



Sustainable Palm Oil: Aspiration or Reality?

The potential and limitations of the
Roundtable on Sustainable Palm Oil (RSPO)



United Evangelical Mission
Communion of Churches
in three Continents

Brot
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Bread for the World –
Protestant
Development Service

Published by

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Art.No. 129 5 0171 0

Donations

Brot für die Welt

Account number: 500 500 500

Bank für Kirche und Diakonie, Bank code (BLZ): 1006 1006

IBAN: DE10100610060500500500, BIC: GENODED1KDB

Vereinte Evangelische Mission

IBAN DE45 3506 0190 0009 0909 08

KD-Bank eG

BIC GENODED1DKD

Berlin, May 2014

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Foreword

When the EU directive requiring the labelling of palm oil in processed foods enters into force at the end of 2014, it will increase the industry demand for certified sustainable palm oil. But how sustainable is the RSPO initiative, which was voluntarily created by the industry? Can improvements be implemented within the RSPO, or would it be more successful use national legal instruments to go after human rights violations and breaches in environmental laws? We address these questions in this booklet.

For many years, the partner organisations of Bread for the World and the United Evangelical Mission have been calling attention to the destruction of precious ecosystems and the violent social conflicts caused by the rapidly expanding cultivation of oil palms. Together they are taking a stand to ensure that the rights of farmers and indigenous peoples are being respected and protected.

Most of those affected cannot expect any help from the state. In many countries, the situation is influenced by conflicting laws, overlapping and uncertain common law, illegal operations, corruption, and a lack of legal certainty. Human rights obligations are often insufficiently enforced or end up having no effect on the ground. In light of this, many believe that the remedy lies in improving the situation of those affected by concluding agreements with plantation operators and securing voluntary commitments from industry.

The largest initiative in the palm oil sector is the Roundtable on Sustainable Palm Oil (RSPO). This voluntary initiative by industry and civil society was founded in 2004 with the aim of establishing and promoting a certification process for sustainably produced palm oil. While the media has focused mostly on the RSPO's flaws, national authorities are increasingly relying on partnerships with industry.

The present study is an effort to provide an overview of the aspirations and the realities of the RSPO. Study authors Friedel Hütz-Adams and Ann-Kathrin Voge clarify the structure and the workings of the RSPO and examine both the potential and the gaps in the certification criteria and principles for the production of sustainable palm oil.

To this end, they evaluated numerous studies and asked sixteen individuals from the enterprise and NGO fields to assess the developments in the palm oil market. All of those interviewed agreed that improvements are possible through the RSPO, but they were also

disenchanted with the RSPO's failure to provide many of the promised benefits. The study shows that simply introducing voluntary standards will not remedy all of the abuses; instead, the governments in the countries where oil palms are cultivated must enforce existing laws and businesses should identify the barriers to doing so.

Bread for the World and the United Evangelical Mission believe that a certification system that promises sustainability to its customers requires considerably more strict criteria and monitoring. These Protestant agencies see their role as one of collaborating to strengthen civil society: as watchdog groups, they call attention when governments fall short and plantation owners violate human rights, and they actively campaign for the rights of local peoples.

These agencies also continue to keep a close eye on the effects of the increasing demand in Europe and are informing palm oil consumers of the consequences of oil palm cultivation in producing countries. The increasing exploitation of this natural resource in the chemical industry and as a biofuel is driving further development of plantations at the expense of the environment and local planters.

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Chapter 1

Introduction

“Making the palm oil market fully sustainable is possible but only over time, and with the right levels of commitment. The RSPO depends on the goodwill of companies on the ground, and local government authorities, to ensure that these principles and criteria are abided to. There have been a number of cases of non-compliant members. ... Non-complying member organisations can simply opt to leave the RSPO in the midst of a complaint, and consequently they will not be governed by any of our rules. The RSPO closely monitors the activities of its members [but] it has no legal way to enforce its members to comply.” RSPO response to criticism ¹

The global demand for palm oil as a vegetable oil for human consumption, a biofuel, and a raw material for the chemical industry is growing. Its increasing use around the world is leading to continuous expansion of the area needed to cultivate it. A multitude of reports and studies attest to the deforestation that has accompanied this growth, as well as forced displacement or insufficient compensation of the people who live in these areas. What's more, the labour conditions on the plantations often comply with neither international standards nor local legislation. Many critics have alleged that the cultivation of oil palms as a monoculture on large tracts of land is completely impossible to carry out sustainably, especially since mixed cropping almost never happens.

The partner organisations of Bread for the World and the United Evangelical Mission have been calling attention to these problems for years. But the plantations continue to be expanded, especially in Indonesia and Malaysia, but increasingly also in Africa, South and Central America, and Papua New Guinea.

The Roundtable on Sustainable Palm Oil (RSPO) was founded in 2004 as a response to the social and environmental problems in the countries of production. The aim of this voluntary initiative by industry and civil society is to promote the production and use of sustainable palm oil. They developed a comprehensive set of criteria that was to guarantee this and be implemented by all member corporations, with independent monitoring of compliance. Compliance with these criteria would mean significant improvements in the palm oil sector, but there are increasing accusations that RSPO members

do not comply with the criteria themselves. This raises the question of how to assess the value of the RSPO itself. On the one hand, the organisation could be a way to push through improvements; on the other, in view of the massive problems the RSPO has had with enforcing its own standards, it might make more sense to find other means of countering human rights violations and breaches of environmental law.

The workings and effects of the RSPO, as well as its weaknesses, are presented here to create a basis for this debate, in light of the developments in the global market. Various stakeholders have also been asked to evaluate the RSPO's impact. This then provides the foundation for recommendations in handling the palm oil sector in the future.

¹ — quoted in The Guardian, 6 Nov. 2013

Chapter 2

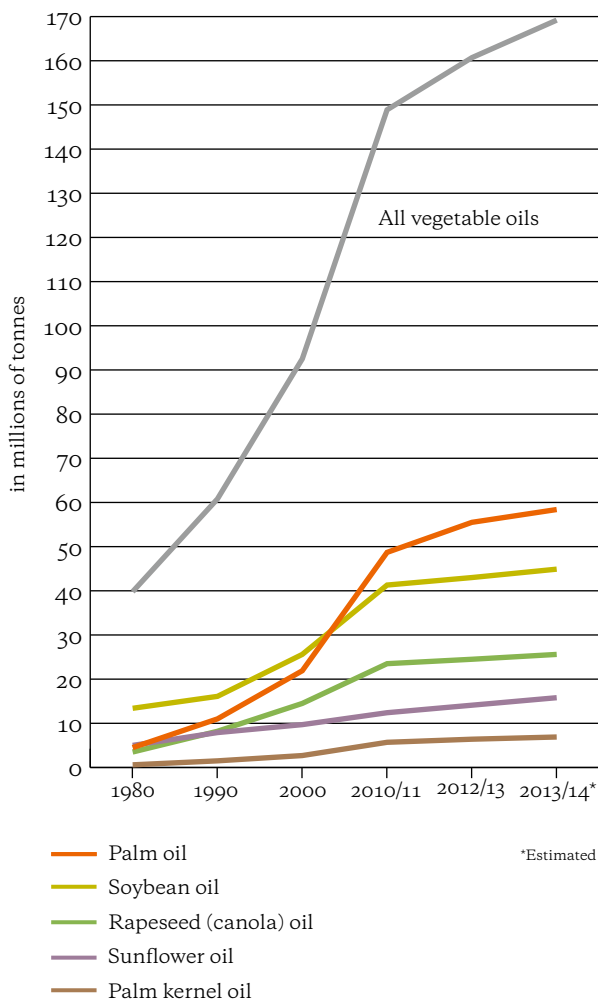
Oil palm cultivation – Developments in the market

The market for vegetable oil made from the fruit of the oil palm has skyrocketed in recent years. Taken together, palm oil and palm kernel oil now make up some 39 per cent of global oil production.

All available forecasts indicate that the use of palm oil will continue to grow massively in years to come, meaning that we can expect an increase in the social and environmental conflicts caused by the global expansion of palm oil production areas.

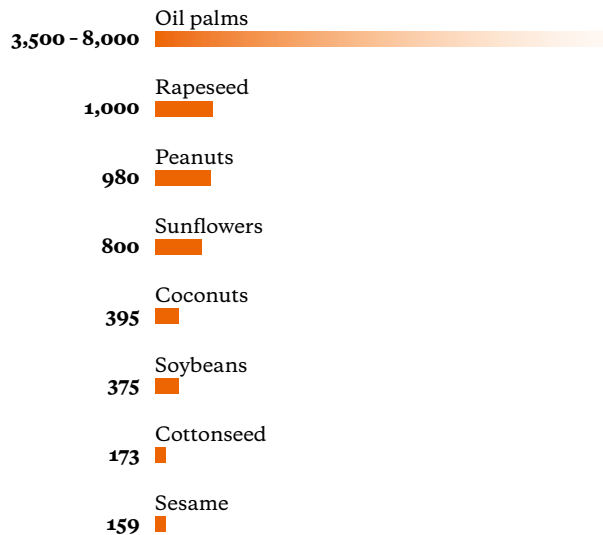
Oil palms are very fruitful. Soy cultivation yields .35 tonnes of oil per hectare; rapeseed yields about 1 tonne. Palm oil, on the other hand, yields 3.5 tonnes per hectare, and the potential for well-maintained plantations can be considerably higher. In view of the increasingly scarce amount of land available for cultivation, then, the cultivation of oil palms can have indirect positive effects on the future food supply, since it requires less land than competing products. The significance of how much land is required for a given crop will become increasingly important, since erosion, land given over to settlement and industry, and climate change are making usable agricultural land more and more scarce, although the developments will vary greatly depending on the region. At the same time, the global population will continue to grow, such that in the future more food will have to be produced on less available agricultural land: high-yield crops will become progressively more important for feeding the world's population in the future. At the same time, monocultures grown on large expanses carry enormous ecological risks, as we can see from oil palms and other crops. The mixing of field crops with other food crops, on the other hand, can improve local food security and may generate equally high yields from various products.

Figure 1: Vegetable oil production, 1980 - 2014
(in millions of tonnes)



Sources: Teoh 2010: 7; USDA 2014: 6

Figure 2: Oil production: Average yield
(in kilograms per hectare)



Sources: CIFOR 2009: 11; USDA 2009

Palm oil production is currently concentrated in only a few countries and among several large corporations. Some 86 per cent of the global harvest is cultivated in Malaysia and Indonesia.

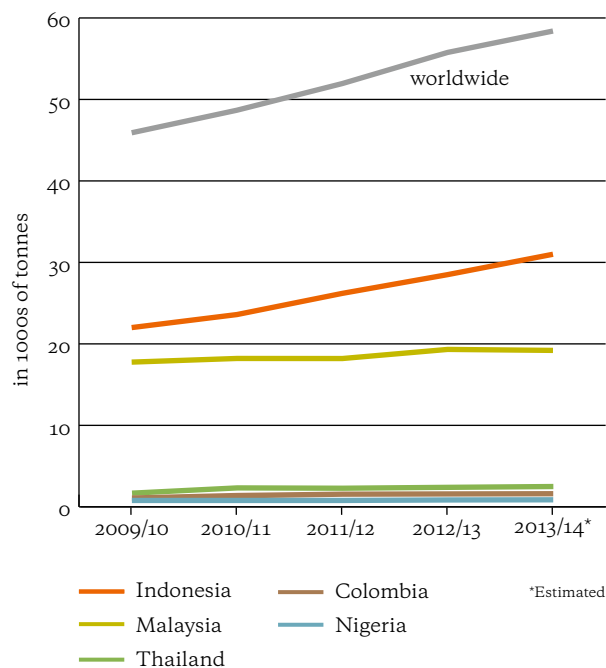
Two countries, Malaysia and Indonesia, dominate trade in the global market. They supply around 90 per cent of the palm oil that is internationally traded. Remarkably, the largest percentage of growth in production and exports can be seen in Indonesia.

Forecasts indicate that we can expect to see particular expansion in cultivation in the African tropics, with all of the ensuing problems.

A large share of these exports goes to developing and threshold countries, with India (21.1 %) and China (15.5 %) as the two largest purchasing countries. The European Union (13.6 %) is already in third place.

The highest increase in imports in the past ten years has been in India, followed by China, the EU, and Pakistan. It remains to be seen how the market will continue to develop. Recently imports to the EU have dropped and imports to China have stagnated.

Figure 3: Palm oil: Production in 1000s of tonnes



Source: USDA 2014: 14

Table 1: Palm oil: Exports in 1000s of tonnes

	1982-84	1992-94	2003/04	2010/11	2011/12	2012/13	2013/14 ¹
Worldwide	4,536	10,113	21,610	36,854	39,024	42,530	43,269
Indonesia	435	1,815	7,856	16,423	18,452	20,300	21,300
Malaysia	2,981	6,291	11,602	16,596	16,600	18,000	17,500
Papua-Neuguinea	nr	nr	nr	577	587	620	640
Thailand	nr	nr	nr	382	290	420	520

Sources: Toepfer 2009: 36; USDA 2010a, 2010b, 2014: all p. 14.

¹ Estimated

Table 2: Palm oil: Imports in 1000s of tonnes

	1982-84	1992-94	2003/04	2010/11	2011/12	2012/13	2013/14 ¹
Worldwide	4,336	9,489	21,733	36,297	38,825	41,712	42,596
India	628	237	3,486	6,661	7,473	8,307	9,000
China	32	1,296	3,710	5,711	5,841	6,589	6,600
EU	840*	1,668**	3,371	4,944	5,708	6,300	5,800
Pakistan	381	1,051	1,297	2,064	2,218	2,200	2,450
Malaysia	nr	nr	nr	1,593	1,850	1,645	1,675
United States	nr	nr	nr	980	1,032	1,285	1,300
Egypt	nr	nr	nr	1,277	1,204	975	1,225
Bangladesh	nr	nr	nr	996	984	1,050	1,100
Singapore	nr	nr	nr	656	854	750	850
Iran	nr	nr	nr	634	610	730	740
Others	nr	nr	nr	10,781	11,051	11,881	11,856

Sources: Töpfer 2009: 38; USDA 2010b, USDA 2014: all p. 14.

¹ Estimated; *then 10 EU Member States; **then 15 EU Member States

The growth in the palm oil market has not only been driven by exports, but also by increasing consumption in cultivation countries. Use in Indonesia has also sharply risen in recent years.

Asia is the region with the highest palm oil consumption and must be included in solution strategies for more sustainability.

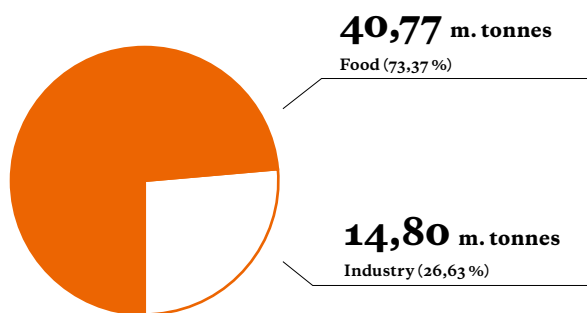
Table 3: Consumption in 1000s of tonnes

	2009/10	2010/11	2011/12	2012/13	2013/14 ¹
Worldwide	45,131	47,909	51,035	54,512	56,536
India	6,440	7,080	7,425	8,425	9,144
Indonesia	5,494	6,414	7,129	7,815	8,501
China	5,930	5,797	5,841	6,389	6,579
EU	5,220	4,919	5,630	5,975	5,755
Malaysia	3,103	3,220	3,290	3,200	3,160
Pakistan	1,957	2,077	2,110	2,215	2,405
Thailand	1,255	1,457	1,563	1,603	1,610
Nigeria	1,252	1,267	1,285	1,375	1,405
United States	957	957	1,043	1,230	1,293
Egypt	1,080	1,180	1,185	1,170	1,190
Bangladesh	921	980	1,030	1,059	1,100

Source: USDA 2014: 14

¹ Estimated

Figure 4: Palm Oil: World consumption 2013/2014



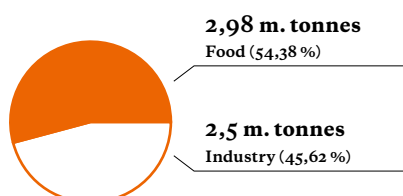
Source: USDA 2014: Table 19, p. 22

The most significant global use of palm oil continues to be as food (73.37%). But the percentage needed by industry is markedly rising; in 2013/14 it was around 27 per cent.

At 43 per cent, the amount of palm oil used for chemical and technical processes in the EU is very high compared to other countries. In India, the oil is used almost exclusively for the food supply (USDA 2014:22, 29, 31). With its growing application as a biofuel, however, shifts in its use are looming. In 2012, the global proportion of palm oil being used for energy, heating, and fuel was 5 per cent (FNR 2013a). The percentage in the EU, however, greatly increased from 2006 to 2012: by 2012, 29.3 per cent of palm oil imports were already being used to manufacture biodiesel (IISD 2013: 8).

Palm kernel oil is used almost exclusively by industry (Hütz-Adams 2012: 15-16).

EU consumption 2013/2014



Source: USDA 2014: Table 26, p. 29

Chapter 3

The structure of the Roundtable on Sustainable Palm Oil (RSPO)

The massive expansion of world palm oil production over the last decade has been accompanied by serious social and environmental problems in the countries of production. The RSPO came into being ten years ago as a multistakeholder initiative emerging from the need to more sustainably shape the economic consequences of palm oil production.

3.1 History and current extent of production

The inception of the Roundtable on Sustainable Palm Oil (RSPO) in 2004 came about from an initiative from the World Wildlife Fund (WWF) together with several industry representatives. The RSPO is a voluntary initiative with the goal of promoting sustainable production and processing of palm oil and providing its own certification that can be used in product marketing.

By July 2013, 1.8 million hectares of cropland had already been certified. If fallow land, infrastructure, and new installations are included, the total amount of land certified extends over 2.4 million hectares. Up to 9.0 million tonnes of palm oil (without palm kernel oil) can be harvested from this land, constituting some 15 per cent of the amount available worldwide. Indonesia and Malaysia are the source of 92 per cent of the certified goods, which is above the percentage both countries contribute to the total production of palm oil (86%, see Table 3; RSPO 2013b, 2013c).

3.2 Membership

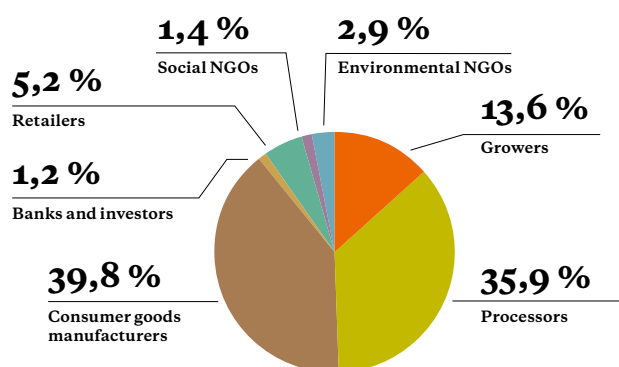
The RSPO brings together palm oil actors from seven areas:

1. Oil palm growers
2. Processors and traders
3. Consumer goods manufacturers
4. Retailers
5. Bankers and investors, as well as
6. environmental NGOs and
7. NGOs with a social focus.

The RSPO had 1,439 members in January 2014, of whom 911 were ordinary members, 427 were “supply chain

members”, and 101 were “affiliate members” (see chap. 3.3). Along with food-industry conglomerates like Unilever, Ferrero, P&G, and Nestle, members also include NGOs like the WWF, Solidaridad, and Oxfam, but these make up only a small portion (www.rspo.org; see Figure 1).

Figure 5: Member structure of the RSPO



Source: RSPO <http://www.rspo.org/en/member/listing/category>, accessed 4 May 2014

RSPO members come from many different countries around the world. As of January 2014, 190 of them were from Germany, the highest number from any one country (www.rspo.org). German firms have also been awarded the most licences to display the RSPO seal of approval: twenty German firms have such licences at the moment and are allowed to use the seal if they wish to (RSPO 2013b; RSPO 2013c).

RSPO members are obliged to comply with RSPO principles and prove this compliance through inspections. A company does not have to start producing exclusively certified palm oil as soon as it becomes a member, however, but rather can gradually change over production to 100 per cent sustainable according to a fixed timeline. During the changeover period, only the palm oil produced on certified plantations can be sold as certified (www.rspo.org). In July 2013, 44 of the 126 palm oil producer members were certified (RSPO 2013b).

Obliging all certified members to get all of their plantations certified within a fixed timeline, rather than only certifying the best plantations, is an unusual requirement for sustainability standards. This “anti-flagship clause” also disallows exclusion of difficult cases and makes it impossible to generate and certify only part of the production run on an ongoing basis.

From the start of membership, there are also regulations governing plantations that are not yet certified: if violations of law, land conflicts without mediation procedures, or clearing of primary forest (since 2005) are occurring on areas that have not yet been certified, this precludes the certification of other croplands belonging to the company (www.rspo.org). Subsidiary companies are not taken into consideration, however, so it is currently possible for the subsidiaries of a certified corporation to never have to make any effort to get its plantations certified.

3.3 Organisational structures

There are three different types of membership in the RSPO. Ordinary members are classified into one of the seven areas listed above, even if they are active in several. Affiliate members are not part of any of the seven areas, but rather are interested in RSPO's goals and activities in their respective capacity as sponsors, development, or research institutions, and in this way can follow the developments at member meetings without enjoying voting rights (RSPO 2012d, RSPO n.d.). The third possibility for membership is to join RSPO as a supply chain associate: these members are companies that use fewer than 500 tonnes of palm oil or palm oil derivatives per year (www.rspo.org).

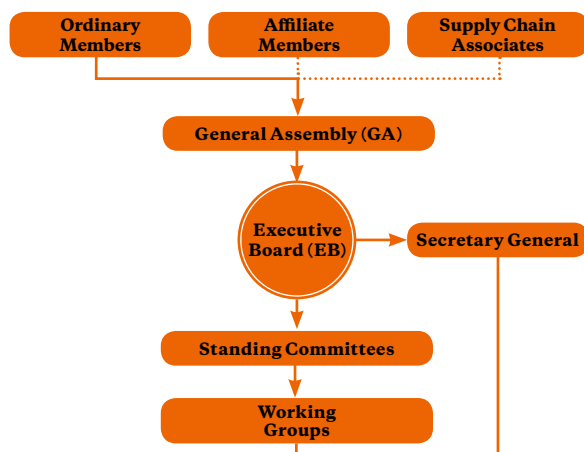
All members participate in the General Meeting, which is presided over by an Executive Board. The board consists of sixteen people, with two representatives from each of the seven areas. Palm oil growers are the only group to have four representatives: one each from Indonesia and Malaysia, one for the “smallholder sector”, and one for “the rest of the world”. Half of the Executive Board is re-elected each year; any ordinary member of the RSPO may stand for election. The seven areas are currently represented by: MPOA, Indonesian Growers, NBPOL and FELDA (growers), Unilever and Kraft Foods (consumer goods manufacturers), RPOG and Carrefour (retailers), AAK and IOI (processors and traders), Rabobank and HSBC (banks and investors), WWF and Conservation International (environmental organizations), and Oxfam and Both Ends (social NGOs). The RSPO president is Jan Kees Vis of Unilever (www.rspo.org).

The RSPO Secretariat is located in Kuala Lumpur, Malaysia, and the secretary general is Darrel Webber. The work of the Secretariat is supported by a field office

in Jakarta, Indonesia. Most staffers are from Malaysia and Indonesia (www.rspo.org).

In addition to the Executive Board and the Secretariat, there are committees and working groups for various areas, such as smallholders, traceability, and greenhouse gases (see Figure 6).

Figure 6: Structure of the RSPO



Source: RSPO 2012b

3.4 Supply chain models

The RSPO offers producers various supply chain models for bringing their products to market:

- Separation model
 - Identity Preserved (IP)
 - Segregation
- Mass Balance (MB)
- Certificate trading through the Book and Claim (B & C) System

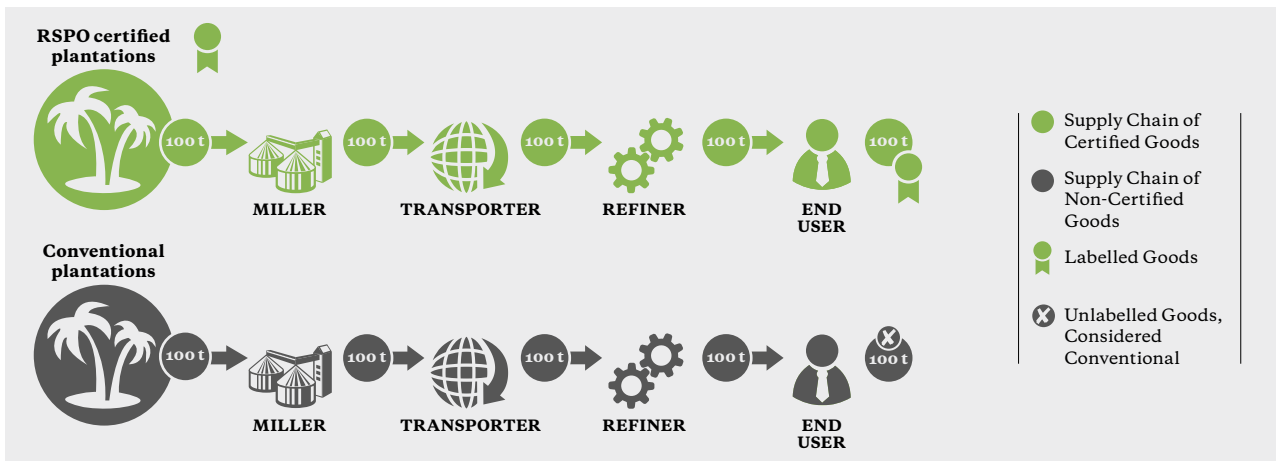
The separation model is the RSPO's most exacting. In this system, all processors and traders must keep the raw materials of RSPO-certified and conventional palm oil physically isolated from each other from the plantation to the end product. Producers and processors must ensure that the various flows of material are kept verifiably separate. This method is known as Segregation.



The palm oil can also be traded separately from other certified, segregated palm oil, so that the end product indicates the oil's plantation of origin. This model is called Identity Preserved (see Figure 7).

If segregated palm oil is used, the product can be labelled with the description, “This product contains certified sustainable palm oil” and the RSPO trademark (RSPO 2011b).

Figure 7: Segregation / Identity Preserved supply chain model

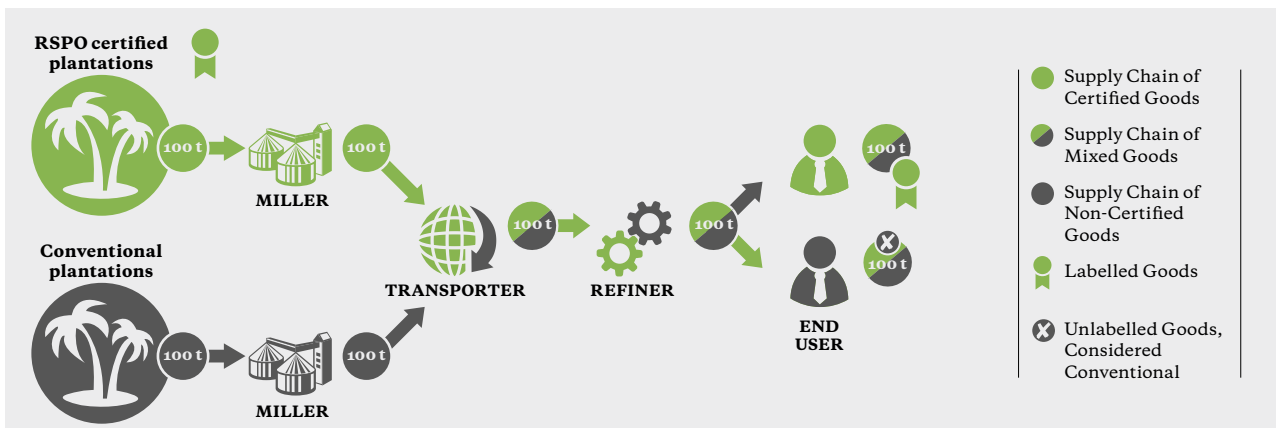


Source: Authors' representation following RSPO 2008

It is also possible to sell a mix of certified and uncertified palm oil using the “Mass Balance” (MB) method. This involves controlling the percentage of certified oil and ensures that the amount of end product labelled as certified never exceeds the amount certified before the mixing process (Figure 8). For example, if 30 per cent of the raw materials were certified, then 30 per cent of the finished product can be distributed as certified. But

the end product after the mixing process will not necessarily contain any palm oil that was cultivated and processed under RSPO-certified conditions. Products made with palm oil from the Mass Balance method may carry the label “Supports the production of RSPO Certified Sustainable Palm Oil” and the RSPO logo including the word “MIXED” (RSPO 2011b).

Figure 8: Mass Balance supply chain model



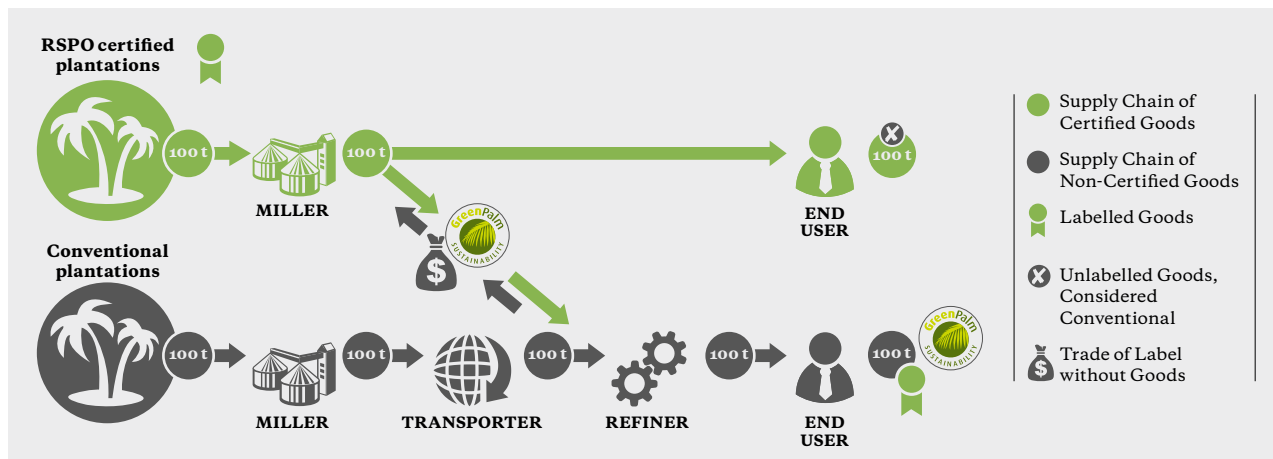
Source: Authors' representation following RSPO 2008



An alternative trading platform has also been established in collaboration with GreenPalm that allows certificates to be traded using a Book and Claim System (B & C). Palm oil producers use the platform to sell certificates for each tonne of certified palm oil they have produced that is sold conventionally. Palm oil processors and sellers of products containing palm oil who have purchased uncertified palm oil can register on this platform as members and acquire as many certificates as they need (see Figure 9). They can distribute any product that has been certified through this method with the message “contributes

to the production of certified sustainable palm oil” and the GreenPalm logo, but they are not allowed to use the RSPO trademark (RSPO 2011b). The Book and Claim System enables companies not certified by the RSPO to acquire certificates as they need them, thereby selling their conventionally produced palm oil as “certified” oil. This system thus allows a complete physical separation of the RSPO certificate from the palm oil cultivated in accordance with RSPO criteria. In order to ensure that no more certificates are sold than the number allowed, the RSPO-certified production capacity of each producer registered with GreenPalm is recorded and checked against the sales numbers (<http://greenpalm.org/>).

Figure 9: Book & Claim supply chain model



Source: Authors' representation following RSPO 2008

Figure 10: Production and sales of certified palm oil

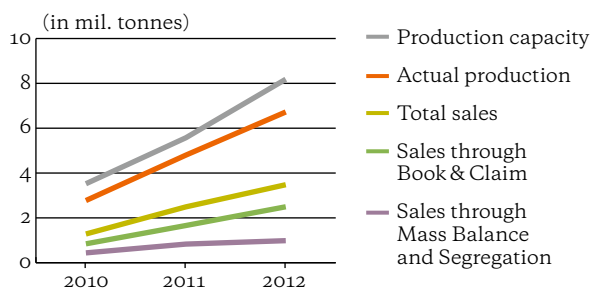


Table 4:

	2010	2011	2012
B & C as percentage of sales	65.77 %	66.63 %	71.72 %
Production as percentage of sales	46.19 %	51.90 %	51.74 %

Quelle: RSPO 2013b

Most RSPO-certified palm oil is traded using this procedure: in 2012, about 2.5 million tonnes of crude palm oil (CPO) were traded through Book and Claim, whereas only about a million tonnes (28.28 %) were sold through Segregation and Mass Balance, with Segregation making up the smaller portion (see Table 4).

GreenPalm is a trademark of Book & Claim Limited, a registered British subsidiary of the palm oil processor and RSPO member AarhusKarlshamn UK Ltd. According to GreenPalm, AarhusKarlshamn is the largest palm oil importer in the country (<http://greenpalm.org/>). The main B & C sellers on the GreenPalm platform are Sime Darby and Wilmar International. Sime Darby traded 926,397 certificates in 2012, corresponding to the same number of tonnes of CSPO (crude sustainable palm oil), while Wilmar traded 200,000. As of early November 2013, it cost an additional \$2.80 to buy a certificate for one tonne of CSPO (<http://greenpalm.org/>). This is only about .35 per cent of the global market price of CPO

(about \$800 on 7 Nov. 2013), and therefore makes little difference in a company's price calculation.

Despite the wide variety of possible trading methods that make buying certified palm oil a relatively easy and reasonably priced proposition, in 2012 there were only about 3.5 million tonnes sold out of the 6.7 million tonnes of certified oil – scarcely more than half (see Table 4).

3.5 Certification: Principles and criteria

The rules that members must follow are summarised in the RSPO principles and criteria that were drawn up in 2007 and revised in 2013. These rules must conform to national laws and conditions, such as local minimum wage, meaning that the details of the rules can vary from country to country. In order to become a member of the RSPO, palm oil growers, processors, and traders must fulfil the following eight principles (RSPO 2013e):

1. Commitment to transparency
2. Compliance with applicable laws and regulations
3. Commitment to long-term economic and financial viability
4. Use of appropriate best practices by growers and millers
5. Environmental responsibility and conservation of natural resources and biodiversity
6. Responsible consideration of employees, and of individuals and communities affected by growers and mills
7. Responsible development of new plantings
8. Commitment to continuous improvement in key areas of activities.

Each principle consists of several criteria, and these in turn each have one or more indicators to be verified when certifying a plantation or mill and in subsequent monitoring. There are a total of 43 criteria with 138 indicators for the 8 principles, as well as guidelines for interpreting some of the indicators. As of November 2013, 69 indicators were listed as “major indicators” (RSPO 2013a).

The formulation of the principles themselves is kept very general, and even though the criteria and indicators go into more detail, the guidelines for some areas are formulated in a way that is not strict or precise enough (see chapter 4).

The criteria contain a broad and wide-ranging spectrum of obligations, including providing information to relevant stakeholders (Criterion 1.1) and making important documents publicly available (1.2); complying with the Core Labour Standards of the ILO (6.6-12; see box); obtaining the free, prior, and informed consent (FPIC) of the local population affected (2.3, 7.5-6); and following environmental criteria, such as minimising erosion and soil degradation (4.3), avoiding using fire to prepare the land (5.5 and 7.7; with exceptions, see chap. 4), and a ban on clearing primary forest and other areas with high conservation value (HCV) after November 2005 (7.3).

The RSPO criteria and indicators thus provide a broadly defined framework that in some cases even goes significantly beyond other sustainability standards. Some examples of this are the commitment to obtaining the free, prior, and informed consent (FPIC) of the affected population and listing the complaint procedures established within the RSPO that the groups affected can use (on the various authorities for the procedures see chap. 3.7). In other areas, however, the requirements leave something to be desired; examples of these follow in chapter 4.

Core Labour Standards of the ILO

The International Labour Organisation (ILO) is a specialised agency of the United Nations that develops conventions to protect the rights of employees. Several conventions have been internationally recognised as Core Labour Standards and make up a minimum standard that is binding on all ILO member States. These Core Labour Standards, compliance with which is part of the RSPO criteria, include:

- C 29 Forced labour, 1930
- C 87 Freedom of Association and Protection of the Right to Organise, 1948
- C 98 The Right to Organise and to Bargain Collectively, 1949
- C 100 Equal Remuneration, 1951
- C 105 Abolition of Forced Labour, 1957
- C 111 Discrimination in Respect of Employment and Occupation, 1958
- C 138 Minimum Age for Admission to Employment, 1973
- C 182 Prohibition of the Worst Forms of Child Labour, 1999

Compliance with the “New Plantings Procedure” (NPP) of the RSPO when setting up new plantations has been a requirement since early 2010. These stipulate a process where the area must first be assessed for primary forest, HCV areas, peat areas, and land used by local people in order to exclude these from use (primary forest) or guarantee that they will be dealt with in accordance with RSPO criteria. Part of the NPP calls for an RSPO certification body to check and verify that the new planting is being conducted in compliance with all RSPO criteria. Before work can begin on the plantation area, the project is published on the RSPO homepage for at least 30 days. Affected parties may lodge grievances during this time, the legitimacy of must be verified within two weeks. If no legitimate grievances have been filed after 30 days, the work may begin. If there are any legitimate grievances, work on the new plantation cannot begin until the grievance process has been concluded (RSPO 2012e, 2012f, 2010).

3.6 Verification of compliance with criteria

Compliance with the principles, criteria, and indicators is checked through independent monitoring by an external auditing organization that is recognised as a certifier by the RSPO (third-party assessment). After successful certification, the certificate is valid for five years and Annual Surveillance Assessments (ASAs) are performed to verify compliance with criteria. There are a total of nineteen institutions from European and Asian countries authorised as auditors, including TÜV Rheinland Malaysia Sdn. Bhd. and TÜV Nord Indonesia (www.rspo.org).

RSPO-certified actors in the supply chain also commit to submitting Annual Communications of Progress, or ACOP. These reports are publicly available on the RSPO website and contain tables of the member's yearly progress, for example the amount of certified palm oil and palm kernel oil, the number of certificates traded, and the new plantations or processing facilities (www.rspo.org).

3.7 Complaints procedures and sanctions

Grievances against the RSPO itself can also be registered with the Secretariat, as well as grievances against members or member subsidiaries. A grievance process has been established in which the grievance is received and evaluated. It can also trigger a mediation process at various levels. Many other standards have no such institutionalised grievance process, and its existence is a fundamentally positive thing.

A grievance must make reference to a violation of the RSPO Statutes and By-Laws, Principles & Criteria (P&C), recognised national interpretations of the P&C, Code of Conduct, New Plantings Procedure, Certification System, or other rules developed by the RSPO. A grievance can be submitted by either RSPO members or external actors, for example affected local communities or workers at the company in question (www.rspo.org).

In cases of grievances resulting from human rights or labour rights violations, or violations of environmental protection regulations - especially before or during an initial certification - the RSPO Dispute Settlement Facility (DSF) takes over mediation. Most other grievance cases are taken up by the Complaints Panel, particularly when these concern RSPO organisations or when a resolution cannot be reached through other mechanisms. The final authority is the RSPO Executive Board, which can issue a decision or terminate the RSPO membership of the member in question. The complaints currently underway, their status, and relevant information and documents are available on the RSPO homepage, creating a high level of transparency. As of December 2013, there were 44 cases listed, of which 15 had been concluded (www.rspo.org).

However, there is no clear rule on what happens if a company violates its commitments. Possible sanctions include expulsion and termination of membership, but it is not specified which sanctions are possible in which situations.

Chapter 4

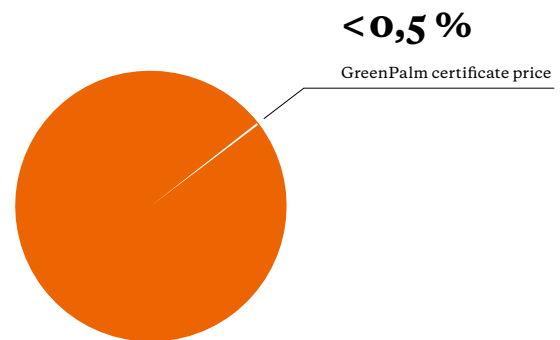
Problems in practice: Weaknesses and violations

As far-reaching as the RSPO guidelines are in some fields, there are still many weaknesses in their implementation. The various trading methods, especially Book and Claim, offer little incentive to implement the stricter system of Segregation. The criteria and indicators against which RSPO-certified plantations and mills are evaluated must be stricter in places if they are to do justice to the goals and aspirations of the RSPO. Verification of certification through third-party assessors is not uniform and has its weak points. Numerous reports and studies by both local and international NGOs give examples of serious violations of RSPO criteria by companies that committed to comply with these criteria, as well as problems with the implementation of the complaints system.

4.1 Too little incentive to implement more demanding supply chain models

At the moment, over 70 per cent of the palm oil sold under RSPO certification is traded through the Book and Claim supply chain model on the GreenPalm platform. This certificate trading guarantees palm oil processors maximum independence and flexibility, since the certificate is traded completely independently of the palm oil itself. At the same time, the additional costs are minimal; as described in chapter 3.4, they amount to less than .5 per cent of the current global market price of palm oil (see Figure 11). The system therefore offers no incentive for companies in the value chain to implement certification themselves or to purchase certified palm oil through the other possible trading methods. It is very likely that the costs, expense, and risks of such implementation would be higher than the negligible added cost of a GreenPalm certificate, which in addition can be acquired or sold back as needed. Book and Claim may have been conceived as a simple entry-level model that was supposed to lead to successively more palm oil being traded through the stricter methods of Segregation and Mass Balance, but the current sales numbers do not indicate that any such development can be expected, since the incentives to do so are so slight.

Figure 11: The relationship between exchange price and GreenPalm certificate price



Source: Authors' representation

Use of the Book and Claim system harbours the risk of a completely non-transparent system where companies that make no effort to undertake environmental and social improvements can still offer certified palm oil at a vanishingly low additional cost. Consumers who consciously seek out products with sustainably produced palm oil are generally unaware that a product with a printed GreenPalm logo does not contain any certified palm oil at all. The GreenPalm trademark certainly does not live up to their ideas of sustainability.

This raises the fundamental question of whether an additional cost of less than .5 per cent of the global market price can have any effect on the sustainability of a product when that sustainability should include elements such as protecting biodiversity, prohibiting the clearing of primary forest, complying with ILO Core Labour Standards and other labour regulations, and protecting the rights of the local people. All of these measures, if fully implemented, signify extra effort and expense that this small additional cost definitely cannot compensate for. The Book and Claim system is consciously maintained in a way that allows the market to determine the additional cost, but it is doubtful that sustainability at the current price is even possible.

4.2 Gaps in certification

The criteria and indicators for RSPO certification still contain some gaps that qualify the sustainability claim of its label, even after the revision of these criteria in 2013 improved some of the weaknesses in the old version.

For example, RSPO criterion 7.3 prohibits the cutting down of any primary forest and any area with high conservation value (HCV) after November 2005. But it does not prohibit the clearing of other forests, nor is maintaining forest corridors in order to connect parts of preserved forest a criterion, even though both are very important in conserving biodiversity.

Peat areas, which store large amounts of CO₂ and are therefore exceedingly important in climate protection, are addressed in criterion 7.4: “Extensive planting on steep terrain, and/or marginal and fragile soils, including peat, is avoided” (RSPO 2013a: 52).

The indicators for this criterion are that maps “shall be available and used to identify areas to be avoided” and that where “limited planting” on such soils occurs, “plans shall be developed and implemented to protect them without incurring adverse impacts” (RSPO 2013a: 52). But environmental and climate change activists agree that peat areas should be completely excluded from use as oil palm plantations (Greenpeace 2012:4; Greenpeace 2013a:2; Greenpeace Switzerland 2011; <http://www.wetlands.org>).

The RSPO criteria also seem to have been grossly and deliberately violated by some growers. For example, in June 2013 several international organisations documented the large-scale forest fires in the Riau province of Sumatra, Indonesia, which analysis of satellite photos revealed could be traced to land concessions belonging to several palm oil companies. The extraordinarily strong fires led to record high levels of air pollution in Indonesia, Malaysia, and Singapore. Concession owners included companies that are members of the RSPO such as Sinar Mas, APRIL, and Sime Darby (EIA 21 June 2013; Greenpeace International 24 June 2013).

RSPO criterion 7.7 prohibits the use of fire in the preparation of new plantings, with exceptions for special cases. Such “specific situations”, however, are limited to cases where there is a risk of “severe pest and disease outbreaks” (RSPO 2013a: 55).

Friends of the Earth, for example, described the case of the Bumitama corporation, which deliberately ignored a wide variety of RSPO member criteria and even continued the violations during an ongoing grievance process.

The Indonesian company Bumitama Agri Ltd. has been a member of the RSPO since 2007, and in the summer of 2013 was proven to have cleared land in Kalimantan next to a forest reserve that is the habitat of one of the last groups of large orang-utans. As late as April

2013, the company was still promising not to disturb the land until studies had clarified the situation. In addition, palm oil was purchased from plantations that Bumitama had no property title for; these too intersected a forest reserve. Bumitama sells most of its harvest to Wilmar, another RSPO member (FoE 2013:10-15, 17).

Repeated human rights violations continue to be documented. These frequently take the form of an initial disregard for the land and property rights of local peoples, often ethnic communities with traditional property rights. If this leads to conflicts, the people are sometimes threatened with violence or pressured with actual violence to give up their claims. Forced clearing of settlements, detention of protesters, and destruction of personal property can occur. An international study (Colchester and Chao 2013: e.g., 16ff., 101-125, 159-198) documented several such cases, for example in Sumatra and Kalimantan in Indonesia, and how they were dealt with through the RSPO complaints mechanism; conflicts over Wilmar International plantations were described in an article in *Down to Earth* (DTE 2013).

Workers have also been exposed to sometimes serious human rights violations that are breaches of ILO Core Labour Standards. A study by the International Labour Rights Forum used three cases to show that even RSPO certified plantations have issues of human trafficking, forced labour, and child labour, and that employees were not being sufficiently protected when dealing with harmful chemicals (ILRF 2013).

4.3 No uniform, independent audits

There seem to be tremendous differences in the quality of external inspections. The auditors have no uniform training in verifying RSPO criteria, so social and environmental criteria can be weighted very differently from case to case. At the same time, they have a lot of flexibility in executing their Annual Surveillance Assessments because there is no fixed or unified format for these. As an example, the depth of the local research and the length or detail of the assessments can vary widely. An analysis of data and example cases from various countries has shown that the audits performed often do not include a survey of members of the local communities.

Results from surveying certain individuals may be used as anecdotal evidence for the opinion of the entire community, regardless of the status or role of the individuals within their society (Colchester and Chao 2013: 388, 396). But RSPO regulations require a survey of the local population through the questioning of their local elected representatives (RSPO 2011a: para. 5.3.2).

When TÜV Rheinland performed an external audit of the PT Mustika Sembuluh company, for example, a subsidiary of Wilmar International that has plantations in central Kalimantan, the local people were not consulted. All of the interviewees mentioned in the report were staff members and representatives of the company, and the only public consultation of people who were not employees of PT Mustika Sembuluh took place outside of the company's land concession. The people were not included even though there was an existing land conflict with the Dayak Temuan indigenous group. PT Mustika Sembuluh was the first company in Kalimantan to receive RSPO certification (Colchester and Chao 2013:16, 388).

In addition, it is questionable how independent these third party assessments are from the plantation operators facing an audit. The local situation can lead to a corporation and its plantations becoming the most important or only client of a certification body, so that it may also be in the economic interest of that organisation to generate exclusively positive assessments in order to ensure a long-term relationship with the client. The assessing institution is paid directly by the plantation operator for the assessment, which raises the question of whether such a structure permits the independence of certification bodies at all, especially in regions where a few multinational enterprises operate the majority of the plantations (Colchester and Chao 2013:388, 396).

4.4 Complaints procedures with high hurdles

RSPO criteria are indeed relatively far-reaching; they range from the NPP for new plantations to a complaints system. But the sanction mechanisms are not sufficiently effective, and even with all the reports of violations and the grievances against numerous companies that have been submitted to the RSPO and are currently being examined, only one company has so far been stripped of

its membership in the RSPO: Indonesian corporation PT Dutapalma Nusantara (also known as Duta Palma and Darmex Agro) was officially expelled from the RSPO on 9 May 2013, after the conclusion of a Grievance Process that had been underway since 2009 and accused Dutapalma of numerous violations of RSPO criteria. These violations included using fire to clear land for a plantation and establishing a plantation on peatland (RSPO 2013d; Greenpeace International 13 May 2013; WWF 21 June 2013; Mongabay 13 May 2013). Greenpeace had been repeatedly calling attention to PT Dutapalma Nusantara's rule violations since 2007 (Greenpeace International 2013b: 4). That this company was not expelled from the RSPO until 2013, six years after the first indications of violations, is evidence of the hesitancy and ponderousness of the RSPO grievance process. Other complaints from 2009 and 2010 are likewise still awaiting final resolution.

4.5 Avoiding responsibility

Firms facing an RSPO grievance also have the opportunity to sell off the plantations in question, end the certification process, or attempt arbitration, circumventing local people's claims for damages in the process. In September 2012, a Cameroon subsidiary of American firm Herakles Farms called SGSOC also withdrew its application for membership in the RSPO after a local NGO submitted a complaint to the RSPO on behalf of the ethnic communities in the concession area. SGSOC was thus able to remove itself from an attempt at resolution, and the only remaining option for the local communities is to file a legal claim in court (Colchester and Chao 2013: 21f.).

In 2013, the Wilmar corporation sold off its subsidiary, PT Asiatic Persada - which continues to be blamed for human rights violations in its concession areas in Sumatra - to two other owners who are not RSPO members but are close to the Wilmar founders. Because the new owners have no interest in continuing the grievance process on a case from 2011 that is currently underway with the RSPO and the IFC, the people affected have no further possibility to receive compensation from these institutions. The 2011 case concerns the destruction of 83 homes belonging to families who lived inside the concession area; they were accused of having stolen palm fruits from the company. Human rights groups helped the affected parties to start the grievance process with the

RSPO in 2011. In December 2013, new cases of serious human rights violations against the local people came to light: early that month, company security forces, Indonesian military, and police brigades in several villages destroyed almost 150 houses inside the concession area, ruined residents' property, and captured several people who had resisted (Mongabay 14 Dec. 2013).

thousand documented cases of land conflicts in the Indonesian agricultural sector, half of which involved companies growing oil palms (Colchester and Chao 2013:9).

4.6 Proven defects - limited effect

An international study on the effects of the grievance process concluded that the current size of the complaint mechanism is not suited to deal with the large number of tips and grievances within a reasonable timeframe. Of the 31 cases submitted by 2012, only 5 have been resolved (Colchester and Chao 2013: 390, 392). The study concludes from this that the RSPO complaint mechanism has neither the mandate nor the capacity to remedy the large number of disputes between companies and local communities (Colchester and Chao 2013: 392).

Data from various cultivation areas also show that many of the cases examined were the result of omissions in the plantation planning process, especially failures in communication with and compensation of local residents.

But the fact that an RSPO grievance process even occurs in these cases is an exception in itself. Such proceedings were previously only embarked upon by affected communities when they had help from a local, national, or international NGO.

A community of affected parties acting alone is usually not in the position to demand that a corporation respect its rights or to start an RSPO grievance process; the reasons for this may include the community not having been informed of the options for grievances or its rights, language barriers that present an obstacle to doing so, or the inability to follow up on the announcement of a new plantation that is published for 30 days on a website. In many cases involving human rights violations, communities' lack of contact with NGOs means that news of the violations never reaches the (national or international) public (Colchester and Chao 2013:390, 391, 396; see also Chao 2013:3).

The number of cases either recorded by the RSPO or involving SPO members is only the tip of the iceberg. Information from the National Land Bureau in Indonesia indicates that in 2012 alone, there were some eight

Chapter 5

Market changes in the EU and effects on the RSPO

Even though demand for palm oil in the EU remains far behind that of the Asian market, it is especially important for the RSPO. Regulations within the EU and in individual EU member States have a signal effect and therefore can exert great influence on the interests of the RSPO and the sales potential of RSPO-certified palm oil. The debates over biofuels and food labelling make it clear how EU regulations can not only have an effect on the RSPO criteria itself, but also on the interests of processors and traders in becoming RSPO certified.

5.1 Palm oil and biofuels

Because of the European and German plans to increase the use of biofuels in order to reduce greenhouse gas emissions, fuel manufacturers are becoming more and more interested in palm oil, and the percentage of palm oil additives in diesel fuel is increasing.

A study commissioned by the EU forecasts that the percentage of palm oil in the biofuels used by the EU (biodiesel and bioethanol) could rise from 4 per cent in 2008 to 17 per cent in 2020 (EU 2012b: 20). Friends of the Earth International has alleged that the palm oil added to biofuels in the EU has risen by 365 per cent in the last six years (FoE 2013: 7; IISD 2013:8). According to figures from Oil World, by 2013 more than 10 per cent of the global palm oil harvest was being used in the production of biodiesel (Bloomberg 3 Sept. 2013).

In November 2012, the RSPO-RED (RSPO with additional climate protection criteria) was recognised by the EU as a certification system for the sustainability certification of biofuels (EU 2012a; in addition to RSPO-RED, certification is also possible through the ISCC and the Rainforest Alliance, see chap. 6.). The RED deals with Renewable Energy Directive 2009/28/EG, which in Germany is known as the renewable energies guideline (guideline text: EU 2009).

The raw materials used to generate biofuels to be mixed with petrol and diesel for the EU must comply with the climate protection criteria stipulated by the EU in order to reach the EU-wide targets for reduction of CO₂. This includes the fact that the manufacture of this fuel must emit less CO₂ than the production of conventional petrol or diesel, with escalating requirements. At the beginning, the biofuels should reduce greenhouse gas emissions by at least 30 per cent, but by 2017 this

share must be at least 50 per cent, with 60 per cent reductions required of new facilities as of 2018 (EU 2009:21f.; “new facilities” refers to facilities beginning operations on 1 Jan. 2017 or later). If a biofuel does not reach these high emissions targets, under the EU RED regulations it cannot be recognised within the EU as climate-friendly, but it can continue to be used.

The emissions reduction criteria for palm oil not only govern its cultivation on plantations, but also the mills where palm fruits are further processed. Both must comply with special criteria for methane capture if they are to fulfil the currently required emissions reduction targets at all (RSPO 2012a: 3; EU 2009: Article 17, p. 21 and Annex V, p. 37; FNR 2013b: 15; methane, a greenhouse gas with more harmful effects than CO₂, is released when crude palm oil is processed.). But there is no uniform, recognised method to calculate the actual reduction in CO₂ for the oil from a specific plantation, so average values must inevitably be used (RSPO 2012a: 7; EU 2009 Article 19 p. 25f., Annex V p. 37).

Another criterion for palm oil besides the reduction of CO₂ emissions is that the plantation of origin has to have been in operation since at least 2008, so that it can be proven that no rainforest was cleared for planting as of 2008 (RSPO 2012a: 3; EU 2009 Article 17, p. 21 and Annex V, p. 37).

Recognition under RSPO-RED will only be given for palm oil that is traded under the Mass Balance, Segregation, or Identity Preserved (IP) systems. It is not possible to comply with RSPO-RED criteria under GreenPalm's Book and Claim system (RSPO 2012a: 4).

Since 2012, it has been possible to sell RSPO-certified palm oil as “sustainable” under EU fuel regulations once it has been recognised by RSPO-RED. This change brought loud protests from some environmental protection organisations, since they believed that both the RSPO-RED criteria and the RSPO criteria in general were not strict enough to be called “sustainable” (Asser Institute 2012; Klimaretter.info 2012).

The main criticism of the EU RED-regulations is that plantations only have to have existed since early 2008 in order to comply with criteria – meaning that until that point, forests were allowed to have been cleared for the establishment of the plantation (cf. EU 2009: Article 17 p. 22). The EU's standards for greenhouse gas emissions reductions through the use of palm oil that complies with emissions reduction criteria do not consider the status of the plantation land prior to 2008, nor the

CO₂ that could have been released from clearing forest or draining wetlands (RSPO 2012a: 7; EU 2009 Article 19 p. 25f., Appendix V p. 37).

If an oil palm plantation is set up on the site of a former rainforest or even on marshland (where the soil captures an even greater quantity of CO₂ than the forest does), this emits a large amount of CO₂, so that the fuel made from palm oil from this monoculture has a much worse effect on the climate than any other biofuel; depending on how the oil was grown, it can have an even worse carbon footprint than conventional fuel. According to a study by the UNEP (Bringezu et al. 2009), when a rainforest is cleared to make room for a oil palm plantation it can exceed the carbon footprint of conventional fuel by 800 per cent, and by up to 2000 per cent in cases of peatland conversions (EMPA 2012: 7; EU 2012b: 26f., 128f.; IFPRI 2011: 13; FoE 2013:14 referring to Bringezu, Stefan et al. 2009:53). The results of these studies do vary, but they show that palm oil may not comply with sustainability criteria (Grethe et al. 2013:9, figure on p. 27). Under RED, however, biofuels of this type are allowed in the EU as a “sustainable” replacement for mineral biofuels if the plantation was established prior to 2008.

One particularly unfortunate thing about setting 2008 as the limit is that a vast majority of today's oil palm plantations were already operating by that time. In 2008, there were 44 million tonnes produced worldwide; today, that number is 58 million tonnes (USDA 2010a: 13; USDA 2014: 14). Seventy-five per cent of today's production capacity was already in production in 2008. Since several years must pass between the planting of an oil palm crop and the first harvest, significantly more than 75 per cent of producing plantations today had to have been established before 2008. This instrument cannot do much for forest conservation when less than 25 per cent of the current global harvest is influenced by the 2008 limit at all.

What's more, RSPO-RED certification is not even available to smallholders (RSPO 2012a: 2). This means that only large-scale plantations working with extensive oil palm monocultures can be certified. Paradoxically, this excludes producers who plant on small plots of land, ensuring a more diverse landscape, from being certified as “sustainable”.

There are also plans to improve emissions by mixing biofuels into the production of jet fuel: Lufthansa tested the use of biofuel for the first time in 2011 (see <http://www.lufthansagroup.com/en/themen/biofuel.html>). So

far, however, there have been no legislatively stipulated sustainability criteria for jet fuel, and the environmental and social problems with using biokerosene derived from palm oil are the same as those with biodiesel.

A study by the Heinrich Böll Foundation found that European demand for vegetable oils in the production of biodiesel is responsible for an increase of 16 per cent in global market prices. Current plans for 2020 would require importing 85 per cent of the vegetable oil necessary into the EU (Grethe et al. 2013:8).

In view of this result, and the aforementioned environmental problems, it is doubtful that it will be possible to produce the vegetable oil needed for biodiesel in the amounts planned for Europe in an environmentally and socially acceptable manner, since this would increase global market prices, jeopardise food security, and lead to more pressure on croplands.

5.2 Palm oil and ingredient labelling on food products

Palm oil is now an added ingredient in half of all processed foods, but it seldom appears on lists of ingredients. As of December 2014, the EU law on food information to consumers in force since 2011 (1169/2011) will require all food manufacturers to list palm oil as an stand-alone ingredient in processed products within the EU. They previously had no obligation to do so; palm oil could generally be grouped together with other fats as “vegetable oils” or “vegetable fats”. Interested consumers were unable to determine whether a product contained palm oil and in what amounts it had been mixed into the product. The new regulations will increase transparency considerably and make it possible for critical customers to recognise products containing a percentage of palm oil and make the appropriate purchase decisions.

Since palm oil in the media has mainly been linked to the negative effects on environment and society, the new regulations could lead companies that are sensitive to consumer opinion to try to avoid using palm oil as much as they can, or to increase their use of palm oil that carries certification of sustainability. The EU regulations are expected to raise interest in the RSPO, increase sales of certified palm oil, and lead to a higher percentage of RSPO-certified palm oil being used in global production.

5.3 Reactions to EU guidelines

The Wilmar palm oil corporation, which operates almost half of global palm oil production, issued corporate guidelines in 2013 that should substantially raise sustainability standards for the palm oil traded or produced by the multinational by the end of 2015. These developments have already been interpreted as a marketing strategy and a reaction to the EU legislation (Deutsche Welle 2014; Wilmar International 2013; see also www.wilmar-international.com/sustainability).

The involvement of recognised large multinationals such as Nestle, Unilever, Rewe and Lidl in the Sustainable Palm Oil Forum (see chap. 6.5), coupled with press releases from companies like Ferrero and Hershey, also show that industry and traders are taking steps to comply with the requirements.

It must be said, however, that the EU regulation is limited to foodstuffs; industrial products such as cosmetics and cleaning products, varnishes, candles, and fuels are still not required to carry any consumer-friendly labelling about the oils and fats they contain. Consumers will continue to have no way of obtaining information about the composition of these products for the foreseeable future.

Chapter 6

Other sustainability approaches in the palm oil sector

The RSPO is not the only way to certify a palm oil plantation; some companies want to work together with NGOs to carry out their own projects or implement their own improvements within the RSPO. The alternative approaches are still very small-scale and draw on various areas, as the following examples show.

6.1 Alternative certifications

One of the approaches to promoting good palm-oil production methods among smallholders and establishing a transparent marketing chain is the collaboration by GEPA-The Fair Trade Company. The company obtains the palm oil for its products from a cooperative in Ghana that is both organic and fair trade (GEPA 2013). While GEPA's approach goes above and beyond that of the RSPO, the amount that has been sold so far is very small. In addition, there is also palm oil on the market that carries the European organic seal of approval. Organic certification is an advantage as far as the environment is concerned: it prohibits the use of pesticides, which protects the biological diversity of the plantation and the health of workers.

Less extensive is the International Sustainability and Carbon Certification (ISCC) Standard, a close collaboration with the Rainforest Alliance (RA). Both work in line with the Sustainable Agriculture Network (SAN) Standard and are an attempt to implement compliance with the sustainability requirements in the European Renewable Energy Directive and the German sustainability laws for biofuels and bioelectricity. Criteria for the standard include conserving biodiversity and high conservation value (HCV) areas; keeping biomass production environmentally friendly; providing safe labour conditions for employees; complying with human, labour, and land rights, as well as other existing laws; and introducing good management practices (for details see www.iscc-system.org and <http://www.rainforest-alliance.org>).

Various companies are also establishing more sustainable supply chains concurrently with the certification process, in collaboration with NGOs. Examples include Henkel's cooperation with Solidaridad to provide training and support to smallholders in Honduras and the WWF's approach to work together with companies to establish a better standard for new plantings (WWF 10 Jan. 2012; Henkel 2013).

A network of NGOs and companies called the Palm Oil Innovation Group likewise intends to go above and beyond the RSPO's approach (Greenpeace International 2013a: 5). It remains to be seen how internal controls and external transparency will be managed in these projects. Another voluntary commitment initiative is the Sustainable Palm Oil Transformation Manifesto, which corporations and NGOs have been discussing since early December 2013. Wilmar published a document at the same time as the manifesto, entitled "No Deforestation, No Peat, No Exploitation Policy", many parts of which read exactly the same as the manifesto. But both documents ultimately garnered criticism that they basically parroted the RSPO guidelines (Wilmar International 2013).

6.2 Forum for Sustainable Palm Oil

In September 2013, a group of companies active in Germany in industry and trade founded the Forum for Sustainable Palm Oil in tandem with NGOs and various associations. The forum is supported by the German Federal Ministry of Food and Agriculture and its goal is for Germany to use and process sustainable palm oil exclusively, as soon as is feasible. Towards this end, forum members have committed to transition to using sustainably produced palm oil by the end of 2014. "Sustainable" here means certified by the RSPO or a comparable standard (e.g., Rainforest Alliance, ISCC). The forum also wants to improve the RSPO:

An explicit goal of the forum is that member companies not switch over to other vegetable oils, but rather work to improve the conditions in the palm oil sector (for details see <http://www.forumpalmoel.org> and <http://www.giz.de/de/mediathek/16873.html>).

Chapter 7

Results from the experts: RSPO aspirations and reality

With the many critical studies of the RSPO's effects, one cannot help but suspect that the RSPO is having almost no effect in its current form. At the same time, however, there are some who find fault with the insufficient implementation of RSPO criteria even as they note that work to improve the implementation of the criteria as part of an existing approach is better than having no prospects for action at all. A survey was thus drafted in order to gauge opinions, and sent to German stakeholders as well as NGOs in Asia and west Africa. This was not a systematic survey, but rather the solicitation of a total of sixteen opinions: two companies, one business association, two standard-issuing organizations, one organization for development cooperation, and six European, three Asian, and one African NGO. The results can communicate opinion trends about the RSPO's prospects but have no pretensions to statistical validity.

Survey on the effectiveness of the RSPO

1. *Do you believe that the RSPO in its current form is putting a stop to the destruction of the rainforest, especially primary forests?*

All respondents agreed that the RSPO could not put a stop to the clearing of the forests. At the same time, almost half of respondents were convinced that the RSPO could slow the rate at which forests are being cleared. Several respondents took this as an indication that in view of the political and legal circumstances in many cultivation regions, the RSPO was the only entity capable of improving the situation at the moment. They also noted that only a small percentage of plantations are certified and that RSPO has no influence on the rest. NGOs in particular criticised the RSPO's weak ability to implement measures against its own members who frequently do not comply with criteria.

2. *Do you believe that the RSPO in its current form is reducing or eliminating human rights violations that occur when new plantations are laid out?*

All respondents agreed that the RSPO cannot eliminate human rights violations. At the same time, a majority of respondents were convinced that the RSPO is at least leading to improvements. Answers in this area also showed that the legal framework and its implementation in cultivation countries are the primary elements that must be improved. NGOs criticised the RSPO's weak implementation ability in this area as well, since members frequently do not comply with criteria.

3. *Do you believe that the RSPO in its current form is improving the situation of employees on plantations?*

Responses were largely divided as to whether RSPO requirements are improving the situation of employees. What is striking is that the European NGOs tended to be more pessimistic, whereas the NGOs from the Global South saw improvements.

4. *Are applicable labour laws already being implemented on plantations, independently of the RSPO?*

Almost all of the NGOs saw gross abuses, whereas responses were more balanced among the other groups.

5. *Are violations of labour and environmental protection laws being legally challenged?*

Some of the respondents answered no to this question, but three-quarters of the answers given indicated that legal challenges to violations were rarely or never pursued.

6. *Is the practical implementation of RSPO regulations susceptible to corruption?*

Half of respondents did not believe the system was corruptible. Six of the seven sceptics came from the NGO side, whereas the standards organisations saw hardly any problems.

7. *Would stronger controls by certifying organisations make it possible to achieve enforcement of current RSPO standards?*

More than half of respondents believed that advances could be made through stricter controls.

8. *Do you see starting points for establishing a concurrent standard to the RSPO that goes further and whose implementation is guaranteed through a certification system?*

The number of respondents who believed in establishing concurrent structures was almost equal to those who had doubts about doing so. Companies and NGOs from the Global North started with the creation of concurrent structures, whereas NGOs from the Global South tended to question this.

Questions 9 and 10 dealt with the German Forum for Sustainable Palm Oil and were only asked of respondents in Germany. Four of the seven respondents were members of the forum.

9. *Does the Forum for Sustainable Palm Oil founded in Germany have the power needed to implement changes within the RSPO?*

Most respondents saw the German market as having the potential to be a pioneer with other European nations in creating change.

10. *Does the forum founded in Germany have the power needed to negotiate more harshly with multinationals growing palm oil in Indonesia and Malaysia?*

At the same time, more than half of respondents were sceptical about the forum having power against corporations. The argument was repeatedly made that this would lead to a schism in cultivation countries. Some companies believed in strengthening their own position on the market by complying with standards, while others said they would concentrate on customers who did not demand higher standards.

Chapter 8

Potential of voluntary agreements

The responses to the survey had very different aspirations as to what cultivation in line with the standards linked to a certification should achieve. On the one hand, there was great disappointment that the RSPO had not yielded many of the achievements that were promised; on the other, there was a realization that many of those aspirations could not come to fruition through voluntary introduction of standards.

The debates in the palm oil sector are also going on right now in other industries where the introduction of standards and subsequent certifications have already taken place, for example the coffee and chocolate industries, the cotton industry, and even the voluntary employee benefits standards of the garment industry.

The past two decades have seen massive increases in the number of labels awarded by private, nongovernmental institutions. It is estimated that there are currently at least 435 different labels being given out in the environmental and social fields (COSA 2013: 1). Added to this are the numerous labels handed out by governmental institutions.

What's more, companies - sometimes in cooperation with NGOs and standard-setting organisations - have introduced their own labels in a variety of different areas or have developed programmes that could lead to their own label (e.g., Cotton Made in Africa, Pro Planet, Source Trust, etc.).

A variety of standard-setting organisations got together to form the ISEAL alliance to improve the effectiveness of their standards, an umbrella association founded in 2002 that currently has 21 standard-setting organisations as members. All of them recognise fundamental rules that the association has defined in tandem with its members. The RSPO joined as an affiliate member in late 2012, but has not yet finished the process of achieving full-fledged membership in the umbrella organisation, for which higher requirements must be met.

8.1 Companies demand more transparency

Similarly to the case of palm oil, recently companies in other sectors have also come to regard purchasing products produced according to certain standards as a way to minimise the risk of scandal. Other companies, by contrast, see establishing a controlled value chain through certification as a strategy not only to minimise risk, but also to use resources more efficiently and to modify their manufacturing chain to be more sustainable and thereby more secure (Steering Committee 2012: 43-46, 56; ISEAL 2011: 11-12).

Despite the rapid growth in the amount of certified agricultural raw materials on offer, there is still very little available data about the effects of the introduction of these standards. In most cases, the assumption has been that introducing standards and implementing them would automatically lead to positive results. Reports about the effect of certifications are therefore frequently anecdotal in character, lacking any systematic record of which changes in particular have been achieved in the agricultural sector.

This makes the credibility of the improvements that it was promised would follow from introducing standards a very important aspect for both companies and consumers. Not until recent years has the number of studies increased and have meta-studies been carried out in an attempt to compile the findings that have been collected (Steering Committee 2012; ITC 2011a, 2011b, 2011c; Blackmore et al. 2012).

The result of the studies can be summarised as an indication that the introduction of proprietary company standards frequently brings with it positive effects. It also establishes, however, that despite the proof of positive effects, at present there is still far too little knowledge available. This is why there has been strong pressure for more studies to be conducted that use a more consistent methodology (ITC 2011b: ix-x, 23; Steering Committee 2012; Blackmore et al. 2012: xiv-xvi).

In light of the debates that have broken out in other industries as well, the hope and the expectation is that companies working at the end of the value chain will demand more proof from the RSPO - in the form of independently executed studies, for example - that production has become more sustainable.

8.2 Voluntary versus legal compliance

“While the RSPO standard itself needs to be strengthened and enforced, so long as national laws and policies allocate lands to companies without respect for community rights, company compliance will be hard to achieve and further conflict inevitable.” (Colchester and Chao 2013: 398).

Certifications bring the most progress when they work hand in hand with national regulations: certification raises the standard, and regulation then ensures that even companies who react more slowly must introduce higher standards. On the other hand, however, certifications can also lead policy-makers to see no further reason to introduce or enforce legislation that would implement minimum standards (Steering Committee 2012: 25).

The membership of European companies in the RSPO is likely to be strongly influenced by the motivation to minimise risk. The current legal situation in Europe does not limit palm oil imports in any way, even when it comes from the most dubious sources.

The massive social and environmental abuses on the plantations are leading some companies to demand improvements at the same time they are aware that national agencies in the cultivation countries will pursue legal violations only tentatively, if at all: existing laws are ignored or cleverly circumvented and must therefore be reinforced and implemented more consistently. RSPO guidelines include compliance with national legislation, but their enforcement is weak, since they are sometimes too abstractly formulated, and the mechanisms to enforce their application are lacking.

This raises the question of whether the RSPO stabilises existing structures through its existence alone, as an exculpatory body: companies point to their voluntary standard that they intend to comply with as soon as possible and to the greatest extent possible, thus deriving a licence to operate in a sometimes lawless space and to exploit that lawless space, along with their ostensible support of the standard; this allows them to expand their operations at the expense of humanity and the environment.

Chapter 9

Conclusion and recommendations

The establishment of more sustainable structures in palm oil cultivation faces great challenges:

many critics doubt that environmentally and socially sustainable structures are possible at all given that these are monocultures on large plots of land. This extensive demand for land leads almost inevitably to the many land conflicts we can see in all of the cultivation areas. Finally, the large need for workers, most of whom must work in remote areas, is linked to great risks for employees.

Even a well-functioning standard faces great challenges under such conditions. This also goes for the RSPO, which does not function sufficiently in many areas either.

Ideally, the process that should lead to more sustainability can be divided into four levels, known as the “4Ds” (from SustainAbility 2011: 12):

- **Define** standards that lead to more sustainability;
- **Deliver** better sustainability by building up capacities, expertise, relationships, infrastructure, and networks;
- **Demonstrate** that results are actually more sustainable;
- Create **demand** for the sustainable products.

We can see the extent of the problems with the RSPO if we use the 4Ds as a standard.

As demonstrated in chapter 4, it is doubtful that the standard is sufficient to do justice to the necessary sustainability.

Furthermore, it is questionable whether it will be implemented in such a way that it actually leads to more sustainability. The proof that progress is actually being achieved has so far only been seen in isolated cases. There has been no comprehensive, independent examination of the effects of companies that are expected to apply the standard or the land that has been certified.

Many of the communities affected by the expansion in plantations still do not know what their rights are today, nor are they aware of the RSPO criteria they could invoke in cases of conflict. They also have limited or no access to the documents that must be compiled by the company in order to erect a plantation. All of this contributes to the fact that they frequently cannot make decisions in a free and informed manner, as is stipulated in the rules of FPIC (Colchester and Chao 2013: 384).

Most of the studies about abuses in the palm oil sector come to the conclusion that these could be remedied through consistent implementation of RSPO criteria. But

even this implementation is insufficient in many cases, because there are huge gaps in the monitoring of standards compliance coupled with a lack of effective sanctions mechanisms.

The main problem in cultivation countries remains the inaction by the governments in charge. The rigorous enforcement of already existing laws would remedy a large part of the abuses. The results of the survey of various stakeholders point in the same direction.

Apparently, more and more companies are dissatisfied with the current situation, as indicated by the attempts by various stakeholders to make the RSPO more efficient or to establish parallel structures. At the end of the day, the Forum for Sustainable Palm Oil is one attempt to reform the RSPO from the inside out. Amid the debates about the problems with palm oil cultivation, we should not forget that massive problems can exist at any company and that we therefore should not lose sight of the production conditions at companies that are not part of the RSPO process.

The global demand structure for palm oil raises more questions. On the one hand, there continue to be big problems actually selling sustainably produced palm oil, with its special seals and additional cost. About half of certified palm oil is sold as conventional palm oil. On the other hand, demand in Asia is particularly high, and is continuing to grow there. It is obvious that unless we include Asian buyers in the debate over sustainability, we cannot achieve comprehensive progress in oil palm cultivation. If they are excluded, there is a risk of two markets being created, with palm oil from newly established plantations with deleterious social and environmental effects being sold to Asian consumers. The fundamental problem is that demand for palm oil will continue to rise. This will also lead to future conflicts over new plantation construction.

Recommendations to the RSPO

The RSPO has the potential to contribute to resolving many conflicts. If this is to happen, however, improvements must be implemented in several areas:

Certification:

- Smallholders should be able to access RSPO and RSPO-RED certification more easily.

Supply chains:

- A gradual transition to segregated supply streams must be implemented in order to increase the sustainability of supply chains. Mass Balance should only be allowed in exceptional cases, and the Book and Claim system should be eliminated after a transition period.

Criteria:

- Criteria must be tightened, for example by excluding cultivation on peatlands and more consistent guidelines for obtaining FPIC.
- The implementation of criteria, especially the New Plantings Procedure, must be guaranteed.

Controls:

- Mechanisms for controlling compliance with criteria must be improved, for example through minimum requirements for audits and auditors.

Complaints system and sanctions:

- The RSPO complaints system must be reformed so that complainants have easy access and are informed that they can make use of it at no cost and can exercise this right without external support.
- The burden of proof must be reversed, so that in contested cases in the future companies must prove that they have complied with laws and standards.
- In case of violations of the criteria, there must be transparent procedures and strict sanctions mechanisms, up to and including the expulsion of the company.

Recommendations to NGOs and church actors

The main problem for those affected by abuses in oil palm cultivation are the violations of existing laws that occur during the operations or establishment of plantations. An important starting point therefore has to be direct support for the affected communities:

- Affected parties must be given much stronger support than before in exercising and implementing their rights, as well as in using the complaints system to do so, especially in the period right before plantations are installed as part of the New Plantings Procedure.
- Abuses by companies not participating in the RSPO must be publicised so as to pressure them even more strongly to establish sustainable structures for cultivation.

- Networking of affected parties and NGOs involved in the cultivation regions must be encouraged so that affected parties can share their experiences from cases of conflict, support one another, and develop strategies together.
- In view of the social and environmental effects of large-scale oil palm cultivation, we must call for reductions in the use of palm oil as a way to limit these effects.
- The public must be informed of the abuses in palm oil cultivation through research, publications, and campaigns. Public interest can encourage companies and governments to tackle these abuses.

Recommendations to governments in cultivation countries

Many of the conflicts with member companies of the RSPO could be avoided completely if the relevant authorities would consistently enforce existing laws:

- Governments in the cultivation countries must consider in their decisions the interests and rights of the people who use the land.
- In order to guarantee protection of the rights of smallholders and the local population, governments must implement the Food and Agriculture Organisation (FAO) guidelines (see box) and create a comprehensive legal framework for land transactions.
- National laws must be implemented, and ILO conventions (especially the Core Labour Standards and the convention on indigenous peoples) must be ratified (if they have not been already). Compliance with these laws and conventions on plantations and in palm oil processing must be monitored.

Voluntary guidelines for the responsible administration of land and soil use rights, fisheries, and forests

The United Nations Committee on World Food Security (CFS) drew up guidelines on the subject of land rights that were adopted in May 2012. These define a comprehensive framework for land transactions. Human rights aspects are paramount, representing great progress: the particular goal of the guidelines is to protect the more than 500 million small-scale food producers in the world who live off of agriculture, livestock breeding, fishing, and/or gathering forest products.

The guidelines call upon governments and countries to recognise the unwritten laws and customs of the people and to respect them. In order to facilitate this, legitimate customs and common law must first be identified and registered: this expressly includes not only formal common law, but what the CFS calls “informal tenure”, or usufruct.

The guidelines outline how transfers of land should be formulated so as to respect the human right to adequate food and the property rights and usufruct of the local population. Local peoples must be consulted, for example, and assessments of impacts on the population and the environment must be carried out. States are expected to enact regulations at the national level governing the size and extent of large-scale land investments. Along with the minimum standards for land

investment, the document also contains guidelines on recognising and protecting property rights and informal tenure, improving administrative structures, executing land reforms, and fighting corruption.

Companies are expected to avoid human rights violations and breaches of unwritten laws by dealing carefully with the rights of affected parties. Due diligence is mentioned here, a term that the UN Human Rights Council adopted in 2011 as a guideline for companies and human rights: the “UN Guiding Principles of Business and Human Rights” explicitly calls upon companies to ensure compliance with human rights in their course of business.

The FAO calls upon all countries implementing the guidelines to monitor their implementation and evaluate their impact. The FAO also encourages governments to support platforms for the various interest groups at local, national, and regional levels that are expected to advance the implementation of the guidelines and encourage progress reviews. It is also suggested that institutions for international development cooperation as well as the United Nations support governments in implementing the guidelines and encourage stronger cooperation among countries of the Global South in handling unwritten laws and customs (FAO 2012).

Recommendations to the German Federal Government

The German Federal Government must act at both the national and international levels to strengthen the rights of peoples affected by oil palm cultivation:

- At the international level, the Federal Government must demand legally binding social and environmental standards that companies operating internationally must comply with along their entire value chain. Standards such as the “Guidelines for Multinational Enterprises” by the Organisation for Economic Cooperation and Development (OECD - a forum of 34 industrial and developing countries) and the “United Nations Guiding Principles” must be intensified so that violations bring sanctions against the culpable enterprise.
- Companies requesting access to an exchange must be required to first submit comprehensive reports on the social conditions, human rights situation, and environmental impact of their supply chain.
- Just as will be required for foodstuffs after late 2014, the law should also require that all other products containing palm oil (cosmetics, laundry detergent, candles, fuel, etc.) include a comprehensible description of their ingredients.
- In addition, the UN Human Rights Council began 2012 by developing a draft for a Convention on the Rights of Peasants; this should be implemented in the future in a way that is similar to the Convention on the Rights of the Child and the Declaration on the Rights of Indigenous Peoples. The German Federal Government should actively support this development process.

Recommendations to the EU

The increasing use of palm oil in the manufacturing of biofuels as part of the EU RED regulations is increasing imports into Europe:

- Because of its unclear effects on the climate, the immense social and environmental problems in cultivation areas, and the competition for use of palm oil as a food, its use as fuel should be abandoned until all open questions can be clarified.

Recommendations to palm oil processors

A multitude of companies in Germany are processors or users of products derived from palm oil:

- Companies must demand that the RSPO improve monitoring of its criteria and increase pressure on producers to eliminate abuses, using clear deadlines and mechanisms for expulsion from the RSPO.
- The companies must design their manufacturing chains in such a way that they are aware of the origins of the palm oil they process. They should also reinforce positive approaches within the RSPO or other standards through the targeted purchasing of segregated palm oil.
- They must refuse to use pursue certification using certificates from the Book and Claim system.

Recommendations to retailers

Retailers are increasingly producing their own brands that contain palm oil and can also exercise pressure on brand manufacturers:

- Retailers should impose conditions on their suppliers and demand proof that they are complying with social and environmental standards.
- Retailers should negotiate with their brand manufacturers to make the use of certified, segregated palm oil a condition of distribution to end consumers.

Recommendations to banks and investors

The establishment of oil palm plantations and processing facilities requires substantial investment that is sometimes financed by issuing stock, borrowing, and letters of credit:

- Anyone investing money in the form of loans to companies that process palm oil must insist on verifiable

evidence of the social, human rights, and environmental conditions at plantations and processing facilities as a prerequisite of any business deal.

Recommendations to individuals

Customers who purchase products manufactured from palm oil have an influence on both manufacturers and legislators:

- A first step is to ask the retailer about the origins of the palm oil and the conditions under which its cultivation, harvest, and processing took place.
- German citizens must call upon the Federal Government to change the legal framework so that companies must give information about the origins of their supply chain and trade responsibly.
- Individuals should take care with their private funds to see that these are not invested in companies that cultivate palm oil without any effective sustainability strategy.
- Groups and initiatives working on the subject of palm oil could be supported in their campaigns.
- Individuals can reduce their use of palm-oil-containing products in their own consumption behaviour or switch to palm-oil-free alternatives.

Chapter 10

Summary

The production of palm oil has risen tenfold over the past thirty years. The increasing demand can be explained by the variety of uses for the raw material, even as palm oil continues to be used primarily for human food consumption. Because of the world's growing population and rising incomes - such as those in India and China - demand for this high-quality vegetable oil is still rising. What's more, palm oil is used as a raw material in the chemical industry, as a fuel, and as a cheap source of energy.

Rising use globally is leading to a continuous expansion of croplands in Malaysia, Indonesia, and Papua New Guinea, as well as in countries in Africa and South and Central America. In many cases, this expansion exerts a negative effect on people and the environment and generates enormous problems. Numerous reports and studies have shown that huge areas of rainforest continue to be cut down for palm oil cultivation, as populations are violently expelled or receive only negligible compensation. The labour conditions on the plantations often meet neither international standards nor local legislation.

In 2004, the Roundtable on Sustainable Palm Oil (RSPO) was founded in response to these social and environmental problems. The aim of this initiative by industry and civil society is to promote the production and processing of sustainable palm oil. Criteria have been developed with this end in mind that all RSPO member companies are expected to implement.

A multitude of studies, however, have shown that when establishing and operating plantations, even certified companies will implement RSPO criteria only in places, or even not comply with them at all. The reason for this is that there are great gaps in the monitoring of compliance with standards and a lack of effective sanction mechanisms.

Fifteen per cent of global palm oil production is produced on croplands certified by the RSPO. So far, however, this amount cannot all be sold with the seal of approval and added cost. To date, about half is being sold on the market as conventional palm oil. The establishment of the German Forum for Sustainable Palm Oil in 2013 is an attempt by corporations to encourage the food industry to buy sustainable palm oil. They also hope to provoke a transition from the Book and Claim System trading method, where certificates are traded independently of the goods themselves, to the Segregated supply chain method.

This interest from business, coupled with the EU directive coming into force in late 2014 that will require palm oil in processed foods to be correctly labelled, raises

the question of how to regard this voluntary initiative by the industry. Can improvements be implemented within the RSPO, or would it be more successful use national legal instruments to go after human rights violations and breaches in environmental laws?

Results of independent research so far into whether RSPO certification achieves actual progress have only been substantiated for individual plantations. The present study seeks to provide a basis for this debate by describing the RSPO's workings, effects, and weaknesses, as well as the total of sixteen participants in the process who provided their assessments of developments on the palm oil market. The people surveyed, who traced the debate from the perspective of companies, state organisations, and NGOs, were in broad agreement about the RSPO's weaknesses: The RSPO has not achieved many of the results it promised. At the same time, it is obvious that abuses cannot be avoided through the voluntary introduction of standards alone, but rather that governments of the production countries must implement existing laws and companies must identify barriers.

The RSPO complaint mechanism is of limited use to affected communities. A majority of the communities affected by the expansion in plantations still do not know what their rights are today, nor are they aware of the RSPO criteria they could invoke in cases of conflict. Often they have limited or no access to the documents compiled by the company in order to construct a plantation. All of this contributes to their inability to make free and informed decisions as to whether they wish to (or must) allow their land to be used for palm oil cultivation.

Regardless of the weaknesses detailed here, the RSPO currently represents the only relevant instrument with any qualitative standards at all for assessing palm oil cultivation. The present study examines this and at the same time shows ways to turn the RSPO into an effective institution: without question, extensive changes will be necessary.

But the problems of oil palm cultivation go far beyond the RSPO's capacity to solve them. This is why the study concludes with recommendations to governments of cultivation countries, the German Federal Government, and the European Union. Actors from within the church and from NGOs can also contribute by helping the affected communities to assert their rights.

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