Implementing agreements, Monitoring and Grievances
- Resolving conflicts and retrofitting FPIC

The New Guide: too big or too small?

Conflicting demands

- Deal with the real complexity of situations in many countries, societies
- Come out with **simple and clear** guidance on what to do to comply with RSPO
- Companies want check lists but communities want voice and flexibility
- Detailed text complemented by diagrams and boxes with lists of issues to consider:
 - Full listing of P&C&I and details of what has changed in P&C (Annex 1)
 - Aim is to provide something that can be developed as SOPs without taking away community initiative
- Have included list of verifiers as Annex 2 which hopefully will help CBs (and companies)

Challenges

Inclusiveness

How to get community consensus when leaders speak ?

Gendered representation

How to engage when traditions exclude eg women from meetings ?



Community mobilisation

Convening and informing whole community

Overcoming lack of resources and expertise

Need for independent advisors

Role of NGOs



Paying for community support and advice

- If it is agreed that to make informed choices communities need legal and CSO/NGO support in FPIC negotiations, **who will pay** them to provide this service to local communities? If the companies pay there are obviously questions of conflict of interest, but where else is the funding to come from?



Ensuring NGOs respect local demands

- If NGOs/ CSOs are to act as paid advisors and / or intermediaries to assist communities in their negotiations with palm oil developers what norms or requirements should be made of them so they perform their role responsibly, and if there are to be such requirements who would assess their competence?



Collective versus individual rights

- FPIC is a collective right of communities to give or withhold their consent to operations on their lands and territories.
- The revised Guide makes clear that, where persons or families have unencumbered alienable property rights to parcels of land, those persons have the right to negotiate sales or leases to companies separate from the community
- But how are other individual rights reconciled with community choices. Right to development? Economic and Social rights?
- Who decides?

1993 Vienna World Conference on Human Rights declared:

‘while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.’

Declaration on the Right to Development

Article 1

‘The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.’

Some conclusions

- Company training: making sure field staff really understand RSPO standard in general, especially land acquisition and FPIC requirements
- FPIC in New Planting Procedures
 - Self representation process clear : community proposes & company accepts
 - meaningfully participation in ESIA's and HCVAs and full HCV has been done, especially HCV 5&6
 - land tenure assessments and participatory community mapping done
 - agreements on how negotiations over land will be carried out
- Proper National Interpretations: careful consideration of how land acquisition and FPIC will be carried out to RSPO standard given national laws, permitting sequences and common cultural realities

Community land use planning

How ensure:

- Full respect for full land rights
- Account taken of mixed economies
- Land and resource needs of all are met
- Needs of future generations are taken into account?





