

Resolving Land Disputes: Emerging Lessons from the RSPO

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'The right to remedy'

'In international law, violation of a human right gives rise to a right of reparation for the victims... [in order] to afford justice to victims and alleviate their suffering "by removing or redressing to the extent possible the consequences of the wrongful acts and by preventing and deterring violations." Measures to this end include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.'

Importance of complaints procedures

- Avoidance of conflict
- Prevent loss of profit to companies
- Prevent loss of benefit to communities

" War: first, one hopes to win; then one expects the enemy to lose; then, one is satisfied that he too is suffering; in the end, one is surprised that everyone has lost"

(Karl Krauss cited in 'The Sugar Barons' 2011: 192)

RSPO Dispute Mechanisms

- Company's grievance procedure (2.2, 6.3, 6.4)
- Certification Body complaint procedure
- **RSPO Complaints Panel**
- **RSPO Dispute Settlement Facility**
- **New Plantings Procedure**

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- Financiers' ombudsmen (eg **IFC CAO**)

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- Government arbitration
 - Courts

Precedents to be proud of

CAO : Wilmar in Sambas West Kalimantan: CAO mediated and negotiated agreements, land restituted, agreement not to expand, compensation paid and extra smallholdings



Precedents to be proud of (2)

CAO 2: Wilmar and Pangean Riau: complex land situation with local people and trans-migrants, land dispute clarified, NGO (Scale Up) mediated negotiation, agreement reached, extra smallholdings allocated



Precedents to be proud of (3)

New Plantings
Procedure: Sime Darby
and Vai people in
Grand Cape Mount,
Liberia: SD has agreed
to stop expansion while
land issues are resolved.
Land tenure issues
complicated and will
need time to resolve.
Govt Land Commission
now involved.



Lessons learned

- Basis for resolving disputes must be:
 - Conformity with P&C: so outcome is a certifiable plantation (with its mill)
 - Respect customary rights in land
 - Respect the right to give or withhold consent (ie no forced land sales or expropriations)
 - 'Mutually agreed' procedure
 - Self-chosen representatives
 - Mediation or trusted third party to ensure fair play

Limited access to the procedures

- None of the RSPO's procedures have been activated by the communities without the help of local and even international NGOs.
- This is not because communities are unconcerned, for in all cases they had tried other avenues first, but because of:
 - Language barriers
 - Technical jargon and technology gaps
 - Lack of awareness of rights, RSPO and P&C
 - Limitations of resources and capacity

Contradictory role of NGOs

- NGOs crucial for procedures to work at all
- But they are not the affected party
- So, how do we avoid 'substitution'? IE:
 - NGOs speaking for, instead of facilitating, communities
 - RSPO bodies seeking agreements from NGOs, when the final agreements must come from the communities
- Clearer rules of the game are needed
- Complaint bodies must be able to contact comms

Multiple parties: problems of representation and inclusion

- Villages are not unified
- Self-chosen representatives
- Government-imposed representatives
- Divided communities
 - Some may seek resolution by different means
- Must allow different rights-holder groups their own opportunities for remedy
- Ensure involvement of minority factions, subordinate classes, gender justice

What is the RSPO's 'jurisdiction'?

- Companies are members of the RSPO and agree to the rules the RSPO sets, as they share 'ownership' of them
- However, communities are not members of RSPO and may not agree with the assumptions of either companies or the RSPO
- Companies, CBs, RSPO Complaints Panel and RSPO DSF (or ombudsmen) cannot dictate terms to communities
- Nor are Governments RSPO members

Role of Government

- Unfair laws or poor governance of lands are often the main cause of disputes (this is the main reason for voluntary standards)
- Government agencies seek role in resolving disputes (but then may again impose unfair laws and policies eg Jambi)
- Yet we need Government to recognise negotiated agreements if they are to be secure (eg Sambas)

Trouble at the Courts

- Parallel processes: RSPO procedures are operating at the same time as cases (often very lengthy) are being pursued through the courts
- Sarawak: IOI and LTK : court case started in 1996. Concession acquired by IOI 2006. NCRs judged to exist 2011: appealed by IOI.
- Sabah: Genting Plantations: case filed in 2002 ask for recognition of NCR and injunction on expansion: company disputed admissability of case: 10 years later Federal Court ruled case admissable: is it now too late?

Scale of the problem

- 1000s of land conflicts related to oil palm in Indonesia: 3 years ago (RT8) BPN said there were 3,500 cases, now it notes 8,000 land disputes for agribusiness in all
- 5 years ago we found 40 cases in the Sarawak courts, today there are said to be several hundred
- Emphasises the need for **FPIC** and negotiated agreements **prior** to expansion

Conclusions for conflict resolution

- Clarify terms of engagement
 - Use P&C as basis for conflict resolution (customary land and FPIC)
 - Ensure self-representation
 - Mechanism must be 'mutually agreed'
- Resource Secretariat adequately (cf FSC)
- Clarify the role of NGOs in complaints (they facilitate but they are not the affected party)
- Increase capacity of RSPO to reach the communities



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Thank you