

Non-judicial grievance mechanisms as a route to remedy

- an unfulfilled opportunity

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Key Points

1. The right to remedy

Under international law, violation of a human right gives rise to a right to remedy, a principle upheld by the “Protect, Respect and Remedy” framework of the UN Guiding Principles on Business and Human Rights.

2. Current non-judicial remedy procedures are failing

This study reveals how far RSPO, FSC, OECD, Unilever and CAO complaints procedures are far from realising UNGP norms.

3. Reforms are needed

Complaints mechanisms must be radically overhauled to be accessible, transparent, predictable, equitable, rights-compatible and provide effective remedy.

4. Human rights defenders need protection

Staff handling grievances must be careful not to exacerbate the risks faced by human rights defenders.

5. Resourcing and incentives required

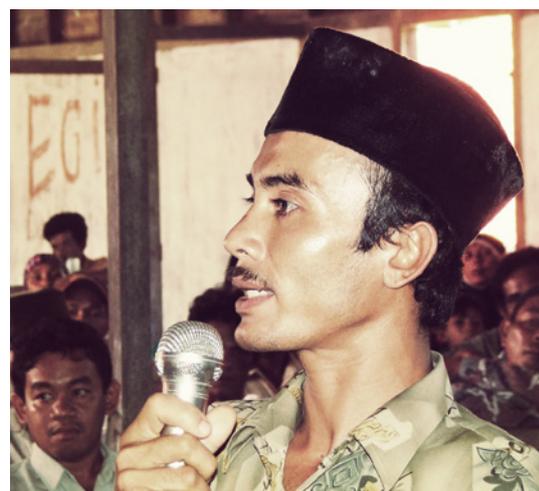
Complaints and remedy procedures need independent investigative capacity, resourcing and stronger incentives to resolve disputes.

Summary

Under international human rights law, violation of a human right gives rise to a right to remedy. Non-judicial grievance mechanisms provide an opportunity for those seeking remedy after facing human rights abuses perpetrated by companies.



Unfortunately, despite great steps in the development of remedy procedures on paper, many procedures fail to live up to best practice. Over the past 25 years, Forest Peoples Programme (FPP) and our partner organisations have supported indigenous peoples and local communities to seek redress through a number of these non-judicial remedy procedures. This briefing assesses these mechanisms against the criteria laid out in the UN Guiding Principles on Business and Human Rights (UNGPs) both on paper, and in the experience of FPP and partners. The analysis shows that these grievance mechanisms have multiple weaknesses in the way they handle complaints and all of them struggle to provide effective remedy to communities. To fulfil their potential, grievance mechanisms must take steps to ensure they are compliant with the UNGPs both on paper and in reality.



Minangkabau spokesperson, West Sumatra, 2005

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Cambodian villagers displaced by Thai sugar plantation petition Thai human rights commission for remedy

Introduction

The UN Guiding Principles on Business and Human Rights (UNGPs) sets out a clear framework on the obligations of States and businesses to human rights. Whereas it is the State's obligation to **protect** human rights, businesses have a responsibility to **respect** human rights, and both have a role to play in providing **remedy** processes where they have failed in these responsibilities.

From the perspective of the victims of human rights abuses linked to business activities, non-judicial grievance mechanisms offer a route to remedy that can be cheaper, easier to access and faster than judicial processes (OHCHR, 2019). Furthermore, in some cases where there are barriers to accessing the judicial system, such as weak laws, discrimination or corruption, non-judicial grievance mechanisms may offer the only reasonable option for seeking remedy. The transnational reach of some grievance mechanisms can also be appealing.

Companies that experience conflicts over land can endure significant loss of profits, loss of investor interest and reputational damage that may limit their access to discerning financiers and markets (Global Witness, 2020). Many companies thus adopt ethical policies on issues such as indigenous peoples' rights, customary rights, workers' rights, gender, land acquisition and consultation. Grievance mechanisms should be designed to allow businesses to identify and rectify where their operations are failing to uphold these policies and remedy any resulting harms. Remedy procedures can also serve as a risk management tool by offering a process for identifying systemic issues through analysing trends, which can then inform the adaptation of company systems and policies.

The grievance mechanisms of companies, multi-stakeholder initiatives, industry collectives and development finance institutions – collectively non-judicial remedy procedures – can therefore play an important role both for businesses, in upholding their human rights obligations under international law and mitigating risk associated with conflicts, and for victims who are seeking remedy for past harms. However, having a grievance mechanism is not enough, it must also be **effective**.

In recent decades, many companies have developed grievance mechanisms yet many of them fail to function effectively. The Corporate Human Rights

Benchmark's 2019 ranking gave the world's two hundred largest companies an average score of just 3.1 out of 15 for their remedy and grievance processes (CHRB, 2019). Without an effective grievance mechanism, businesses will be unaware of many human rights abuses linked to their activities or supply chains and, as a result, many communities and indigenous peoples suffer ongoing human rights abuses with no hope of remediation.

According to the UNGPs, an effective grievance mechanism must be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and the whole process must be a source of continuous learning and established on the basis of engagement and dialogue with stakeholders (OHCHR, 2011).

Over the past 25 years, Forest Peoples Programme (FPP) and our partner organisations have supported communities in accessing several non-judicial remedy mechanisms. This briefing draws on FPP and our partners' experience in submitting complaints to a variety of grievance procedures including: Unilever's palm oil grievance procedure, the Forest Stewardship Council's (FSC) Dispute Resolution System, the Roundtable on Sustainable Palm Oil's (RSPO) Complaints Panel, the International Finance Corporation's (IFC) Compliance Advisory Ombudsman and the Special Incidence Procedure of the Swiss National Contact Point (NCP) for the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. Furthermore, this briefing compares the experiences of FPP and our partners in using these grievance mechanisms, with the effectiveness criteria of the UNGPs.¹ This briefing then scores the named grievance mechanisms, comparing the "on-paper result" with the results on the ground. Finally, the briefing sets out key recommendations which non-judicial remedy procedures must consider in order to become truly compliant with the UNGPs both on paper and in practice.

Effectiveness

Accessible

In order to be effective, grievance mechanisms must be accessible. According to the UNGPs this means firstly that the procedure must be made known to all stakeholder groups for whose use they are intended, and secondly that they provide adequate assistance for those who may face barriers to access. Barriers to access can include a lack of awareness of the mechanism, language, literacy, costs, physical location, and fears of reprisal.

For communities who are in a dispute over land, their options for seeking remedy through non-judicial mechanisms are not always apparent. Although communities may know which company they are in dispute with, and can therefore lodge a complaint directly, they may be unaware that they can submit a complaint to a parent company, buyer, multi-stakeholder initiative of which the company is a member, or with the financier of the project. Lack of awareness of non-judicial remedy procedures is a common and persistent barrier to access. For instance, none of the communities in the cases referred to throughout this briefing were initially aware of the companies' association with either the RSPO or the FSC, or in one case, that the company was financed by the World Bank Group.

As detailed in the UNGPs, it is the companies' responsibility to raise awareness of remedy procedures available to communities who may be impacted by their operations, their members or their subsidiaries. However, in the experience of FPP and partners, this requirement is rarely, if ever, fulfilled.

FSC and Unilever have no explicit requirements in their procedures for their members, clients or suppliers to raise awareness of the grievance procedure with communities. The IFC Office of the Compliance Advisor/Ombudsman (CAO) does not have an explicit requirement to conduct outreach relating to their grievance procedure; however, they do outline their "proactive approach" to raising awareness with potentially affected people, civil society organisations, clients, staff and other stakeholders (IFC, 2013). The RSPO is the most compliant with the UNGPs in that it has a requirement to ensure all stakeholders and complainants have fair and reasonable access to information about the Complaints and Appeals Procedure;² however, as already stated, in the cases referenced here, this requirement was not fulfilled. The OECD NCPs have a responsibility to promote the OECD Guidelines for Multinational Enterprises. We can presume this includes the accompanying complaints mechanism; however, this responsibility is limited to the OECD countries in which the NCP is based. This obligation therefore does not cover countries where OECD country-registered companies operate. In one case, an FPP partner filed a complaint regarding a Swiss-registered company operating in Indonesia, however, the impacted communities fell outside of the geographical remit of the Swiss NCP's obligations for raising awareness.

In terms of accessibility of the procedure itself, all the complaints mechanisms assessed were available online on the provider's website. Some, however, were more difficult to find than others. At the time of writing, the Unilever Palm Oil Grievance Procedure was the most difficult to find, located in a section on sustainable sourcing in the palm oil industry (Unilever, n.d.) rather than in a centrally located "complaints" area. The "Contact Us" page also did not mention complaints so it was unclear if victims could access more information about the complaints mechanism there. The RSPO, FSC and



Plantation companies have their own security forces

IFC procedures were, in comparison, relatively easy to find as they were either directly available under "About" or in sections on accountability (RSPO, n.d.) or integrity (FSC, n.d. -a). The information on the OECD Swiss NCP's "Specific Instances Procedure" was available on the website for the Swiss Secretariat for Economic Affairs (SECO, 2020) and could also be found through the OECD Responsible Business Conduct website (OECD, n.d.). These websites were relatively easy to find but required the user to know what they were looking for.

Another persistent barrier to access was language. Details of the RSPO and Unilever grievance procedures were only available in English, the FSC process in English and Spanish, and the OECD Swiss national contact point information in the Swiss national languages (English, French, German and Italian). For most of these procedures this meant that communities submitting a complaint required the support of an English-speaking advocate such as a lawyer or non-governmental organisation to explain the process and help them access it.

Similarly, complaints to many of these procedures could only be made in English. The IFC CAO was the only process which could be completed in local languages. As stated in the policy, the CAO commits to "work to facilitate communications with its stakeholders in any language, including the submission of complaints ... (and) reports relating to complaints are translated into the local language of the relevant complainants" (IFC, 2013). The OECD process could be completed in any of the Swiss languages, but at the time of writing the other procedures assessed here could only be completed in English.³

In the case of the Dayak Bahau community of Long Isun in Indonesia, who submitted a complaint to the FSC,⁴ much of the evidence consisted of recorded community testimonies in Indonesian. Despite providing full transcripts in Indonesian and key points in English, FSC stipulated they could not consider the complaint unless all materials were fully translated. This necessitated a lengthy and expensive process. The time and resources needed to undertake translation such as this would put the process out of reach for many communities who do not have outside support, rendering the process inaccessible for many.

1. Although the final two criteria of the UNGPs are essential to the development of effective grievance mechanisms, they cannot be assessed through FPP and partner support to communities for specific cases and thus will not be discussed here. Details of each of the cases referred to in this section can be found in Annex 1.
2. RSPO Complaints and Appeals Procedure states at 3.2.2: RSPO Secretariat shall ensure that all stakeholders and complainants have fair and reasonable access to information about the RSPO Complaints and Appeals Procedure and guidance on how to submit complaints publicly accessible via the RSPO website



IFC CAO, Amar Inandar, bears testimony from Wilmar impacted communities in Sambas district, West Kalimantan

One of the most worrying barriers to access is fear of reprisal. Attacks against human rights defenders are a significant problem. In 2019, Front Line Defenders recorded the murders of over 300 human rights defenders, 40 per cent of whom were working on land rights, indigenous peoples' rights and environmental rights (Front Line Defenders, 2020). Since 2015, the Business and Human Rights Resource Centre has documented more than 2,000 attacks on human rights defenders, raising concerns about business-related human rights abuses, with mining and agribusiness the most dangerous sectors (Resource Centre, 2020).

Communities submitting a complaint to a grievance mechanism do not always consider themselves "human rights defenders," but many are acutely aware of the risk they face by making such a complaint. The Shipibo-Konibo community of Santa Clara de Uchunya in Peru have faced a series of threats and attacks after huge swathes of their land were cleared for oil palm production and they submitted an initial complaint to the RSPO Complaints Panel in December 2015. Although responsibility for these attacks is difficult to attribute to the company and we cannot be completely sure that all the attacks were in retaliation for the complaint, the submission of the complaint to the RSPO and the subsequent stop-work order issued did precede a spike in threats to community members and leaders.

Since 2000, at least 25 per cent of specific instances filed by NGOs and communities with an OECD National Contact Point have involved reprisals (OECD Watch, 2020). According to OECD Watch and the Business & Human Rights Resource Centre, filing a case may even deepen the risk for human rights defenders, with some instances of reprisals occurring during or after a case is concluded (OECD Watch, 2020).

Recognising the retaliation complainants face, the IFC CAO and RSPO have taken the important step of developing protocols to protect complainants and human rights defenders submitting a complaint. In doing so, the RSPO joins a number of companies and investors initiatives who have made the important step of denouncing reprisals against human rights defenders (Resource Centre, 2020a) as well as only a handful who have implemented grievance mechanisms which acknowledge this barrier to access and attempt to improve the safety of complainants (Resource Centre, 2020a).

In line with the IFC position statement on retaliation against civil society and project stakeholders (IFC, 2018), the IFC CAO has adopted an "Approach to responding to concerns of threats and incidents of reprisals in CAO Operations," which outlines the steps they take to safeguard defenders in dispute resolution scenarios. This includes, for example, safeguarding the confidentiality of defenders, conducting risk assessments and adopting preventative measures. Similarly, the RSPO's policy on the protection of human rights defenders, whistle-blowers, complainants and community spokespersons provides a way for complainants to notify the RSPO when they are fearful they will face retaliation for making a complaint or during a conflict with an RSPO member. This policy requires the RSPO to put complainants who are at risk in touch with organisations who may be able to offer protection as well as to investigate allegations of reprisals and apply corrective actions. Although this process is not independent from the RSPO secretariat, it is intended to be separated from the Complaints Panel, which includes company representatives.

Unfortunately, several attempts by FPP and partners to trigger the RSPO's policy on the protection of human rights defenders have been unsuccessful.⁵ In one case where the policy was successfully triggered, it took over eight months for the defender to receive a response, leaving them at significant risk in the meantime. In another case, FPP had to remind the RSPO of its own policy for allowing complainants confidentiality after they copied a number of people into an email exchange with the complainant. This provided little assurance that the complainant's identity was being kept confidential. Despite taking the right step by developing a policy, the way these cases were handled demonstrates a substantial lack of understanding from those implementing the grievance mechanism about the risks complainants and defenders face. It also shows a lack of understanding that poor handling of these cases, instead of leading to remedy, could, in fact, lead to increased risk for communities.

3. Please note, this was true at the time of the complaint but the RSPO now allows submissions in English, Spanish, French and Bahasa Indonesia.

4. See Annex 1 for more detail

5. Forest Peoples Programme and partners have not submitted a complaint to the IFC CAO since the adoption of the approach to responding to concerns of threats and incidents of reprisals in CAO Operations so we cannot comment on its efficacy.

Predictable

Predictability is a key component of the guiding principles' effectiveness criteria without which grievance procedures are unlikely to be used or trusted. In order to be predictable, they must provide a clear procedure with an indicative time frame for each stage, clarity on the types of process and outcome available, and a method for monitoring implementation.

The majority of the remedy processes assessed for this briefing provided clear information on the procedure through documents and diagrams, which included indicative timeframes and details of what is to be expected at each stage. In almost all cases, however, the reality did not line up with the procedure.

In practice, the time scales provided were regularly ignored, and communities were frequently left in limbo during the complaint process. For instance, the Unilever Palm Oil Grievance Procedure states complainants should expect an initial response on the merits of the complaint within eight weeks, and then action on the complaint within a few more weeks. However, after receiving a complaint from FPP on behalf of the Dayak Hibun concerning supplier Sime Darby, it took Unilever four months to formally acknowledge receipt of the complaint, let alone make any preliminary decisions.

In the case of the Shipibo-Konibo community of Santa Clara de Uchunya in Peru, who submitted a complaint to the RSPO Complaints Panel about member Plantaciones de Pucallpa, a rapid preliminary ruling by the RSPO Complaints Panel was welcomed by the community. However, the process then stalled for several months. Eventually the company left the roundtable just before the RSPO made its final decision on the complaint public, leaving the community without access to remedy. Similarly, despite a speedy first response from the RSPO Complaints Panel to the indigenous Butaw Kru tribes and local communities in Liberia, where the RSPO accepted the complaint and called on Golden Veroleum Liberia (GVL) to freeze operations, unexplained delays meant a final decision on that case was then not reached for over five years.

Procedures must also be clear and easy to follow in order to be trustworthy. Whilst handling a complaint against Wilmar, the IFC CAO rules about whether the ombudsman role and compliance role could be implemented at the same time appeared to frequently change, leading to confusion and mistrust. The procedure for making a complaint to FSC is particularly complicated. Complaints about the FSC normative framework, the network or the performance of Assurance Services International should go to the FSC directly; complaints regarding FSC's compliance with their policy for association of organisations with FSC should also go to FSC but are dealt with through a different procedure; complaints about certification should go to the certification body who issued the certificate. Each certification body has a different grievance mechanism. Complaints against certification bodies should go to the Assurance Services International. These complicated layers of grievance mechanisms make the process difficult to understand and thus tricky to predict for those unfamiliar with the system. In reality, it meant that when FPP and partners supported the community of Long Isun with a complaint against FSC-certified PT Kemakmuran Berkah Timbers (PT KBT), the complaint was frustratingly and confusingly bounced from mechanism to mechanism.



GAR workshop with Dayak Mayan to consult about land conflict

Procedures for monitoring the implementation of corrective actions or remedy required by these grievance mechanisms are even less predictable than the processes themselves. On paper, the best of the processes reviewed here was the IFC CAO whose procedure does not provide details of the monitoring process but does state that monitoring “may be achieved by setting mutually agreed timelines and outcome indicators,” which implies a predictable and transparent process. However, during the complaint, despite the IFC CAO carrying out regular field monitoring, they provided little warning and provided no funds to complainants to make it possible for them to join the investigations. In their procedures, the FSC and the OECD Swiss NCP do not mention monitoring cases at all.

In the case of Long Isun, after PT KBT's FSC certification was revoked, the FSC's ASI did undertake monitoring. However, despite telling FPP the case was being closely monitored, FSC has not provided FPP with any details. The monitoring is also for getting the company re-certified, rather than for providing remedy to the community. For the RSPO, monitoring of compliance with sanctions and/or the implementation of corrective actions is required in the RSPO Complaints and Appeals Procedure, but how this is done is not specified. In FPP's experience of multiple complaints, field investigations to check outcomes are very rare. Similarly, Unilever mentions in its Palm Oil Grievance Procedure that remediation action plans should be monitored until the grievance is resolved, including regular updates to the external stakeholders. What exactly this means is unclear.⁶

Without clear procedures for follow up, non-judicial grievance mechanisms will fail to ensure the recommended remedial actions are implemented. For instance, in a 2014 complaint to the RSPO Complaints Panel against Golden Agri Resources (GAR), a decision was reached by the Complaints Panel within seven months of the initial submission and GAR were told to take “remedial steps to correct any shortcomings in its land acquisition process with the affected communities” (RSPO, 2015). Despite this fairly rapid preliminary ruling, at the time of writing, over five years since the Complaints Panel's decision, there have been no follow-up actions to enforce the remedies required. For FPP and partners, this is a common frustration and demonstrates that a positive ruling through a grievance mechanism does not necessarily lead to remedy for communities.

⁶ As of publication the Unilever complaint remains open, it is therefore not possible to comment further on the monitoring process.

Equitable

In cases of conflict between communities and companies, the power imbalances can be significant. In order to be truly effective, the UNGPs state that remedy procedures must be equitable and therefore seek to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms.

Maintaining equitability in cases of conflict between communities and companies is challenging. For non-independent operational-level grievance mechanisms, such as the Unilever Palm Oil Grievance Procedure, the UNGPs acknowledge that equitability cannot be achieved without an independent implementor – “since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism” (OHCHR, 2011).

For independent mechanisms, equitability remains a challenge as the resources and access to information and legal advice available to companies often dwarfs that of local communities, therefore disproportionately favouring companies. There are some attempts to rebalance the process. For example, the IFC CAO mentions in their procedural documents that, on request, it can provide guidance to complainants on how to lodge a complaint that might circumvent the need for NGO support. In their incidents of reprisals procedure, they commit to “generating a supportive environment and addressing power imbalances” (IFC CAO, n.d.), including engaging professional mediators and providing capacity building, but FPP is not aware of any independent report of how useful such support can be. Likewise, the RSPO states they will assist those who encounter barriers to access, but what that assistance might be is not articulated. No funding, such as to support a community to procure a lawyer, is provided under any of the policies reviewed. Despite obligations to maintain an equitable process, non-judicial remedy processes rely heavily on NGO support to help level the playing field.

FPP and partners have also experienced several companies using their access to resources corruptly. For instance, after a complaint was filed with the RSPO Complaint Panel against Plantaciones de Pucallpa in Peru, the company pushed back with several spurious claims against the community. This tactic overwhelmed the grievance mechanism as each claim had to be investigated and responded to, stalling the process substantially. Situations like this, where multiple claims by the company must be responded to rather than having the initial – very serious – concern addressed in a timely manner, can lead to feelings of increasing frustration. Many communities simply do not have the time or resources to reply to each of the claims made in these sorts of situations.

In the case against GVL submitted to the RSPO CP, it was clear the company received advanced copies of documents from the RSPO Secretariat on several occasions. For example, the terms of reference for the independent investigator had visibly been edited by the company before the complainant received it. The reasoning for this was not explained, despite a request for clarity, and severe doubts formed about how impartial or equitable the entire process was.



GAR consultation with communities about FPIC after complaint upheld

In several cases, FPP has experienced staff appearing to favour companies. In the case of the complaint against PT KBT, submitted to the FSC Dispute Resolution System, the extent of company influence was shocking. Auditors investigating the complaint (from the certification body, not from FSC directly) held their workshop in a neighbouring village rather than with the community who had issued the complaint, and did not invite the complainants to the workshop, despite prior appeals from FPP. When the auditors did visit the community who had submitted the complaint to investigate the case, they were accompanied by company staff and military personnel. No community consultation was held; instead, a handful of intimidated community members were interviewed whilst others fled for fear of arrest (MacInnes, 2017).

Perhaps the most severe form of inequity is the pressure that can be put on communities outside of the complaints process in an attempt to get them to drop the case. As we saw in the previous section, many of the complainants that FPP and our partners work with experience harassment and violence after raising complaints. Theodorus Tekwan of the Long Isun community in Indonesia faced intimidation and imprisonment on false charges in 2014 after resisting logging on Long Isun’s customary land. The result was that the community were deterred from putting up any formal resistance for over three years. Since then, the community have filed a formal complaint with the FSC which was – eventually – upheld. The company lost their FSC certificate and were told to stop logging on the contested land. Despite this progress, Tekwan and leaders in the Long Isun community continue to face harassment. In 2020, the police attempted to get them to sign documents that would drop their claims for compensation. This was needed for the company to qualify for an FSC “controlled wood” certificate – a lesser certificate that would allow associated companies to maintain their FSC certification.⁷

It is always very difficult to directly attribute intimidation and violence faced by communities to companies; however, we do know that human rights defenders raising concerns about business-related human rights abuses are often attacked (Resource Centre, 2020) and as demonstrated in the case of Long Isun, intimidation, threats and violence can lead to communities withdrawing complaints or ceasing to pursue justice.

7. The FSC controlled wood certificate at a minimum is required for associated companies to maintain their certification with FSC. It has fewer standards regarding indigenous peoples rights comment further on the monitoring process.

Transparent

Keeping parties to a grievance informed is a further key element of effectiveness. The UNGPs say parties must be kept up to date about the progress of complaints, provided with sufficient information about the mechanism's performance to build confidence in its effectiveness, and meet any public interest at stake.

In the first instance, non-judicial grievance mechanisms must be transparent about whether or not they have accepted a complaint, and the reasoning for their decision. This is essential for ensuring grievance mechanisms are making a balanced and rational decision when rejecting – or indeed accepting – cases, and thus eliciting trust in the process.

The OECD Swiss NCP issued a written reason for its decision to admit the complaint against Sime Darby for further consideration and would have done the same if the decision had gone the other way. In contrast, neither Unilever nor FSC reference a requirement to be transparent regarding a rejection of a complaint in their procedures, and despite accepting a policy of association complaint against Roda Mas group, submitted by FPP on behalf of the Dayak Bahau Busaang indigenous community of Long Isun in early 2020, there were few details given about why this was accepted (FSC, n.d. -b). The RSPO procedure is unclear about whether they are required to give complainants thorough reasoning for their rejection of a complaint, although details are required when a case is accepted. When accepted it must be uploaded onto the online tracker and therefore made publicly available. In FPP's experience of RSPO, although complainants are informed about a rejection, they are rarely given a detailed explanation. Rather, they are told the allegation is not considered a violation of RSPO standards.

The IFC CAO has the most stringent requirements in their procedure regarding the transparency of accepting or rejecting a case; they are required to put together an assessment report after the complaint is submitted and provide it to all parties. Furthermore, if at any time the "CAO believes that resolution of the case is unlikely to be possible through a dispute resolution process or that it would be an inefficient use of resources, the complainant will be advised of the reasons for the decision" (IFC, 2013).

With regard to transparency after the case is accepted, and throughout the investigation, all the systems analysed here logged their cases publicly online, but some go further with what they disclose. Since January 2019, Unilever has maintained a public list of all grievances made against their palm oil suppliers, including past cases. This includes actions taken by Unilever in response to grievances and represents a good step forward to transparency. However, the information given is at times minimal or vague and, in FPP's experience, it can be difficult for complainants to know how seriously Unilever is taking the case, or what steps they are taking to engage with the supplier.



Uchunya constitutional lawsuit credit FECONAU

The IFC CAO, FSC and RSPO also log complaints online. These systems appear relatively comprehensive in scope as they include the status of the case, any complaint documentation, and all relevant updates. However, in several cases lodged with the RSPO, FPP and partners have had to repeatedly chase the RSPO Secretariat to receive an update, or to ask them to upload documents to the online portal. In the case of the complaints against GAR, the RSPO Secretariat had, since 2017, stopped uploading updates and letters from the complainant (FPP) and yet continued to upload the respondent's (GAR) quarterly reports. This was only corrected in 2020. During the research for this briefing, several documents were found to be missing from the online complaints portal.

During the complaint lodged with the IFC CAO regarding Wilmar, the CAO refused to share the review of Wilmar's compliance with IFC policies, and later did not share information regarding Wilmar's attempts to bribe mediators with the complainants. The attempted bribery led to the suspension of mediation and complainants were, shockingly, left completely in the dark about why this had happened.

Rights-compatible

Under the UNGPs, grievance mechanisms must be rights-compatible, ensuring that outcomes and remedies are in accord with internationally recognised human rights.

Many non-judicial grievance mechanisms have been developed to expose non-compliance with company policies and procedures and thus a complaint will be accepted if it demonstrates that a company is not in compliance with these policies. This is particularly true for non-judicial grievance mechanisms associated with initiatives that seek to certify goods, such as the RSPO and FSC. These are often designed to expose non-compliance in order to maintain the reputation of the initiative, rather than with remedy in mind.

The rights-compatibility of outcomes is thus directly related to the strength of the policies and procedures developed by companies, multi-stakeholder initiatives or investors. Without rights-compatible policies and procedures, grievance mechanisms will struggle to result in rights-compatible outcomes. For example, under FSC's certification, failure to uphold the right to Free, Prior and Informed Consent (FPIC) of indigenous communities is considered only a minor non-conformance. This can mean that a company continues to be certified by the FSC, despite auditors having noted that consent for the company's operations on customary lands was not given by indigenous communities, which is in contravention of international human rights law.

The RSPO has issued several rulings on cases in which FPP has been involved, with varying degrees of rights-compatibility. The ruling concerning Plantaciones de Pucallpa lacked any mention of rights violated by the company's actions (RSPO, 2017), even though lack of meaningful engagement or FPIC was the primary purpose of the complaint. Instead the focus was on deforestation. On the other hand, the rulings on GAR, GVL and Wilmar could be considered rights-compatible, in that they gave more primacy to the rights of the complainants.

However, rights-compatibility also refers to the provision of remedy. According to international law, remedy should redress past harms, as much as is possible, as well as pre-empt potential abuses by discouraging similar actions in the future (United Nations, 2017). Yet none of the cases drawn on for this briefing have provided adequate, effective and prompt remedy to the communities concerned. As discussed in the next section, even in the cases where rulings could be considered rights-compatible, implementation of remedy has been deficient. Without the provision of remedy, it is difficult to conclude that the processes themselves are rights-compatible.



Palm oil fruits is a lucrative crop but who benefits?

Legitimate

Legitimacy of a remedy procedure requires accessibility, predictability, equitability, transparency and a rights-compatible outcome, as well as to be fairly conducted in order for stakeholders to build and maintain trust in the process.

In the cases discussed here, most communities started with a reasonable level of trust in the process, perhaps more than was warranted. This may have been because the remedy procedure offered new hope in what are often longstanding conflicts. This mirrors the OHCHR Accountability and Remedy Project's research, which found victims welcomed non-judicial remedy procedures as it gave them a new potential route to remedy (OHCHR, 2019). However, as the processes continued, and the remedy procedures failed to uphold the principles of the UNGPs – accessibility, predictability, equitability, transparency and a rights-compatible outcome – as we have seen in the previous sections, trust waned.

Most communities whom FPP and partners support are seeking remedy through non-judicial grievance mechanisms to obtain redress in recognition that their lands have been wrongfully taken, either through restitution or some other measure. Unfortunately, there are many reasons why communities have not achieved remedy through these processes, raising questions of legitimacy.

Many of the grievances analysed here are addressed at parent companies for the abuses of subsidiary operations that they manage or have a controlling share in. This can lead to major problems in implementing remedy. Several complaints by FPP and partners have resulted in the company divesting from the relevant concession or subsidiary responsible. For instance, in the third complaint to the IFC CAO against Wilmar, after protracted problems, Wilmar sold off subsidiary PT Asiatic Persada to a sister corporation that was not a member of RSPO. In the same way, Sime Darby sold off subsidiary PT MAS to a non-RSPO company, after TUK-Indonesia submitted a complaint to the RSPO Complaints panel on behalf of the Dayak Hibun indigenous peoples whose land had been converted to an oil palm concession without proper FPIC. The company told the community they were only borrowing the land for 25 years but subsequently allegedly gained a permit that extinguished all the rights of the community to the land (Colchester et al, 2019). In this case, Sime Darby sold off PT MAS even after repeated appeals from NGOs not to do so, and even after the RSPO General Assembly had appealed to members not to divest operations that were subject to complaint. Despite this behaviour, Sime Darby has retained its RSPO certification for sustainable palm oil for its other operations.

Similarly, when faced with a complaint through a certification system, some companies have simply withdrawn completely. Plantaciones de Pucallpa withdrew from the RSPO just days before the Complaints Panel was due to issue a final judgement on the complaint filed by the community of Santa Clara de Uchunya (FPP, 2016). Therefore, leaving no mechanism for the RSPO to enforce their decision, the complaint was unresolved and the community without remedy. Conclusion and recommendations

Compliance scoring

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| -2 Poor | - The grievance mechanism is not in compliance with any element of this effectiveness criterion |
| -1 Inadequate | - The grievance mechanism complies with 1 or 2 aspects of this effectiveness criterion but fails to fulfil the criterion |
| 0 Adequate | - The grievance mechanism complies with some elements of this effectiveness criterion |
| +1 Good | - The grievance mechanisms complies with most elements of this effectiveness criterion |
| +2 Excellent | - The grievance mechanism complies with all aspects of this effectiveness criterion |

Effectiveness criteria	RSPO		FSC	
	Paper	Reality	Paper	Reality
Accessible	1	-1	-1	-2
	Requirement to make known to stakeholders, not available in local languages, easy to find on website, HRD policy	Not known to stakeholders, not available in local languages (since changed), easy to find on website, dysfunctional HRD policy	No requirement to make known to stakeholders, not available in local languages, easy to find on website, no policy or statement on reprisals	Not known to stakeholders, not available in local languages, easy to find on website, no policy on reprisals
Predictable	0	-1	-1	-2
	Clear procedure, Indicative timescales given, no procedure for monitoring the implementation of outcome	Procedure followed but indicative timescales not adhered to, process for implementation of monitoring unclear	Clear but complicated procedure, Indicative timescales given, no procedure for monitoring the implementation of outcome	Procedure followed but complicated, indicative timescales not adhered to, process for implementation of monitoring unclear
Equitable	1	-2	-1	-2
	Access to procedure and information online, promise to assist those that encounter barriers to access, HRD policy aims to reduce reprisals	NGO support necessary to keep communities informed, companies given advance information, inadequate response to companies pushing back spurious claims to overwhelm complaints mech, no attempt to overcome barriers to access, inadequate dealing of cases of reprisals	Access to procedure and information online but no process for ensuring complainants have access to necessary expertise, no policy on reprisals	NGO support necessary to keep communities informed, inadequate dealings of cases of reprisals
Transparent	1	-2	1	-1
	All complaint information should be logged online including correspondence with complainant/company, reasons for admitting/not admitting a case are not available online	Complaints not properly logged online as per the policy, reasons for admitting/not admitting a case are not available online	All complaint information should be logged online including correspondence with complainant/company, reasons for admitting/not admitting a case are not available online	Minimal information logged online, reasons for admitting/not admitting a case are not available online
Rights-compatibility	2	0	-2	-2
	Rights-compatible policies, outcomes available are rights-compatible	Decisions are not always rights-compatible, cannot compel remedy	Non-compliance with some human rights criteria are considered only a minor non-conformance and thus cannot be considered rights-compatible	Non-compliance with some human rights criteria are considered only a minor non-conformance and thus cannot be considered rights-compatible
Totals	5	-6	-4	-9

	OECD Swiss NCP		Unilever		IFC CAO	
	Paper	Reality	Paper	Reality	Paper	Reality
Accessible	0	0	-2	-2	2	-1
	Requirement to make known to stakeholders (but only in country of company registration), not available in local languages, relatively easy to find on website, no policy on reprisals	Requirement to make known to stakeholders (but only in country of company registration), not available in local languages, relatively easy to find on website, no policy on reprisals	No requirement to make known to stakeholders, not available in local languages, not easy to find on website, no policy on reprisals	No requirement to make known to stakeholders, not available in local languages, not easy to find on website, no policy on reprisals	Requirement to make known to stakeholders, available in local languages, recognises importance of outreach on policy, relatively easy to find on website, policy on handling cases involving reprisals	Not known to stakeholders, available in local languages, relatively easy to find on website, could only communicate with community through NGO
Predictable	0	0	0	-2	2	1
	Clear procedure, Indicative timescales given, no procedure for monitoring the implementation of outcome	Procedure and indicative timescales followed, no procedure for monitoring the implementation of outcome	Clear procedure, Indicative timescales given, no procedure for monitoring the implementation of remedy	Procedure but indicative timescales not adhered to, process for implementation of monitoring unclear	Clear procedure, Indicative timescales given, procedure for monitoring the implementation of outcome	Implementation of policy was confusing, indicative timescales were not adhered to, procedure for monitoring the implementation of outcome was regular but without warning or funds for communities to join
Equitable	-1	-1	-1	-1	1	0
	Access to procedure and information online, no process for ensuring complainants have access to necessary support/expertise, no policy on reprisals, no power to compel companies to disclose information	Access to procedure and information online, no process for ensuring complainants have access to necessary support/expertise, no policy on reprisals, no power to compel companies to disclose information	Access to procedure and information online, no process for ensuring complainants have access to necessary support/expertise, no policy on reprisals	Access to procedure and information online, no process for ensuring complainants have access to necessary support/expertise, no policy on reprisals	Access to procedure and information online, will provide support on how to lodge complaint if requested but no further support mentioned, policy on reprisals	Complainants were not informed of option to get support during the course of the complaint
Transparent	-1	-0	-1	-1	2	-2
	Issues written reasons for admitting/not admitting complaint for further consideration, information not made available online	Issues written reasons for admitting/not admitting complaint for further consideration, information not made available online, complainants were kept informed throughout process	Some complaint information should be logged online	Some complaint information is logged online	All complaint information should be logged online including correspondence with complainant/company	IFC and CAO refused to share some documents and information
Rights-compatibility	2	0	-1	-	2	1
	Rights-compatible policies	Not all decisions are rights-compatible policies, cannot compel remedy	Rights-compatible but vague policies	Non-compliance with some human rights criteria are considered only a minor non-conformance and thus cannot be considered rights-compatible	No outcome yet so cannot score	Rights-compatible policies
Totals	0	-1	-5	-6	9	-1

Conclusion and recommendations

When business-related human rights abuses occur, victims must have access to effective remedy. Non-judicial remedy procedures form an important part of the right to remedy as detailed in the UNGPs; however, to provide remedy, the procedures must first be effective. In this briefing we have seen a number of ways that non-state non-judicial remedy procedures have failed to uphold the UNGP's effectiveness criteria – accessibility, predictability, equitability, transparency, rights-compatibility and legitimacy – both on paper and in reality, thus undermining their ability to provide proper remedy to indigenous peoples and local communities.

In order to improve their compliance with the UNGPs, organisations which host non-judicial grievance mechanisms must do the following.

Accessibility

In FPP's experience, a persistent barrier to access for non-judicial remedy procedures is lack of awareness regarding the procedure. Therefore, **companies must commit to raising awareness of grievance mechanisms with communities who may be directly or indirectly impacted** by a proposed project or a project that is underway. For grievance mechanisms that are housed by multi-stakeholder initiatives, groups, investors or development finance institutions, a requirement to raise awareness of the mechanism with communities should be included in all contracts or agreements with companies. Raising awareness with communities should be conducted in the relevant local languages and in a culturally appropriate manner. Compliance with this requirement should also be verified by the multi-stakeholder initiative, group, investor or development finance institution.

Once communities know a grievance mechanism exists, it must be straightforward to find out more about the process. **Grievance mechanisms must be easy to find online⁸ and available in all relevant languages.** At a minimum, this should include the major languages of the countries of operation.

Cost can be a prohibitive factor for communities in accessing non-judicial remedy. Therefore, **grievance mechanisms should also be adequately resourced** so that expenses which might be a deterrent to complainants, such as translation costs, can be assumed by the organisation who established the grievance mechanism rather than by the community itself. The availability of this support should be stated in the grievance procedure so that communities are aware they can access funds if necessary.

Where the operations of companies handled by a complaints mechanism are in countries or sectors at high risk for reprisals against human rights defenders, non-judicial grievance mechanisms should **develop a procedure for handling cases where complainants are at risk of reprisals** (i.e. develop a human rights defender protocol). This procedure should be developed in collaboration with defenders and experts, and ensure confidentiality is employed where necessary. Those implementing the procedure must have a good understanding of the risks faced by defenders or use the advice of experts where this knowledge is lacking to ensure the handling of the cases



Community consultation to verify complainant concerns about GAR, Kapuas Hulu, Indonesia

does not put the defender/s at further risk. The organisation that houses the grievance mechanism should ensure awareness is raised regarding the availability of this human rights defender protocol, and it should be included in requirements to raise awareness of the grievance mechanisms as a whole.

Predictable

In the experience of FPP and partners, despite including indicative timescales in their grievance procedures, many organisations do not keep to them, leading to frustration for many communities. Non-judicial remedy procedures must ensure they **include realistic indicative timescales for each stage of their grievance procedure.** One way this can be done is by regularly reviewing how quickly each stage of active/past cases has taken and revising the timescales in the procedure to reflect this.

Organisations that house a grievance mechanism should also keep in mind that remedy should be adequate, effective and prompt.⁹ Thus, realistic timescales must also be prompt. To ensure this, **grievance mechanisms must be adequately resourced.** Handling complaints can be time intensive; sufficient staff time should thus be allocated to this task so they can adhere to the timescales given, or when there is a delay, they are able to maintain good communication with the complainant, keeping them updated.

Procedures must be clear and not overly complicated. When developing grievance procedures, it is important to develop them in collaboration with the affected stakeholder to ensure they are not overly complicated, and understandable to the end user. Where they have already been developed, organisations can review grievance procedures in collaboration with affected stakeholders to ensure they are straightforward.

⁸ The complaints section should be available from the homepage of the host organisation.

⁹ "Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

(a) Equal and effective access to justice;

(b) Adequate, effective and prompt reparation for harm suffered;

(c) Access to relevant information concerning violations and reparation mechanisms." (United Nations, 2005)

Equitable

Operational-level grievance mechanisms can be an important part of identifying human rights impacts but they must not be considered or portrayed as an equitable grievance procedure, given the company's stake in the proceedings. As per the UNGPs, **“where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.”**

Where grievance mechanisms are operated by a buyer, multi-stakeholder initiative or investor, steps must be taken to address the imbalance of power between companies and communities. For example, **it must be made clear to companies that it is unacceptable to cause unnecessary delays to complaints through overwhelming the mechanism with paperwork.** This should be stated in the grievance mechanism procedure and when the body handling the complaint first reaches out to the company.

Providing guidance and support for those using a grievance mechanism is a crucial way of restoring an imbalance of power. This is often where NGOs step in. In all the cases examined, significant barriers would have made the grievance mechanisms difficult to access without the support of FPP and partners. Grievance mechanisms must stop relying so heavily on NGOs to support communities in making complaints and instead put in place mechanisms to allow communities direct access to grievance mechanisms. Provisions such as setting aside funds for communities to procure legal advice (of their choice) or an assigned staff member to guide communities through the process are important to help level the playing field.

A strict code of conduct for staff handling complaints should also be in place. The code should highlight the importance of impartiality and steps that should be taken to maintain neutrality when handling complaints, such as sending documents to each party at the same time and not holding undisclosed meetings with either party. Staff should work closely with communities and, if relevant, the NGOs working with them to make sure communities are properly engaged throughout the process.

Finally, developing a human rights defender protocol is also a crucial aspect of maintaining equitability during a grievance (see “accessible” for further detail).

Transparent

In order for communities to determine the usefulness of complaints mechanisms as well as to trust the process, transparency is crucial. In the first instance, **grievance mechanisms should be transparent regarding their reasoning for rejecting or accepting a complaint.** Assuming, it will not endanger the complainant, the reason for rejecting or accepting a complaint should be available online.

The operators of grievance mechanisms should also be **required to regularly publish data about the performance of the mechanism.** This should include data about the length of cases and outcomes, which allows both the operators of the mechanism and would-be users to determine how effective they are.

Furthermore – assuming again it will not endanger the complainant and in agreement with the complainant – **all documentation related to the complaint should be promptly posted online throughout the complaints process.** This will help ensure all parties have access to the same information. In order to fulfil this recommendation, it is crucial that grievance mechanisms are properly resourced with both funding and staff time, without which processes can be delayed.



Inei Yeq, Spiritual leader of the Dayak Bahau Busaang of community of Long Isun.

Rights Compatible

Given that the outcomes of complaints are often based on non-compliance with ethical policies and procedures, these **policies and procedures should be reviewed to ensure they are in accordance with international human rights law.** Expert opinions should be sought in this review.

Staff handling complaints should be trained in properly handling complaints regarding human rights abuses. If those handling complaints do not have an adequate understanding of human rights, it is unlikely that outcomes will be rights compatible. Therefore, when expertise is lacking, expert support should be sought. It should also be made clear to all staff handling complaints that human rights abuses should be given primacy in any outcome to a complaint.

Legitimate

Finally, it is not adequate to develop grievance mechanisms at a multi-stakeholder or financial institutional level with only non-compliance with ethical policies and procedures in mind. If the policy and procedure is developed only to expose failure to uphold policies in order to protect the reputation of the initiative or financial institution, they may think their job is complete once they strip the company of their membership or financial backing. However, in this scenario, the human rights abuses are likely to continue. In order to fulfil the UNGPs, the provision of remedy must be integral to the process.

Once complaints have been investigated and violations identified, then incentives and graduated sanctions must be applied to encourage the rapid negotiation of remedial plans and mediation where necessary, followed by independent monitoring of the effective implementation of these plans. The nature of these sanctions will vary depending on the entity and severity of violation, but may include public notices of non-compliance, publicly visible “traffic light” warnings, suspensions of certificates or investment, termination of membership or public black-listing.

Multi-stakeholder initiatives must also discourage members from divesting or withdrawing their membership when subject to complaints.

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Annex 1 – Case Studies

Forest Stewardship Council Dispute Resolution System

PT Kemakmuran Berkah Timbers

In 2016, FPP and Indonesian indigenous women’s rights organisation, Perkumpulan Nurani Perempuan (PNP), supported the Dayak Bahau community of Long Isun in submitting a complaint to the Forest Stewardship Council over FSC-certified logging company PT Kemakmuran Berkah Timbers (PT KBT).

PT KBT’s concession of 82,000 hectares of forest in Upper Mahakam in East Kalimantan, Indonesia overlapped with the territories of six different indigenous Dayak groups, including Long Isun’s ancestral land. PT KBT commenced its operation on 2,000 hectares of Long Isun’s customary land in 2014 without seeking the Free, Prior and Informed Consent (FPIC) of the community. Logging by PT KBT also impacted the ability of the community to hunt (due to the overwhelming noise of logging), and to fish (due to the pollution of the local river), profoundly impacting the community’s livelihoods.

Community members who attempted to enter into dialogue with the company were met with police repression. One community member, Teodorus Tekwan, was arrested and jailed without charge for 109 days.¹⁰

The complaint, filed with FSC in 2017, eventually resulted in PT KBT losing its FSC Responsible Forest Management certificate. However, despite FSC’s decision and PT KBT’s assurance that they would not re-enter the contested area, the commitment was broken less than two months later when PT KBT ignored the sanctions imposed on it and entered the customary lands of Long Isun to collect timber. Long Isun with the help of PNP and FPP are now pursuing a Policy of Association complaint against the wider company group – Roda Mas Group – which is still certified by the FSC and whose mill continues to process PT KBT timber. The complaint was accepted in June 2020.

Find out more: <https://www.forestpeoples.org/en/timber-pulpwood-and-fsc/press-release/2020/fsc-investigate-renewed-complaints-human-rights>

Roundtable on Sustainable Palm Oil Complaints Panel

Plantaciones de Pucallpa, Alicorp, OLPESA

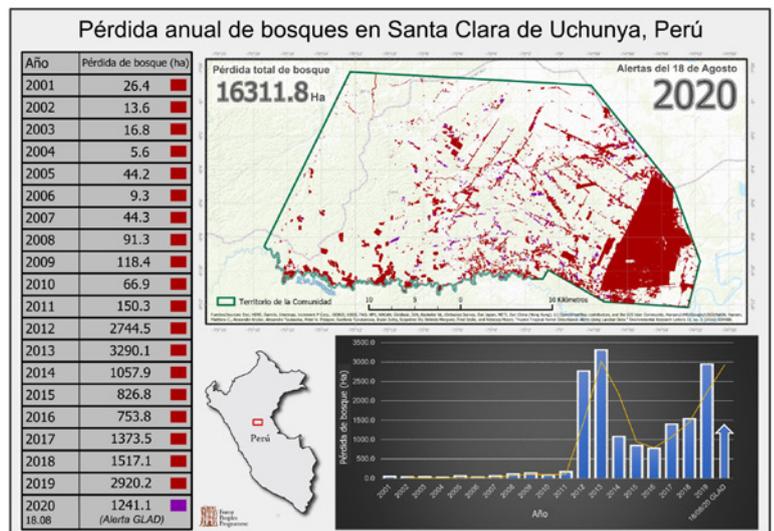
With the support of Federación de Comunidades Nativas del Ucayali y Afluentes (FECONAU), Instituto de Defensa Legal (IDL) and FPP, the Shipibo-Konibo community of in Peru filed a formal complaint with the RSPO Complaints Panel in December 2015 against Plantaciones de Pucallpa for the destruction of around 7,000 hectares of their ancestral forest lands. The destroyed forests included areas the community used for hunting, fishing, and gathering, as well as an important source of medicinal plants and materials for construction. Environmental impacts include the destruction and contamination of water sources and vital habitats for wildlife. The company failed to respect the customary land rights of the community and there was no attempt to initiate FPIC processes with the community.

Community leaders and members who have stood up to the operations have faced multiple attempts on their lives, threats and intimidation.

Initially, Plantaciones de Pucallpa ignored a stop work order issued by the RSPO CP and in October 2016, just as the panel was due to issue a final judgment on the complaint, they withdrew from the RSPO certification scheme altogether.

In 2019, the communities and their allies filed a second set of complaints with the RSPO CP, this time against RSPO-members consumer goods company Alicorp S.A.A. and miller, Oleaginosas del Peru S.A. (OLPESA), after it was confirmed that OLPESA was processing oil palm from the new owner of Plantaciones de Pucallpa, Ocho Sur P, and Alicorp had purchased oil palm from several mills sourcing from Ocho Sur.

Find out more here: <https://www.forestpeoples.org/en/featured-topic/struggle-shipibo-community-santa-clara-de-uchunya-against-expansion-oil-palm>



¹⁰ <https://www.forestpeoples.org/en/legal-human-rights/report/2017/protecting-forest-defenders>

Golden Agri-Resources

Forest Peoples Programme and partners have been involved in a number of complaints submitted to the RSPO Complaints Panel against Golden Agri-Resources (GAR) and their subsidiaries. The first complaint was submitted in 2014 against subsidiary PT Kartika Prima Cipta (PT KPC) in Kapuas Hulu, West Kalimantan and against 17 other GAR operations in other parts of Kalimantan, Indonesia. The complaint exposed the way GAR was systematically grabbing land in violation of the RSPO standards. This was submitted in collaboration with Transformasi untuk Keadilan - Indonesia (TUK-I).

PT KPC also imposed schemes to set aside areas for “high conservation values” and “high carbon stocks”, ignoring the peoples’ own systems of land use, land ownership and land classification and thus limiting their livelihoods and options for income generation. Affected indigenous Dayak communities experienced a land shortage, and communities along the river complained river pollution was causing declining fish-stocks and problems for fish-breeding ventures.

The communities actively protested against the problems brought by the company – although they were not all opposed to oil palm itself – but there is evidence to suggest that the company brought in local police to break up these protests.

The complaint, upheld in 2015, required GAR to make remedy for the lands it had taken without consent and it froze any further expansion or land acquisition by GAR in all 18 of GAR’s operations that were the subject of the complaint. The CP also required that HCV assessments be redone, that promised smallholdings be provided, and that GAR demonstrate the legality of its operations. However, by 2018, there was no progress in securing remedy for the affected communities. GAR refused to renegotiate unfair land deals despite the ruling that they had been taken without proper FPIC. One community’s lands were excised from the concession, however. Since 2017, FPP has repeatedly appealed to the CP for sanctions given the delays with GAR’s compliance with the CP’s ruling.

In 2018, FPP and TUK-I submitted a complaint calling on the RSPO CP to investigate alleged shadow companies owned by Sinar Mas – the conglomerate of which GAR is a part – which GAR had not declared were under its control. After some significant delays, a legal review is currently in process.

In 2020, FPP and Elk Hills Research submitted a complaint against GAR’s operations in Central Kalimantan. The complaint alleges that GAR is illegally operating oil palm plantations inside Indonesia’s protected Forest Zone. The complaint also cites recent bribery convictions of multiple GAR officials in Central Kalimantan as evidence that the company was both aware of these land-use violations and corruptly tried to cover its tracks. According to the complaint, over 75,000 hectares of GAR’s concessions overlap the Forest Zone which is unlawful, representing over 15 per cent of GAR’s total declared plantation area. This case is ongoing.

Find out more:

PT Kartika Prima Cipta case: <https://www.forestpeoples.org/index.php/en/topics/palm-oil-rspo/news/2014/02/palm-oil-company-efforts-slow-deforestation-not-sustainable>

Shadow companies case: <https://www.forestpeoples.org/index.php/en/node/50274>

Central Kalimantan case: <https://www.forestpeoples.org/index.php/en/palm-oil-rspo/press-release/2020/large-scale-bribery-and-illegal-land-use-violations-alleged-large>

Golden Veroleum Liberia

In October 2012, FPP alongside Green Advocates, Sustainable Development Institute Liberia and the Kulu United Development Association submitted a complaint to the RSPO Complaints Panel on behalf of the indigenous Butaw Kru tribes and inhabitants from several local communities situated within the proposed Golden Veroleum Liberia (GVL) 220,000-hectare palm oil concession in Greenville, Butaw and Kpanyan Districts of Southern Liberia.

GVL – a majority-owned subsidiary of Golden Agri-Resources – had obtained the land without FPIC and contravened a number of other criteria¹¹ laid out in the RSPO’s Principles and Criteria. A final decision was reached by the complaints panel six years later, in early 2018. GVL was asked to undertake a number of actions to rectify and remediate their past violations. In response to the RSPO CP decision – which was upheld on appeal – GVL announced a decision to voluntarily suspend its RSPO membership. However, they were unable to do so because self-suspension is not an option under RSPO membership rules and GVL was required to continue with its remedy procedures.

FPP and partners brought a complaint against parent company Golden Agri-Resources for endorsing this unethical attempt by GVL to avoid RSPO CP requirements. However, the CP dismissed the complaint on the grounds that the Code of Conduct for members does not prohibit such actions.

Find out more:

<https://www.forestpeoples.org/index.php/en/node/50228>

11 [https://www.forestpeoples.org/sites/fpp/files/news/2012/10/Final%20complaint%20to%20RSPO%20on%20Golden%20Veroleum-%20Butaw-sinoe%20county%20\(2\).pdf](https://www.forestpeoples.org/sites/fpp/files/news/2012/10/Final%20complaint%20to%20RSPO%20on%20Golden%20Veroleum-%20Butaw-sinoe%20county%20(2).pdf)

Wilmar International Limited

FPP and partners have been involved in several cases to the RSPO CP regarding Wilmar.

In West Sumatra, Wilmar subsidiary PT Permata Hijau Pasaman (PT PHP) was accused by the Minangkabau community of Kapa of taking their land without proper consent. In 2014, the community noticed that Wilmar was seeking to get a permit to formalise the take over their lands without their agreement. With FPP's help they formally appealed to the RSPO CP to stop the company obtaining a business use permit (HGU), as this would permanently extinguish their rights. A meeting was held between the RSPO CP staff, community leaders, Wilmar and FPP, in which it was agreed that they should look for alternatives to HGU. Wilmar, however, went ahead and secured an HGU. The community again appealed to the RSPO CP, but the community leaders were then subject to police harassment and the community leader was arrested and jailed on trumped up charges. In 2017, the RSPO ruled that the community lands were taken without consent and in 2018, ruled that the company must return the disputed lands to the community. A mediator was appointed, participatory mapping was carried out and negotiations for the return of the land concluded. The final steps to legalise the return of the land are now subject to negotiation with the local authorities.

In 2018, FPP and the Nagari Institute assisted the West community of Nagari Koto Baru in filing a formal complaint with the RSPO about the take-over of their lands by Wilmar subsidiary, PT PMJ. Now, almost two years later, the RSPO is yet to make a decision on this complaint.

The leadership of both the Kapa and Koto Baru communities in Sumatra have suffered intense intimidation and criminalisation following their decision to make complaints to the RSPO. FPP filed complaints with the RSPO regarding this criminalisation in early 2015 and again in mid-2018 but no progress was made. Despite frequent requests, no one from FPP or the affected leaders has been interviewed by the RSPO since these complaints were made. Meanwhile, the criminalisation of the leaders from the two communities continues.

Find out more:

Kapa case: <https://www.forestpeoples.org/topics/agribusiness/news/2016/02/maninjau-resolution-0>

Report on Wilmar Affected Communities in West Sumatra (Nov 2019): <https://www.forestpeoples.org/en/palm-oil-rspo/press-release/2019/press-release-report-shows-widespread-human-rights-violations>

Sime Darby

In 2011, FPP along with Green Advocates submitted a complaint to the RSPO CP regarding Sime Darby's operations in Northern Liberia where they had failed to respect customary rights or seek the FPIC of the customary landowners. In response, Sime Darby froze its operations in the contested area and, through the RSPO secretariat, agreed to bilateral negotiations with the communities to resolve their differences.

Initially, the Liberian Government insisted that the communities should talk with them and not directly with the company, however Sime Darby persisted and initially made good progress through a bilateral meeting between local communities and Sime Darby staff – facilitated by FPP. However, problems then ensued due to lack of local staff's respect for the company and RSPO standards. In one instance, a fraudulent letter purportedly from one of the original signatories of the complaint was sent to the RSPO attempting to close the case. In the end, partial remedy was achieved, and Sime Darby stopped planting on contested community lands. Sime Darby decided the operation was unviable as it could not expand into forest areas either as this would also be a violation of RSPO policies. Sime Darby sold off its operation in Liberia in January 2020.

In 2017, Sawitwatch, later Transformasi untuk Keadilan, supported the Dayak Hibun of Sanggau District in West Kalimantan, Indonesia to submit a complaint to the RSPO CP regarding a conflict with Sime Darby subsidiary PT MAS, particularly their treatment of communities whose land overlap with the concession. PT MAS had taken over the land in 1995, by misleading the community with the assertion that it was only borrowing community land to establish an oil palm plantation for 25 years. Without the consent of the community, the company acquired a business license for the plantation, which extinguished all community rights to the land and resources.

Find out more:

Liberia case: <https://www.nytimes.com/2012/01/21/opinion/in-liberia-a-nobel-laureates-problem.html>

<https://www.forestpeoples.org/en/topics/agribusiness/news/2012/04/liberia-agri-business-expansion-threatens-forests-and-local-communi>

Organisation for Economic Co-Operation and Development National Contact Point

Roundtable on Sustainable Palm Oil

A complaint was logged with the Special Incidence Procedure of the National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises in Switzerland, against the Roundtable on Sustainable Palm Oil (RSPO) in 2017 on behalf of Dayak communities in Indonesia over the RSPO's failure to pursue a claim against Sime Darby (see section on RSPO Complaints Panel).

Unilever Palm Oil Grievance Procedure

Sime Darby

A complaint was submitted to Unilever palm oil grievance procedure in 2019 on behalf of the Dayak Hibun indigenous people of Sanggau District in West Kalimantan, Indonesia linked to Unilever's continued purchase of palm oil from Sime Darby (see section on RSPO Complaints Panel).

Find out more: <https://www.forestpeoples.org/en/palm-oil-rspo/press-release/2019/press-release-unsustainable-sime-darby-buyers-and-financiers-must>

International Finance Corporation Compliance Advisory Ombudsman

Wilmar

In 2007, FPP, along with 19 signatories from community groups, and local and international NGOs, lodged a complaint with the IFC CAO raising concerns alleging IFC staff had failed to follow IFC social and environmental policies in providing finance to Wilmar, and that Wilmar was in violation of IFC and RSPO standards. The complaint cited numerous instances across Indonesia. The CAO chose to focus on two communities in West Kalimantan, Indonesia – Senuju and Sajingan Kecil – impacted by a subsidiary of Wilmar International Limited. After a field investigation, CAO agreed to mediate and in 2008 a partial remedy was agreed. Although monitoring missions continued for three years, implementation of the agreements was deficient and CAO capacity to follow up lapsed. A 2015 investigation by FPP and local partners found that Wilmar was not honouring its commitments.

In 2009, FPP and the coalition filed a further complaint after IFC provided further financing to Wilmar. The complaint called again for CAO to address Wilmar's systemic violations of IFC and RSPO standards. The CAO, however, chose instead to provide mediation by local NGOs to four impacted communities. Meanwhile the CAO did find that IFC staff had failed to adhere to IFC standards and the World Bank Group President froze all World Bank Group funding for the palm oil sector.

In 2011, FPP and the coalition filed a further complaint to the CAO after Wilmar's subsidiary, PT Asiatic Persada, paid local police to violently expel indigenous people from its palm oil concession in Jambi Province, Sumatra, which the Batin Sembilan communities claimed was on their land. Company personnel then bulldozed 83 family dwellings into nearby creeks. The CAO again agreed to mediate but the negotiations stalled for reasons that were not made clear.

World Bank Group documents reveal that one of the CAO mediators reported that personnel of the Wilmar group had tried to bribe him to give up information pertinent to the case. The charge of bribery was taken to the World Bank Group's Integrity Vice Presidency and then escalated to the World Bank Group's Sanctions Board. The dispute caused a chasm of mistrust to open between the CAO and Wilmar, seriously delaying the conflict resolution process. The CAO then dropped the case after Wilmar unilaterally divested itself of the company, leaving the affected communities without recourse.

Find out more:

2007 case: <https://www.forestpeoples.org/en/topics/palm-oil-rspo/publication/2011/ifc-be-audited-policy-violations-over-palm-oil-projects-ngo-co>

Senuju and Sajingan Kecil case: <https://www.forestpeoples.org/en/topics/palm-oil-rspo/news/2016/02/wilmar-fails-resolve-conflicts-communities-west-kalimantan-and-wes>

2008/2011 case: <https://www.forestpeoples.org/topics/palm-oil-rspo/news/2015/07/press-release-palm-oil-giant-wilmar-resorts-dirty-tricks>

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