



WHO WATCHES THE WATCHMEN?

2

The continuing incompetence of the Roundtable on Sustainable Palm Oil's (RSPO) assurance systems

2019

 **grassroots**

 **ENVIRONMENTAL
INVESTIGATION
AGENCY**

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Cover image:
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SUMMARY

In 2015, the Environmental Investigation Agency (EIA) and Grassroots released the report *Who Watches the Watchmen?* on the implementation of the certification systems of the Roundtable on Sustainable Palm Oil (RSPO).

It revealed extensive fraud as well as sub-standard and underhand assurance processes within the RSPO. The RSPO is often hailed as the best certification scheme for palm oil based on its standard – the Principles and Criteria (P&C). However, it receives far less scrutiny as to how it is ensuring its standards are adhered to and, therefore, its impact.

Four years on from that report, the RSPO is about to start implementing its new and improved P&C – and we return to the scene of the crime to assess what, if anything, has changed and how the RSPO has responded to the serious concerns raised in 2015.

Investigations have found that the action taken by the RSPO is severely lacking. Despite it setting up an Assurance Task Force, this body has failed to deliver and complete its objectives. The Assurance Task Force stands as one of the worst-run working groups of the RSPO. It has been disorganised, unprofessionally managed, and has chronically missed deadlines.

The last update from the Assurance Task Force in 2018 reported 55 per cent of the activities were incomplete. Of the five key objectives under the Task Force, only the development of Free, Prior and Informed Consent guidelines has been completed, but their effectiveness is unknown. For the other four objectives, the actions and outputs under each of them has not led to the fulfilment of the objectives.

Many of the same issues remain, have recurred and could easily occur again. Non-adherence to the RSPO's standards is systemic and widespread, and has led to ongoing land conflicts, labour abuses and destruction of forests.

As the world approaches 2020 targets to halt deforestation, the RSPO needs to rapidly implement radical solutions to restore its credibility. We question whether the RSPO is willing and able to rectify its systemic failures – ultimately, voluntary certification is too limited by its voluntary nature.

WHO WATCHES THE WATCHMEN?



In late 2015, EIA and Grassroots published the report *Who Watches the Watchmen?*¹ It demonstrated a serious breakdown of the Roundtable on Sustainable Palm Oil's (RSPO) assurance and certification system with some of the issues and specific problems being funnelled through the RSPO's complaints system – a system that was nearly as woeful in performance.

The reputationally damaging evidence exposed the dysfunction, naivety of implementation, reckless management and multiple structural weaknesses which were facilitating a wholesale greenwashing of the palm oil sector.

The *Watchmen* report identified:

- auditors providing fraudulent assessments that cover up violations of the RSPO Standard and procedures;
- auditors failing to identify indigenous land right claims;
- auditors failing to identify social conflicts arising due to abuse of community rights;
- auditors failing to identify serious labour abuses;
- auditors failing to identify risks of trafficked labour being used in plantations;
- ambiguity over legal compliance;
- auditors providing methodologically and substantively flawed High Conservation Value (HCV) area assessments that will enable destruction of HCVs;
- certification bodies displaying weak understanding of the P&C standard;
- certification bodies providing suspect assessments in response to legitimate complaints from NGOs which fail to address the substance of the complaints;
- conflicts of interest due to links between certification bodies and plantation companies.

Following the publication of the *Watchmen* report, a Resolution on 'Ensuring quality, oversight and credibility of RSPO assessments' which compelled the RSPO to act on the concerns raised was adopted in 2015 by RSPO members. The RSPO confirmed it would set up a body to do this and in 2016 formed the Assurance Task Force (ATF).

Four years later, significant concerns about the RSPO's assurance systems still remain.² More widely the credibility and impact of third-party certification schemes is in doubt. The New York Declaration on Forests concluded in September 2019 that deforestation has accelerated not diminished, despite certification schemes.³

In 2018, the RSPO adopted a new and improved Principles and Criteria (P&C) that includes provisions for ensuring no deforestation, no new planting on peat, the protection of human rights defenders, improved workers' rights and better smallholder inclusion.⁴ All audits undertaken from November 2019 will be assessed for compliance with this new P&C 2018. In 2019, the RSPO also announced it would establish a permanent Assurance Standing Committee (ASC).⁵ These developments are a natural point at which to take stock and undertake an analysis of the performance of the RSPO's systems to-date.

HOW DOES RSPO CERTIFICATION WORK?

The RSPO is a voluntary certification scheme established in 2004. The RSPO consists of a Secretariat and RSPO members who pay to be part of its membership. It uses a third-party certification model for assessing and certifying against the RSPO Principles & Criteria (P&C), the benchmark standard that palm oil production must meet to be certified "sustainable". The P&C are revised every five years.

There are two types of certification: Principles and Criteria (P&C) and Supply Chain Certification (SCC). Only RSPO palm oil grower members (c. 175 companies) become certified under the P&C Standard. RSPO palm oil growers employ a third-party certification body (CB) to carry out an assessment of its mill and supplying plantations against the P&C.

The certification body carries out document reviews, fieldwork and interviews to establish P&C compliance. Any non-compliances (NCs) with the P&C are identified by the certification bodies and categorised as minor or major. Major non-compliances have to be resolved within three months to the satisfaction of the certification body before certification can be granted. Minor non-compliances have to be resolved by the next annual audit. Unresolved major non-compliances can lead to the suspension or withdrawal of the certificate. Unresolved minor non-compliances can be escalated to become a major non-compliance.

Upon successful assessment, the certification body issues a certificate for the unit as an assurance to the public that it has complied with the P&C standard. Once certified, companies can sell palm oil from that mill as RSPO-certified. After the initial certification, annual surveillance audits are

undertaken with full re-certification audits once every five years to ensure continuing compliance.

RSPO supply chain members are certified under the Supply Chain Certification standard – a quality management system enabling a facility to buy and sell RSPO-certified palm oil and to make claims about using RSPO-certified palm oil. Certification bodies are employed by the RSPO member to conduct audits of its adherence to the SCC Standard.

Certification bodies are accredited, and their performance monitored by an independent organisation – Assurance Services International (ASI) – including by the use of compliance assessments and witness assessments, where a sample of audits are observed by ASI – who was appointed by the RSPO in 2014.

Under certification, the certification body does not only audit a particular mill and its supply base to the P&C, but is also obligated to ensure that all the member's uncertified units are in compliance with the RSPO's Partial Certification and New Planting Procedure (NPP) requirements, as well as ensuring compliance with the Remediation and Compensation Procedure (RaCP). This makes it somewhat challenging, given the certification body will need to identify and assess all the mills and plantations managed by an RSPO member.

PARTIAL CERTIFICATION

To avoid palm oil growers only certifying their best plantations and ignoring the more controversial ones, the RSPO has requirements for all uncertified management units⁶ – otherwise known as partial certification. An RSPO member cannot proceed with certification unless its uncertified plantations meet these requirements – this is included as part of any P&C audit.

Non-certified plantations must meet the following:

- no replacement of primary forests nor HCV areas since November 2005 – new plantings since January 2010 must have complied with the New Planting Procedure (NPP);
- no land conflicts or labour disputes that are not being resolved through a mutually agreed process;
- no failures to comply with the law;
- a time-bound plan for when they will become certified.

THE NEW PLANTING PROCEDURE (NPP)

Recognising that P&C certification does not occur until the production of palm oil begins, the RSPO introduced the NPP in 2010 to clarify which P&C requirements uncertified units must comply with prior to planting. As part of any audit certification bodies are required to check whether there has been any new planting in uncertified units, and if so whether the NPP has been carried out.

The NPP states that prior to new planting growers must:⁷

- ensure Free, Prior and Informed Consent (FPIC) is obtained
- undertake a High Conservation Value (HCV) assessment
- undertake a Social and Environmental Impact Assessment (SEIA)
- undertake a land use change analysis (LUCA), soil survey and greenhouse gas assessment

The updated 2015 NPP requires HCV assessments to be conducted by assessors approved under the HCV Resource Network's Assessor Licensing Scheme (ALS). The NPP 2015 also requires that HCV assessments must be quality reviewed and marked as satisfactory by the HCV Resource Network.

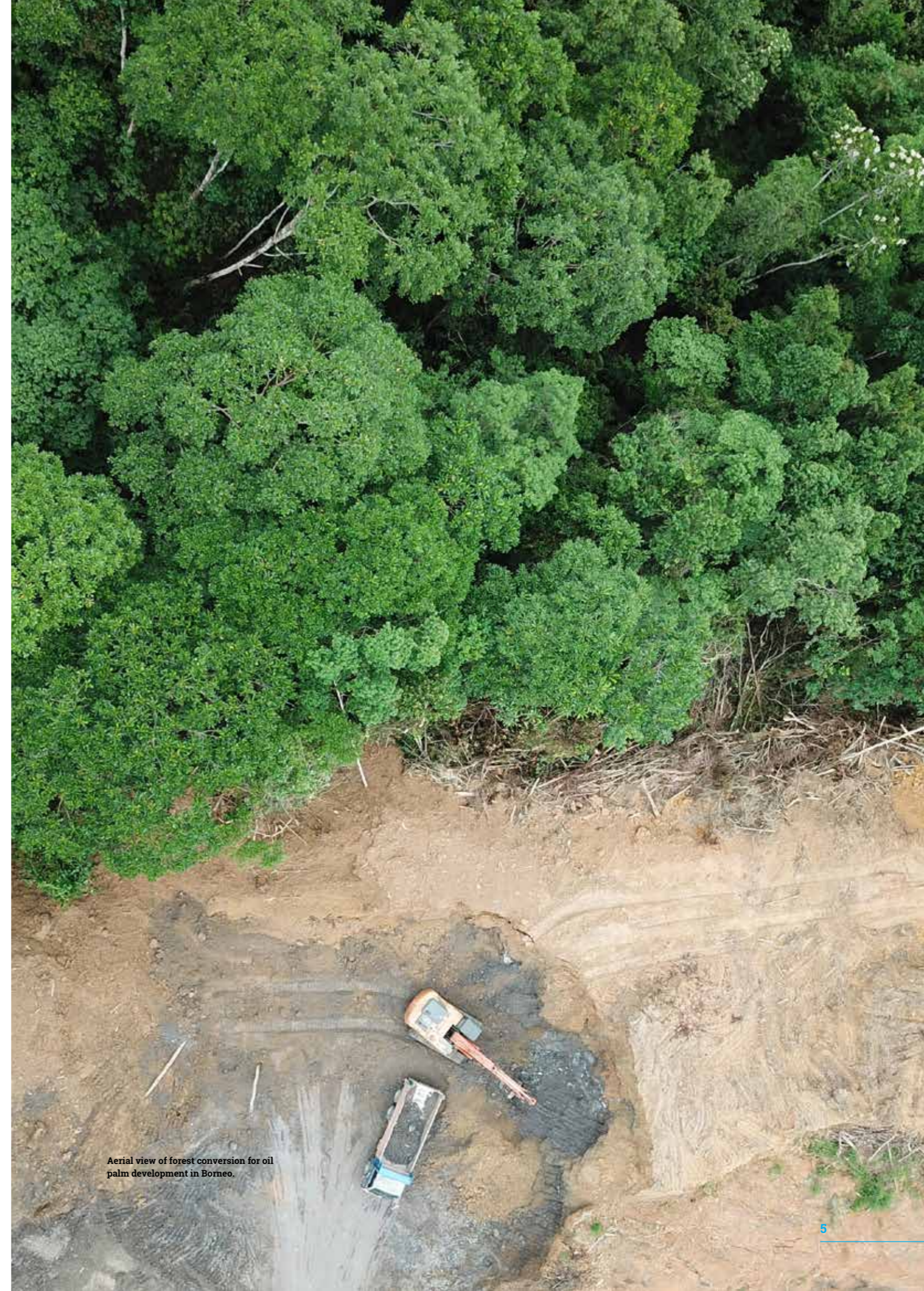
The NPP is verified by a certification body and checked by the RSPO Secretariat before it is publicly posted online for a two-week comment period, after which, if no comments are made, it is approved.

THE REMEDIATION AND COMPENSATION PROCEDURE – OFFSETTING BY ANY OTHER NAME

In 2015 the RSPO introduced the Remediation and Compensation Procedure⁸ to address the situation that some growers had undertaken land clearance after November 2005 without first conducting an HCV assessment. Consequently, HCVs which should have been conserved may have been cleared in violation of the P&C.

The Remediation and Compensation Procedure requires growers to self-disclose land clearing since 2005 without an HCV assessment. Growers are required to compensate for any HCVs lost – whether environmental or social – by on-site or off-site remediation. The amount to be compensated is determined using a Land Use Change Analysis and more recent land clearance, results in greater compensation amounts required. A compensation plan is then submitted to the RSPO. Plantation certification can only proceed once the Land Use Change Analysis and compensation plan, if needed, is approved.

If land clearing without an HCV assessment is reported by anyone other than the grower, it becomes a complaint case and the Remediation and Compensation Procedure is followed; the grower cannot continue with any new certifications until the compensation plan is approved. However, if an RSPO grower member conducted land clearing without an HCV assessment after May 2014, it can be expelled from the RSPO. The Remediation and Compensation Procedure also allows new members which may have done clearing since 2005 without HCV assessments to join the RSPO and subsequently compensate for any HCVs lost.



Aerial view of forest conversion for oil palm development in Borneo.

WHAT IS THE ASSURANCE TASK FORCE?

Following the publication of *Who Watches the Watchmen?*, Resolution 6h was adopted by RSPO members at the 12th RSPO General Assembly in November 2015.⁹ The RSPO Assurance Task Force was established in 2016 to deliver on Resolution 6h, as a functionary body of the RSPO Secretariat.

According to the RSPO, the Assurance Task Force was: "assigned to identify all necessary steps to ensure robust assessment, verification and certification against RSPO standard and roles required from all parties, notably certifying bodies and lead auditors, assessors and growers."¹⁰ This covered assessments, verification, audits and oversight.

The Assurance Task Force's objectives were to:

- make certification bodies fit for purpose to undertake all current P&C assessments;
- improve the social assessment skills of certification body auditors and the wider RSPO community, covering land rights, Free, Prior and Informed Consent and labour issues;
- resolve the conflict of interest and opportunities for collusion in current company and certification body auditor relationships;
- significantly improve growers' understanding of their obligations under the P&C and New Planting Procedure, including building internal competency;
- develop and instigate a transparent and robust system for monitoring the quality of all RSPO audits; and
- clarify the rule set for notifications related to the New Planting Procedures and for partial and time-bound certification.

The Task Force consisted of RSPO Secretariat personnel, under the leadership of the Assurance Director, leading implementation. Assurance Services International (ASI) and the HCV Resource Network were named as Task Force counterparts. A Steering Group composed of RSPO Board of Governors members was established to provide oversight. A Reference Panel with experts was added to provide specific advice, which included both EIA and Grassroots.

HOW DID THE ASSURANCE TASK FORCE OPERATE?

The RSPO's Board of Governors gave assurances that Resolution 6h would be a priority issue for the RSPO. In July 2016, the Terms of Reference for an Assurance Task Force were provided to Reference Panel and Steering Group

members. The Terms of Reference and implementation timeframe for the Assurance Task Force were decided by the RSPO. Its stated goal was to conclude its work by October 2016, with a targeted "final comprehensive report with full recommendations for systematic changes by 1st November 2016"¹¹. However, the first Assurance Task Force meeting was only held in November 2016; it never met this target, nor produced a "comprehensive report" as tasked.

The full Assurance Task Force, including reference panel experts, met annually at physical meetings in 2016 and 2017. Another two meetings were held in 2018 - the last to-date in November 2018. The RSPO also began producing quarterly reports, with some gaps, against the Assurance Task Force's work programme.

Membership or association with the Assurance Task Force was marked by long silent periods followed by updates of activities undertaken by the RSPO Secretariat. Meeting minutes were inaccurate (e.g. omitting discussions or decisions), poorly written and late. Notes or other preparatory materials for meetings were often provided with little time to digest information and some members were not informed of meetings at all. Context and details on the implementation of activities were poor or non-existent. While disorganised numbering and changing of actions over time compounded this problem. Confusion reigned as to whether the RSPO Secretariat, that formed the Assurance Task Force itself, met separately; no details or minutes of these meetings were provided if it did.

Deadlines, timelines and delivering against stated objectives were rarely followed, and had no influence or consequence. One consultant's study did not actually focus on the topic it was meant to, yet was incorporated and legitimised in the Assurance Task Force discussions.¹² The track record for accountability was very poor owing to the delays, tardiness and an opaque method of appointing contractors for developing modules or conducting research. All in all, it is totally unclear what actions have been completed by the Assurance Task Force, and their effectiveness, with Task Force members very poorly informed on progress.

In the most recently posted Assurance Task Force update for 2018 into 2019¹³ the Task Force posts a completion of 43 per cent of total activities, 23 per cent as 'On-Going' with 32 per cent still 'Pending' – i.e. 55 per cent remained uncompleted. No updates have been provided since.

The Assurance Task Force is now presumably disbanded and replaced by a permanent Assurance Standing Committee formed solely of RSPO members.¹⁴ The RSPO has never formally notified Assurance Task Force members of the group's disbandment. In September 2019, the Assurance Standing Committee reportedly had its first meeting, but no information on this has been disclosed either to Task Force members or publicly.



Progress of the Assurance Task Force against the Objectives of Resolution 6h

Objectives	Actions Completed <small>(number completed/total number of actions)</small>	Evaluation of the Actions Taken
Objective 1: Develop clear, mandatory guidelines on the minimum acceptable quality of HCV assessments		
1.1 To provide a summary report on the HCV Assessor Licensing Scheme and quality control of the HCV assessment reports	YES (1/1)	The HCV Resource Network produced a report on efforts to review the quality of HCV Assessor Licensing Scheme assessments. ¹⁵ A series of recommendations were made as a result of this exercise, but it is unclear if the recommendations in the report have been acted on.
1.2 To prepare a guideline for prospective HCV licensed assessors	YES (1/1)	Progress on developing these guidelines were provided to Task Force members in 2017 and 2018. It appeared to be published on the HCV Resource Network website in September 2019. ¹⁶
1.3 Auditors checklist	PARTIAL (1/3)	A minimum requirements list was reportedly being developed by the HCV Resource Network under this objective. Progress towards it has not been clearly tracked, and it is unclear if it was ever finalised.
1.4 Training for auditors and growers	PARTIAL (2/3)	New training module on HCV and some training delivered. Training with certification bodies was supposed to occur in 2019. ¹⁷
Objective 2: Develop clear, mandatory guidelines on assessments of Free, Prior and Informed Consent (FPIC) in the New Planting Procedure		
2.1 To develop clear, mandatory minimum guideline on assessment of FPIC in the New Planting Procedure.	YES (2/2)	New FPIC guidelines were developed by the Forest Peoples Programme and integrated as part of the normative guidance for the New Planting Procedure. ¹⁸
2.2 Translation of the FPIC documents and publishing	YES (2/2)	The new FPIC guidelines were translated and published in French, Thai, Bahasa Indonesia and Spanish.
2.3 Development of training modules on FPIC.	YES (1/1)	Forest Peoples Programme produced a training module for the RSPO to implement with certification bodies, delivered to the RSPO in 2017.
2.4 Training for growers, communities and certification bodies	NO (0/1)	Training of auditors reported to the Assurance Task Force in November 2017, with expansion of training to include growers and other stakeholders planned for 2018. The most recent Task Force update listed the activity as "Ongoing" and detailed that some FPIC training was provided to certification bodies in 2017 and 2018.
Objective 3: Develop and institute a transparent and robust system for monitoring the quality of assessments		
3.1 To develop a minimal guidance for social audit and training for certification body auditors and growers and certification bodies	PARTIAL (2/5)	The development of minimal guidance for social audit is not yet completed, although there has been various training. A link was established with the work of the RSPO's Labour Task Force to help develop guidelines and training on labour issues. Verite led the implementation of a training module and pilot testing for certification bodies. ¹⁹ An obvious overlap with the Labour Task Force's objectives has led to progress on labour related guidelines, but no other 'social' topics (such as gender) received the equivalent attention.
3.2 To develop the minimum guideline and checklist for Partial Certification and then provide training for growers and certification body auditors	PARTIAL (1/4)	Aidenvironment produced and supported pilot training on new minimum guidelines for Partial Certification in 2017. The 2017 Quarter 3 Progress Report stated this activity as 'Completed'. However, the 2018 Quarter 3 Progress Report contradicts it by listing numerous activities such as grower training and the revision of system documents as "Pending" i.e. not started.
3.3 Develop the minimum guidelines for Social and Environmental Impact Assessment (SEIA) and New Planting Procedure components and provide training for growers and certification bodies based on minimum guidelines	PARTIAL (1/4)	According to Aidenvironment, a SEIA module was developed, and a training session conducted for certification bodies in 2017. It is unclear what has happened since. New Planting Procedure and Social Accountability training modules exist on the RSPO's website. The 2018 Quarter 3 Progress Report states the module and training for certification bodies are "Done" while training for growers and a registry of SEIA assessors was still "Pending" i.e. not started.

Green – Done Orange – Partially done Red – Not done

Table 1: Evaluation of Assurance Task Force results against activities.

3.4 To conduct a study on remuneration of certification bodies/auditors	PARTIAL (1/2)	The RSPO Secretariat appointed Dr. Steffen Preusser to do this study. A report with recommendations was discussed by the Assurance Task Force at several occasions. It remains unclear how the recommendations have been acted on, if at all.
3.5 RSPO to arrange for capacity building (outreach programme) for growers	PARTIAL	Some training was reported by the RSPO Secretariat. Information on the impacts, feedback and the training modules themselves have never been revealed.
3.6 To provide concrete guidance to certification bodies (and growers) to use the proper sources of maps (such as community land maps, peat) as reference (also listed as 3.7)	NO (0/3)	The establishment of the RSPO's Geographic Information Systems (GIS) Unit in 2017 was meant to support this activity, facilitating the development of guidance. As of the last Task Force meeting in November 2018, there was an update on the peat maps regarding their use and caveats. There has been little reporting to suggest concrete guidance is being developed for other maps, notably community maps.
3.8 Preparation on Jurisdictional Approach & RSPO NEXT.	NO (0/1)	Unclear what was intended for this activity.

Objective 4: Monitor the quality and performance of Auditors and pursue suspensions or sanctions against underperforming or persistent offenders

4.1 To provide the summary of the compliance report by end of December 2016 to be published on Assurance Services International (ASI) and RSPO websites	YES (1/1)	The objective was met with ASI's Integrity Report in 2017. ²⁰ The report suggests that while RSPO P&C Standards have advanced, the tools, personnel and guidance for certification bodies' assessments is woefully lacking. The recommendations were not discussed properly by the Assurance Task Force, and it is unclear if any were implemented.
4.2 To monitor quality and performance of auditors and pursue suspensions or sanctions against underperforming or persistent offenders	YES (1/1)	Both ASI and the HCV Assessor Licensing Scheme were operationalised before the start of Assurance Task Force. The performance of ASI to-date suggests it has been reasonably effective in improving certification body performance. ASI has conducted conformity and witness assessments of certification bodies, reported suspensions, accredited certification bodies and provided their surveillance data analysis. The proposed Lead Auditor registry hosted by RSPO did not materialise. HCV Resource Network has reported on its improvements. A registry for HCV experts was highlighted in the HCV Resource Network's updates. There is yet no clarity over progress on a registry for SEIA assessors.
4.3 To provide capacity building to certification body/auditor by providing training for lead auditors and team members	YES (1/1)	A programme for the training of certification bodies was established and substantially improved, although there has been no feedback shared with the Assurance Task Force.
4.4 A system to keep track of certificate status (which certificates are suspended/withdrawn/ terminated) and the non-compliance(s)	YES (1/1)	It does not appear that the RSPO is tracking non-compliances through a centralised mechanism. While there is a system for seeing the status of certificates, including if active, suspended or expired, this has been in place since before the Assurance Task Force's formation and it is unclear from it why certificates have been suspended.
4.5 To produce option paper on how to de-link certification bodies and certificate holder(s) /client-company (to enhance the independence of certification bodies)	PARTIAL (3/4)	A report was produced by Liza Murphy. Instead of an options paper to facilitate a discussion on potential models to support de-linking certification bodies and companies, the consultant instead made the recommendation against de-linking and made a series of other recommendations. The scope and direction of the study did not address the primary objective.
4.6 Quality improvement for certification body-hired reviewers	NO (0/2)	The 2017 RSPO Certification Systems document has dedicated an annex on Guidance for Peer Reviewers. It contains a justification for reviews, a substantive guidance section for the basic elements for review in a certification body public summary. A basic requirement for the reviewers' report is also articulated. However, it is unclear how the quality of reviewers themselves is being raised.
4.7 Assurance Services International (ASI) produced RSPO non-conformity analysis	PARTIAL	Several non-compliance reports were produced by ASI in 2017 and 2018. They showed that witnessed assessments resulted in 50 per cent more non-compliances being identified – notably 90 per cent more major ones. ²¹ They also showed that 90 per cent of non-compliances were raised under only half of the RSPO's Principles. It is unclear if and how the results and recommendations were followed-up.

Objective 5: Monitor RSPO members' adherence to required procedures and report all members that omit submitting New Planting Procedure notifications, before clearing lands, to the Complaints Panel

5.1 Review of complaints mechanism (hosted by RSPO, ASI, and HCV Resources Network), accessibility and feedback system	NO (0/1)	This was meant to look at harmonising the complaints systems. It is unclear if anything on this occurred – this was marked as 'completed' in 2017 and then as 'ongoing' in 2018.
5.2 Monitoring of the New Planting Procedure area	PARTIAL (1/4)	Comments made on New Planting Procedures are now published on the RSPO website. There appears to have been very little progress on mapping and monitoring the New Planting Procedure and HCV areas, and there is no known system for sanctioning members for not submitting.

KEY FINDINGS FROM THE ASSURANCE TASK FORCE

The Task Force – the RSPO Secretariat, Assurance Services International (ASI) and the HCV Resource Network – have worked on and delivered a broad range of activities aimed at improving assurance and certification processes. There have been many activities, including developing assessor guidance, training, managing assessors and exploring tools that could enhance credibility in a third-party certification system. However, this report documents the poor execution and questions the effectiveness of all this effort.

The conclusion of each of the main objectives of Resolution 6h are as follows:

Objective 1: Develop clear, mandatory guidelines on the minimum acceptable quality of HCV assessments

The HCV Assessor Licensing Scheme has taken over the RSPO's work of licensing and managing HCV assessors, and has developed an assessment quality control system, leading to improvements for post-2015 HCV assessments. Not all the recommendations and actions were completed under the Task Force, however, and many pre-2015 HCV assessments remain poor in quality. The activities do not result in the culmination of mandatory guidelines; therefore, the objective was **not fulfilled**.

Objective 2: Develop clear, mandatory guidelines on assessments of Free, Prior and Informed Consent (FPIC) in the New Planting Procedure

FPIC guidelines were produced and training conducted but its effectiveness in ensuring that audits under the New Planting Procedure adequately assess FPIC in practice is unclear. This objective was **partially fulfilled**.

Objective 3: Develop and institute a transparent and robust system for monitoring the quality of assessments

These activities have focused primarily on training and guidance, rather than actually developing and instituting a transparent and robust system for monitoring the quality of assessments. Only the HCV Assessor Licensing Scheme provides monitoring to some degree. The objective was **not fulfilled**.

Objective 4: Monitor the quality and performance of auditors and pursue suspensions or sanctions against underperforming or persistent offenders

The RSPO has relied on ASI, and the HCV Resource Network, to perform this function. It is unclear if or how the outcomes and recommendations have been addressed. The agreed plan for five-year certification body rotation appears unimplemented while the study for delinking auditors was abandoned. There is no evidence of a coherent system for scheduled monitoring of non-compliances to inform performance, risks and training needs. The objective was **not fulfilled**.

Objective 5: Monitor RSPO members' adherence to required procedures and report all members that omit submitting New Planting Procedure notifications, before clearing lands, to the Complaints Panel

It is unclear what are the specifics, if any, on progress and mechanics for coordinating between the different bodies (ASI, HCV Assessor Licensing Scheme, RSPO). New Planting Procedures are now more accessible, but there is no concrete evidence of the monitoring of their submission and implementation. The objective was **not fulfilled**.

In summary the key issues are:

- a. the Assurance Task Force is synonymous with missed deadlines, static reporting, infrequent communications, poorly run meetings, tardiness, ineligible and inaccurate reporting, a lack of follow-up and the inconsequentiality of missing deadlines and other offenses that were persistent, constant and draining. It is no exaggeration to say that the Assurance Task Force must stand as one of the most **poorly managed, run and disorganised working groups ever established by the RSPO**;
- b. the Assurance Task Force never met its self-declared November 2016 deadline and the last official update could list only 43 per cent of work completed and even if all the work envisioned was completed it would not have met all the objectives. The Task Force **has not completed its work in three years of running and the impacts of implementation are unclear and un-monitored**;

- c. some **issues were neglected over the course of time**. Missing are guidance for several social criteria, while the de-coupling study was never re-commissioned - thus there is no research or discourse on what a de-coupling scenario would be;
- d. in the analyses and reports produced under the Assurance Task Force, various recommendations were offered. These offers have come from ASI, the HCV Resource Network, and various consultants. In the case of ASI for example, their recommendation was understood to be fundamental for an effective role. How that was addressed is unclear. This was because there was **no system to manage recommendations**;
- e. activities for Social and Environmental Impact Assessments (SEIA), Partial Certification and Free, Prior and Informed Consent (FPIC) training were pilot tested with relevant Task Force experts, but they were then excluded thereafter from feedback and further iterations of the versions developed for certification bodies. Therefore, **Task Force members are not updated on implementation feedback or what changes were made to final versions**;
- f. the Task Force members never received annual workplans, objectives or other information to understand the strategic direction. Reporting documented various actions and implementation yet Task Force members were not aware how it came to be implemented, or specifics of activities. **The wider Assurance Task Force were isolated from the RSPO Secretariat of the Task Force which operated opaquely**;
- g. the different assessors; certification bodies, HCV and SEIA assessors, are administered by ASI, the HCV Assessor Licensing Scheme and RSPO respectively. ASI has the most developed administration, the HCV Assessor Licensing Scheme has resulted in significant improvements, but RSPO has not even developed a SEIA Registry. Similarly, guidance development ranged from completed to non-existent. The effect is that **RSPO certification does not provide fair coverage of the P&C, and the disparity in the quality of the guidance and assessors continues to discredit the certification system**.

Overall the Assurance Task Force has failed to deliver on many of its deliverables and therefore its objectives and in turn the concerns raised through the original *Who Watches the Watchmen?* report. This is well illustrated by both the original case studies from the original *Watchmen* report and new case studies (Table 2).



Basket of loose fruits in East Kalimantan, Indonesia

TABLE 2

ISSUE	CASE STUDIES
Failure to identify social conflicts and land right claims and weak guidance on Free, Prior and Informed Consent	PT BSMJ PT NB PT KPC PT REA Kaltim Poligrow IOI Pelita
Failure to identify labour abuses	Profundo report
Ambiguity over legal compliance	PT NB PT KPC
Weak and flawed HCV assessments leading to the destruction of HCV areas	ANJ
Poor technical knowledge and understanding of the RSPO standard	Profundo report
Certification bodies providing suspect responses or fraudulent assessments that cover up violations of the RSPO Standard	PT BSMJ PT KPC IOI Pelita
Conflicts of interest due to link between certification bodies and companies	IOI Pelita PT KPC
Weaknesses in the complaints system	PT BSMJ PT NB PT KPC Poligrow IOI Pelita
Weak oversight of certification bodies and fraudulent behaviour	Profundo report PT REA Kaltim PT BSMJ PT KPC
Weak New Planting Procedure (NPP) processes (including verification, comments process and post-NPP monitoring) resulting in misleading and fraudulent NPP assessments or evasion of the NPP	PT BSMJ PT NB ANJ PT TAP Poligrow

Table 2: Case studies relevant to issues raised in the *Watchmen* report.

A COMPROMISED COMPLAINTS SYSTEM

The *Watchmen* report raised a number of concerns around the RSPO's complaints system including that it failed to properly address the complicity of auditors in non-compliances which led to complaints, that certification bodies were allowed to assess complaints for companies they had certified – a clear conflict of interest - and measures were not taken against auditors even when the culpability of auditors was established in the complaints. One of the key shortcomings highlighted was RSPO's inability to detect violations before considerable harm had occurred and its unwillingness to contemplate a system which proactively identifies violation through the its own processes.

The complaints system was already tasked with undergoing review following Resolution 6f in 2013 and the Assurance Task Force further tasked the RSPO with exploring a harmonised complaints management system for RSPO, Assurance Services International (ASI) and the HCV Resource Network, and possibly expanding ASI's mandate to include complaints. It was also recommended that members who fail to submit New Planting Procedures before land clearance are referred to the complaints system.

CHANGES SINCE 2015

The RSPO adopted new complaint procedures in June 2017. These included some positive changes, such as an appeals process and the redirection of complaints concerning certified plantations or certification bodies to the accreditation body – ASI. Still, the ASI system only accepts complaints if an attempt to resolve issue with certification bodies has been exhausted²². The activities outlined for the complaints system under the Assurance Task Force have never been completed.

As of October 2019, there were 38 open complaints in the RSPO system. The longest has been open nine and a half years.²³ About one third have been open more for than three years. On average, it takes 700 days before complaints are closed. According to the RSPO, the most frequent complaints are on Free, Prior and Informed Consent (FPIC), HCV areas and certification bodies²⁴ – the very same issues documented in the *Watchmen* report.

The failures raised back in both 2013 and 2015 still remain institutionalised. Many NGOs have raised continuing concerns about the RSPO's complaints – Profundo provides recent examples of such concerns,²⁵ as do the case studies in this report. RSPO members quitting the RSPO rather than resolving complaints remains a problem and seems to disincentivise the RSPO from sanctioning members over complaints to minimise its risk of losing members. The RSPO adopted a resolution in 2018 to try and discourage members with unresolved complaints from avoiding their obligations by divesting or membership withdrawal. It is yet to be seen how well this can be implemented.

There is also the tendency by the RSPO to funnel members to compensate for damage using the Remediation and Compensation Procedure – a symptom of the fact that complaints are only raised after considerable harm has already occurred.

Transparency in the complaints system is severely lacking. The RSPO far too frequently fails to release documents, details of its own investigations and reports, and details of the compensation required by companies. All are integral to the successful resolution of complaints.

In July 2018, the RSPO established its Investigation & Monitoring Unit (IMU) to undertake investigations of allegations in the public domain, HCV monitoring, hotspot monitoring and post-complaints monitoring.

So far just six IMU cases are publicly listed – five of these are post-complaints being monitored and two of these are complaints that have been ongoing for more than nine years. The number of investigations listed does not reflect the allegations in the public domain nor HCV or hotspot monitoring.

The RSPO is however now reportedly monitoring hotspots²⁶, but it lacks credibility on how the RSPO is independently verifying a fire and is dependent on its members volunteering spatial data for all their concessions. There also remains no process whereby members not submitting New Planting Procedures or destroying HCVs are systematically identified and complaints filed automatically by the RSPO. As such, violations of RSPO rules and procedures can all too easily still occur, with the complaints system not credible, transparent nor able to uphold such violations.



Putting out fires in East Kalimantan, Indonesia

CASE STUDIES

CASE STUDIES 1 & 2

Misleading and Fraudulent New Planting Procedure (NPP) Assessments and How Certification Bodies (CBs) Respond to Violations of the RSPO Standard

Original issues in *Who Watches the Watchmen?*

The NPP for PT BSMJ in East Kalimantan, Indonesia, posted in 2012 deliberately omitted and falsified information. It failed to mention the Muara Tae community from which the company did not have consent. Despite knowing this, the assessors claimed the community was not mentioned in the assessments due to sampling reasons. The assessments were also undertaken after land clearance, undermining the whole NPP process, and failed to adequately identify HCV areas. EIA had already submitted a complaint to the RSPO, which ultimately confirmed the allegations made.

EIA also raised concerns to the certification body – TUV NORD Indonesia – which had signed off the NPP documents and only undertaken a desk-based review. The certification body rejected EIA's concerns and in doing so showed a poor understanding of Free, Prior and Informed Consent (FPIC), customary rights and that the RSPO's Standard went beyond national legislation. TUV NORD's independent investigation failed to include community consultation once more – it only consulted the company and assessors. Subsequently ASI found TUV NORD Indonesia lacking and terminated its accreditation under the RSPO.

Newly planted oil palm estate in East Kalimantan, Indonesia



Company: PT Borneo Surya Mining Jaya (BSMJ), as subsidiary of First Resources

Assessors: Consultants from Bogor Agricultural Institute

Original CB: TUV NORD Indonesia

New CBs: BSI Group; PT. Mutuagung Lestari

What's happened since 2015

In December 2015 the RSPO complaint was closed as "unresolved".²⁷ First Resources agreed to keep an 892ha area of disputed land free from further development.

This area is much smaller than the potential 4,304 ha of Muara Tae customary land overlapping with PT BSMJ as identified by EIA.²⁸ There was not a participatory mapping exercise, as there was not mutual agreement over a mediator. EIA voiced its dissatisfaction at how the whole complaint was handled and that the case was closed without resolution and with multiple actions outstanding.²⁹

First Resources received approval to proceed with P&C certification and now has two mills certified,³⁰ despite partial certification requirements stipulating land conflicts must be being resolved through a mutually agreed process in all concessions. PT BSMJ's original, unrevised NPP from 2012 remains online.

Neither of the most recent audit reports – undertaken by BSI Group and PT. Mutuagung Lestari - refer to the land conflict in PT BSMJ. It is stated: "There is no information from public source and RSPO website on any land conflict for uncertified unit of the group subsidiaries",³¹ an incredible claim given this is one of Indonesia's highest profile land conflict cases.³² It calls into question the integrity of both certification bodies – whom had already been exposed in the first *Watchmen* report for their roles in cases then.

The land conflict continues. The regional office of the national land agency (BPN) finally handed over the right to cultivate documents for PT BSMJ to the Muara Tae community in May 2019 after a two-year battle.³³ But this only details and maps the rights the Government granted to PT BSMJ – the conflict is not yet resolved.

Company: PT Nabire Baru (NB), a subsidiary of Goodhope Asia Holdings Ltd

HCV Assessor: Nyoto Santosa

CB: BSI Services Malaysia, Sdn, Bhd.

In March 2017, PT Nabire Baru, a subsidiary of Goodhope Asia Holdings Ltd, submitted an NPP to the RSPO. The assessments submitted as part of this were woefully deficient. They failed to include the required information such as mention of the FPIC process, a land use change analysis, soil survey and greenhouse gases assessment. In addition, the HCV assessment was poor quality and likely deliberately false as it stated there were no primary forests and peatlands.³⁴

Originally 95 per cent of PT NB was forest, including primary forest.³⁵ By the time the NPP was submitted in 2017, PT NB had already cleared 9,872 ha³⁶ – about 70 per cent of its area – a clear violation of the RSPO rules requiring companies to submit NPPs before land clearing. Its parent company, Goodhope Asia Holdings, had been an RSPO member since 2014, and other subsidiaries members since 2006/2007, so it was unlikely to have been aware of the RSPO rules.

PT NB had also been operating in violation of the law by clearing large areas of land without an Environmental Impact Assessment up until 2014.³⁷ Additionally, there was already an open complaint against PT NB in relation to land grabbing, failure to follow a Free, Prior and Informed Consent (FPIC) process, deforestation and irregularities in its legal compliance.

Despite all this, both the Certification Body and the RSPO had signed-off the NPP and allowed it to be posted, even though the RSPO had already commissioned its own independent review into the HCV assessments of PT NB and other Goodhope subsidiaries and found them to be inadequate.

EIA and other NGOs subsequently submitted formal comments on the deficient NPP. The RSPO then raised a complaint against the entire Goodhope Asia Group given that

all the HCV assessments had been undertaken by the same assessor, Nyoto Santosa, with the RSPO appointing itself as the complainant.

The RSPO issued 'stop work' orders for seven Goodhope subsidiaries, including PT NB, until new HCV assessments and land use change analyses were done. While the original HCV assessment for PT NB had identified just 672 ha for conservation, a new HCV assessment in 2018 identified 4,703 ha of the remaining uncleared land to conserve - an increase of 600 per cent.³⁸

The RSPO also undertook its own legal review, – although it refused to share this – since it had made itself the complainant. While the RSPO seemed to agree that PT NB had operated without an Environmental Impact Assessment up until 2014, in violation of the law, because it had subsequently obtained an environmental permit in 2014 it was now deemed to be in legal compliance, seemingly without consequences.³⁹

On the land-grabbing and the FPIC process, the RSPO failed to undertake any proper investigation as part of the separate PT NB complaint case, despite stating it would, nor were documents shared with the complainant. In January 2019 this complaint case was closed as the community instead decided to resolve the matter bilaterally with the company.

In the end, PT NB was required by the RSPO to compensate for just 1,385 ha cleared before May 2014 without an HCV assessment⁴⁰, despite it clearing nearly 10,000 ha between 2011-17 including "large areas of primary forest" in what was a highly forested landscape.⁴¹ The land use change analysis that forms the basis for the compensation has never been made available, nor has its NPP been revised that would include the new land use change analysis and HCV assessment.

Overall the RSPO processes appear to have failed to adequately address PT NB taking lands without consent and clearing forests, including primary forests, without having legal permits. The company was still in 2017 able to submit an NPP years after it had started operating and despite the RSPO knowing this was sub-standard. A revised NPP is still outstanding and the compensation process has been opaque.

CASE STUDY 3

Fraudulent behaviour of assessors and collusion to deceive

Company: PT Kartika Prima Cipta (PT KPC), a subsidiary of Golden Agri Resources (GAR)

HCV Assessor: Bogor Agricultural Institute

CB: PT Mutuagung Lestari

Original Issues in *Who Watches the Watchmen?*

In the series of complaints filed by Forest Peoples Programme (FPP), TUK-Indonesia and others to the RSPO, the complainants alleged that both the HCV assessor and certification body had in 2014 approved and assessed GAR as compliant to the RSPO requirements, despite violations of the RSPO Standard being well documented and information published directly before assessments were done and approved. It was inconceivable that those who carried out the assessments, and PT Mutuagung Lestari in its verification of them, were unaware of these issues. On these grounds FPP arrived at the conclusion that "it seems these assessors have colluded with GAR in disguising the real situation".⁴² In total, FPP and partners filed 18 separate cases against GAR's certified units on the same grounds.

A further complaint was filed in 2014 against PT Mutuagung Lestari over its role in what appeared as an orchestrated attempt, possibly in coordination with the company, to misrepresent or ignore information to certify the company against the RSPO Standard. At the time, HCV assessor and certification body management were under the mandate of the RSPO Secretariat. When the *Watchmen* report was written in 2015 there was no response of substance to this complaint.

This case highlighted serious fraudulent activities and seemingly a culture of collusion in the certification and assessment work in the RSPO. The deceit perpetrated was so clear, egregious and in defiance of the authority of the RSPO or the institutions of third-party certification that it cast doubt over the very foundations of RSPO certification. This exposé of the culture and practices demonstrated unequivocally that the system as it stood was untenable, corrupted and unfit for purpose.

What's happened since 2015

GAR continues to appear to operate in defiance. The Complaints Panel sanctioned GAR through a stop work order⁴³. Conditions have been imposed on the company, but the case has not progressed significantly towards a process that would inspire a serious response by the company. The case tracker is conspicuous for only posting updates from GAR – thus giving the impression that the case is being addressed. Incredibly, in September 2019, the RSPO Secretariat admitted the case has been open too long – since October 2014 – and it did not have a precise knowledge of the case specifics. Therefore, FPP has been asked to resubmit case documentation to the RSPO to assist.

This case remains unresolved because of GARs continued defiance or disregard for the rulings handed down despite clear evidence of its responsibility⁴⁴.

- HCV assessments for the 17 GAR concessions have still not been finalised and have not been shared with the communities;
- additional smallholdings in PT KPC have still not been provided and there are further unresolved disputes about the location and tenure of the proposed smallholder allocations;
- land disputes resulting from the original land acquisition by PT KPC, in contravention of FPIC requirements, remain unresolved;
- legal status of the land in PT KPC remains unclear;
- remediation process in PT KPC is stalled and GAR is refusing to renegotiate land transfers carried out without proper FPIC (even though it has redone some elements in the FPIC process such as mapping etc.); and
- minimal progress has been made in the other concessions.

In 2018, FPP submitted another five complaints to the RSPO due to inaction and GAR continuing operating in violation of the Complaints Panel's decisions and RSPO standards.⁴⁵ These were inter-linked to the original case in 2014.

The role of the RSPO Secretariat in this has been compounding and contributing towards the delays and ineptitude. In fact, the 2018 submissions are attributable to the RSPO Secretariat not responding to critical legal review studies required to support the case resolution and not conducting its own legal review despite volunteering itself to the task in 2016. FPP is awaiting a response from Complaints Panel at the time of writing as to whether the case will now be adjudicated properly, sanctions handed down appropriately, and critical outstanding issues (e.g. legal review) systematically addressed.

CASE STUDY 4

Weak HCV Assessments

Companies: PT Permata Putera Mandiri (PPM) and PT Putera Manunggal Perkasa (PMP), subsidiaries of PT Austindo Nusantara Jaya Tbk (ANJ)

Parent Company: PT Austindo Nusantara Jaya Tbk (ANJ)

HCV Assessor: Nyoto Santoso; Junser Naibaho

CB: Mutuagung Lestari

In 2014, ANJ submitted and had approved New Planting Procedures (NPPs) for PT PPM and PT PMP⁴⁶ - two of its three neighbouring concessions in West Papua, Indonesia.

PT PPM had its HCV assessment done by the HCV assessor Nyoto Santoso - identified as having done at least 34 HCV assessments, likely more, for RSPO members.⁴⁷ Many of these were of poor quality or fraudulent. Following a complaint made to the HCV Resource Network by EIA in 2017, Nyoto Santosa was de-listed as an HCV assessor.

In 2017, NGOs sent a letter to the RSPO requesting that it investigate due to deforestation, as well as land disputes, occurring in PT PPM and PT PMP. One of the big concerns highlighted was that primary forest, which is not allowed to be cleared under the RSPO, had been classified as secondary forest in the HCV assessment approved under the NPP and was being cleared.

ANJ had acknowledged these deficiencies itself and stated the initial HCV assessments were inaccurate, and as a result, it undertook new assessments and committed to conserve a larger area.⁴⁸ Revised conservation plans were submitted to the RSPO, but it did not re-submit its NPPs, nor were these new HCV assessments made public nor did they appear on the HCV Resource Network website. Neither did the RSPO require the NPPs to be re-submitted as it stated there was no procedure requiring this.

Following continuing concerns, including that PT PMP was deforesting in violation of the new P&C 2018,⁴⁹ the RSPO eventually opened a case under its Investigation & Monitoring Unit (IMU) in September 2018.⁵⁰ But this only



Aerial view of a river in Papua.

focused on ANJ's changes to its conservation plans for the concessions, and not the issue of the HCV assessments being of sub-standard quality in the first place. The IMU case was subsequently closed.

Despite these known deficiencies in the HCV assessments, openly acknowledged by ANJ, the original HCV assessments for PT PPM and PT PMP remain approved by the RSPO. The RSPO has not required them to be revised, even though they are seriously flawed, and appears unwilling to un-approve an NPP.

ANJ could technically change its conservation plans – and did, which was the subject of the IMU case – and clear primary forests and yet still not be acting in violation of its approved NPP. As ANJ itself stated "PT. PMP and PT. PPM have gone through the NPP process and theoretically could clear a larger area".⁵¹

These raises serious issues over the post-NPP process. There is no procedure or inclination from the RSPO to require the revision of HCV assessments known to be sub-standard and no procedures for monitoring NPPs. ANJ itself raised such concerns with the RSPO including:

1. there is no post-NPP procedure requiring companies to inform the RSPO of changes to development and conservation plans; and
2. there is no procedure that requires or encourages companies to report unintended land clearance to the RSPO.

ANJ even stated that the situation is created by a "pre-2015 RSPO NPP process that had inadequacies. This has resulted in a morass of "grey areas" that need to be addressed."

CASE STUDIES 5 & 6

Evading the New Planting Procedure (NPP)

Company: PT Triputra Agro Persada (TAP)

Original issues in *Who Watches the Watchmen?*

The company's planted area was noted to have increased from 82,000 ha to 134,000 ha, but it had not submitted any NPP to the RSPO. The company was reportedly responsible for at least 37,000 ha of deforestation including potential orangutan habitat. There was also a disparity between the planted area the company reported in its Annual Report compared to that reported to the RSPO through its Annual Communication of Progress (ACOP). Despite the evidence being published, there were no punitive measures taken, nor a complaint lodged by the RSPO Secretariat.

What's happened since 2015

The company has been reported as now having planted up to 170,000 ha out of a total area of 388,000 ha.⁵² Yet, it reports a much smaller area to the area to the RSPO – that is has planted 27,468 ha out of a total area of 43,476 ha.⁵³ It does not report to the RSPO that it operates in East Kalimantan and West Kalimantan, only in Central Kalimantan and Jambi.⁵⁴ In East Kalimantan recent deforestation in its subsidiary PT Dwiwira Lestari Jaya has been identified.⁵⁵ It has still not submitted any NPP to the RSPO. The company has two certified mills but did not list its operations in East and West Kalimantan in its most recent audit reports as required under partial certification requirements either. This is a continual failure by the RSPO to hold companies to account on RSPO processes and ensure accurate reporting, with too much reliance on self assessment by companies. Companies can still easily avoid the NPP and partial certification requirements.



Orangutans, Kalimantan, Indonesia

© EIA

Company: Poligrow Colombia SAS

Original HCV assessor: Diego Rodriquez, BioAp;

New HCV assessor: Juan Pablo Zorro Ceron

Original issues in *Who Watches the Watchmen?*

In 2015 it was reported that environmental activists had received death threats for them protesting over the displacement of local people by the company Poligrow in Colombia, an RSPO member.⁵⁶ Despite Poligrow having a landbank more than 10,000 ha it had not submitted any NPP notification that would have had to include its Free, Prior and Informed Consent (FPIC) process, as well as other assessments. In September 2015 the Complaints Panels asked for RSPO Secretariat to write to the company seeking clarification on the New Planting Procedure (NPP) submission and a complaint case was opened. The case highlighted how the RSPO did not have any system to respond to and act on serious violations, nor any system to identify those companies failing to submit NPPs.

What's happened since 2015

The RSPO complaint on Poligrow is still open, having been open since August 2015. In August 2017, two years after the issues were raised to the RSPO, independent investigations by the RSPO found the company in breach of the following P&C requirements:⁵⁷

- P&C 2.1.4 – no tracking system for compliance with laws and regulations;
- P&C 2.2 – ongoing legal proceedings;
- P&C 2.3 – failure to conduct proper FPIC; overlap of indigenous territories and Poligrow's land; impact on livelihoods of indigenous communities;
- P&C 4 – incomplete identification and management of health and safety risks; breaching maintenance of the fertility of the soil;
- P&C 5 – environmental impact assessment inadequate and pending environmental investigations; lack of social dialogue with indigenous communities; lack of monitoring of HCV areas; leaching from rainwater run-off;
- P&C 6 – employment opportunities limited; wages deducted if absent; delays in wage payment; lack of personal protection equipment; inadequate healthcare; families of indigenous communities living in poor conditions (malnutrition and polluted water);

The RSPO also identified other breaches inclusive of several legal issues, including pending court cases and stop work orders, and that security procedures and protocols were inadequate.⁵⁸ Poligrow was asked to implement and submit an action plan and provide quarterly updates on legal proceedings. So began a period of draft action plans and clarifications being provided.

In December 2018, based on further clarifications provided by Poligrow suggesting FPIC was not needed the RSPO stated "it finds it difficult to accept Poligrow's clarification that there is no need for FPIC and that the document submitted for Social Liability was erroneously translated".⁵⁹ The RSPO required Poligrow to urgently demonstrate compliance with FPIC, and to review and update its Social and Environmental Impact Assessment (SEIA) and HCV assessment, and subsequently its participatory mapping and operational management plan.

A revised action plan appears to have been agreed in May 2019 – four years after the complaint opened. This action plan is not public, nor is Poligrow's progress - there is no official complainant listed by the RSPO, so therefore no information is made available to stakeholders.

Meanwhile, in 2017 Poligrow was sanctioned by the regional environmental authority of Colombia (CORMACARENA) for environmental damage with recommendations issued to it.⁶⁰ This related to mismanagement of its waste and wastewater disposal, including domestic and industrial misuse of surface water for its palm oil extraction plant and dumping of wastewater in gallery forests and native wetland areas (morichales), without the proper water treatment plan and permits. It was ordered to pay 47 million Colombian pesos and restore 180 morichales⁶¹

Poligrow began operating in 2008 and became an RSPO member in 2009; it has now planted 7,000 ha and plans to plant another 8,000 ha.⁶² It has still not submitted any NPP, nor are any of its operations certified. It remains an RSPO member despite serious breaches of the P&C being found by the RSPO. It is stated it is undergoing the RSPO compensation procedure,⁶³ but there is no transparency as to what this is for and how much. In August 2019 Poligrow submitted an HCV assessment to the HCV Resource Network for review,⁶⁴ suggesting it is looking to submit an NPP at some point, a mere 10 years after it joined the RSPO.

Poligrow it seems has still evaded the NPP and clearly has not been following the P&C. The compensation process is hidden behind closed doors as is the complaint case, to a large extent, and therefore it is not possible to know what has been required of the company. Poligrow just recently announced it has applied for an initial certification evaluation against the P&C 2013⁶⁵ – a day before the new P&C 2018 comes into effect on the 15th November 2019.

CASE STUDY 7

Certification bodies, complaints and conflicts of interest

Company: IOI Plantations – RSPO founding member

CB: Intertek (previously Moody International)

Original issues in *Who Watches the Watchmen?*

The land conflict case between the community of Long Teran Kanan and IOI-Pelita (a joint-venture between IOI Plantations and the Sarawak government entity PELITA) was raised as a complaint in the RSPO system by Grassroots and other NGOs on behalf of the community in 2010.

IOI utilised certification bodies to counter the complaint and exonerate the company. The assessors employed by IOI attempted this by conducting a controversial “assessment” of the complaint. These assessors were from the very same organisation that had certified IOI despite the case having come to light already. The assessors attempted to manipulate feedback by deceiving communities of their intent and objectives.

In addition, the RSPO posted the “assessment” on the complaints page for this case, and that created the impression it was conducted using sound methodology and impartiality or a third-party approach because it was conducted by a certification body. The complainants took exception to how the “assessment” was an irregular activity for a certification body. The certification body had acted in conflict of interest, seemingly colluding with the company to distort facts as a means to discredit the complaint and complainants. The very credibility of the certification body would be jeopardised if conclusive evidence that contradicted their opinion gained traction through RSPO’s complaints system.

What’s happened since 2015

IOI had already been sanctioned in 2012 by the RSPO through a suspension,⁶⁶ prior to the *Watchmen* report. IOI had been reinstated after the IOI-Pelita complaint case was moved to the Dispute Settlement Facility in 2013. That failed to generate momentum and the Complaints Panel then again suspended IOI Group’s RSPO certificates in April 2016 for some months. IOI entered into some negotiations with the community, Grassroots and the RSPO to identify a solution that produced tangible steps in 2017. IOI and Grassroots then began dialogue to cooperate on developing a roadmap or resolution plan based on RSPO requirements in 2017. The case was then moved in the RSPO complaints system from an open case into the resolution stage⁶⁷. In 2018, IOI formalised its relationship with Grassroots to support and advise on a holistic resolution plan with all affected communities. This resolution plan was provisionally accepted by the RSPO Complaints Panel in 2018. Other parties were then engaged for the implementation of other activities. The activities would follow advice and requirements from the Complaints Panel.

Guidance for key processes, as required by the RSPO for the resolution process, has been inadequate. The Free, Prior and Informed Consent (FPIC) guidance that was applied was the older document developed for the RSPO from 2008/9 because the new version that was developed and shared as part of the Assurance Taskforce work from 2016 was not publicly available through the RSPO.

Grassroots and other stakeholders pursued sanctions against the certification body for what was argued to be clear breaches of the basic principles of a third-party assessor and impartiality. On the face of it, such an argument would have been superfluous, yet complainants had to underscore this explicitly before the so-called “assessment” was recognised as unacceptable by the RSPO Secretariat.

The case remains unresolved, although significant progress has been made in establishing the platform for a negotiated resolution. This complaint is the longest running in the RSPO system at nine and a half years.

CASE STUDIES 8 & 9

Failing to identify abusive labour practices and land conflicts

Profundo’s 2018 report

In 2018, Profundo produced a report on the effectiveness of the RSPO certification system in capturing labour issues, commissioned by the RSPO.⁶⁸ As part of this, field verification was conducted in late 2017 in four certified palm oil concessions in Indonesia. This found a low or very low level of compliance on labour issues in all of them. The broader problem for the RSPO centred over evidence from the same report of discrepancies in the performance of certification bodies. The Profundo report alleged certification bodies remained unable to detect and raise labour related non-compliances, having compared them to compliance audit assessments conducted by Assurance Services International (ASI). It found that six certification bodies were not suspended despite them not properly conducting audits, closing non-compliances without adequate verification and reporting the wrong non-compliances. The revelation from Profundo’s report in 2018 demonstrates that monitoring the impacts of training and implementation are essential to attain an accurate picture of effectiveness, and the report called into question once again “the credibility of the RSPO certification system, its auditing, enforcement and complaints handling system”.

Company: PT REA Kaltim, a subsidiary of REA Holdings

CB: PT TUV Rheinland Indonesia

PT REA Kaltim in East Kalimantan, Indonesia, has been RSPO certified since 2011 under Perdana Mill and Cakara Mill. Yet it has been mired by issues, notably land claims and compensation issues, since its inception.⁶⁹ In 2015, local residents staged a blockade in their quest to receive compensation for both land and planting that had not yet completed.⁷⁰ Fifteen people were arrested, two women were released, but the 13 remaining men were jailed.⁷¹ Some locals have said that it took nine years and protests by the community before the company paid them. It is understood there are still multiple ongoing claims where locals have not received compensation from the company.

Assurance Services International (ASI) witnessed the certification body’s audit of Perdana Mill in 2018.⁷² This assessment found 17 major non-compliances and five minor non-compliances with the RSPO P&C including: contractual and casual workers not being made permanent; no follow-up after accidents occurring; lack of personal protection equipment; inadequate housing facilities; no evidence of participatory mapping in disputed areas; no record of agreement on HCV areas between the company and communities; land clearing since 2005 without an HCV assessment; and no management and monitoring of the HCV areas, among others. In 2019, the certification body found just three major and four minor non-compliances – significantly less than the ASI witnessed assessment in 2018.

In 2019, Tepian estate, which supplies to Perdana mill was excluded from the RSPO certification of this mill, despite it previously being certified since 2012.⁷³ This was due to it clearing land since 2005 without an HCV assessment and the RSPO compensation procedure not being finalised. It is a violation of the P&C to clear land since 2005 without doing an HCV assessment in order to identify any areas to conserve first. The audits from 2016 onwards identified land clearing between 2005-2008 in Tepian estate, but it was not raised as a non-compliance until the ASI witnessed assessment in 2018. Pre-2016 audits appear to have not noted the land clearing at all, highlighting the weaknesses in the audit process to identify and raise issues.



THE ANNUAL COMMUNICATION OF PROGRESS (ACOP) – TOWARDS 100 PER CENT CERTIFICATION?

RSPO members are required to submit an ACOP every year. This is a standardised report to assess progress towards 100 per cent RSPO certified palm oil and is a fundamental requirement of the RSPO. Members who do not submit for two years in a row are suspended and those failing to submit for three years have their membership terminated.

All RSPO members are obliged to stipulate a time-bound plan within their ACOP, setting a deadline for reaching 100 per cent RSPO certification. ACOP data is self-reported by companies and not verified by the RSPO. As such time-bound plans are fickle and totally unreliable.

Although the RSPO has 4,347 members at the last count,⁷⁴ this belies the fact that it is only the 1,765 Ordinary Members⁷⁵ which are working towards 100 per cent certification. And only palm oil growers (c. 175 members) are required to achieve 100 per cent certification, which is meant to be reached within five years.

Less than 20 per cent of RSPO members that reported in 2018 had achieved 100 per cent certification. Just 8 per cent of RSPO palm oil growers reported being 100 per cent certified.⁷⁶ This is a despondently low number considering 64 per cent of the 122 growers reporting in 2019 had been members for more than five years.⁷⁷

There is no current requirement for non-grower RSPO members who buy palm oil such as consumer goods manufacturers, retailers and processors/traders – to reach 100 per cent certification, or even to buy any certified palm oil at all; 20 per cent of processors/traders reported sourcing absolutely no certified palm oil in 2018.⁷⁸

It's clear that RSPO members are not committing to achieving 100 per cent RSPO certification and are not held to this. There are reasons for this including that the cost of certification still outweighs the price achieved and that there are not enough buyers generating enough demand. Only 50 per cent of certified palm oil is sold as certified.

The RSPO has now stated that non-grower RSPO members should achieve 100 per cent certification by 2023, as well as growers continuing on the road to 100 per cent.⁷⁹ The RSPO is set to start requiring buyers to increase the proportion of RSPO sustainable palm oil they buy by 15 per cent each year, or risk fines and suspension.⁸⁰

Yet without greater assurance that its standards and procedures are being adhered to, the RSPO is likely to find it hard to get buyers to increase the amount of certified palm oil they buy, and in turn encourage growers to produce more than the surplus they already do, and therefore to enforce its own rules.

CONCLUSION AND RECOMMENDATIONS

RSPO complicit in the continual non-implementation of its Standard

Violations of the RSPO's Standard and procedures remain systemic and widespread four years since the original *Who Watches the Watchmen?* report. It is difficult to find grounds for reassurance that RSPO members are truly implementing the P&C.

The Assurance Task Force has been one of the worst run and poorest performing parts of the RSPO. The actions have been lacklustre, without transparency and, most importantly, have failed to fulfil the objectives of the Assurance Task Force and Resolution 6h. The reporting suggests a lot of activity, yet even Task Force members question the effectiveness overall. Some objectives were achieved and the performance of the HCV Assessor Licensing Scheme and Assurance Services International (ASI) have been key pieces to reconstitute some command and control over certain components of the entire system. Apparent successes, such as Free, Prior and Informed Consent (FPIC) guidelines, stem from the work of NGOs rather than the Assurance Task Force. The modest achievements are set against a working environment of dysfunction and disorganisation in the Task Force. The RSPO's complicity and failure to decisively deliver on Resolution 6h is symptomatic of its unwillingness and perhaps inability to resolve the issues. Nearly all of the concerns raised originally in *Who Watches the Watchmen?* could easily reoccur again and have done so.

The complaints system has fared little better. Despite updated procedures, intrinsic problems remain. It is slow to act, favours compromises over sanctioning members, and all too often no action is taken until after considerable damage is done. Cases continue to be lodged for the same issues the Task Force is supposedly addressing through training certification bodies and assessors. In many cases, the RSPO turns to compensation – a very opaque process in itself – to allow members to offset damage.

The RSPO's poor assurance systems means its certification has not necessarily resulted in tangible impacts. There has been no significant difference found between certified and non-certified plantations.⁸¹ Fire and peatland loss continues after certification - although deforestation decreased by 33 per cent after certification, only one per cent of forest remained in certified plantations.⁸² With the RSPO seeking to push both growers and non-growers towards 100 per cent certification - which has been poorly achieved and not required to date – it needs to make its assurance systems a priority to provide incentives for increased uptake.

The world is in the midst of a climate and natural emergency. It can no longer afford to wait for the RSPO to slowly nudge companies in the right direction, while in the meantime allowing them to do continual harm both to the environment and people. Unless the RSPO re-calibrates to a more proactive rather than reactive approach to mollify growers it will become irrelevant. It must strengthen its assurance systems and make the entire process - certification, audits and complaints - more robust. At present there is a wealth of evidence that RSPO members are not adhering to the its standards, even if they appear to be doing so on paper.

The new P&C 2018 are considered a significant improvement over the previous version, yet they can only attain their full potential, if they can be audited and upheld in a thorough, comprehensive and competent way. The newly created Assurance Steering Committee, now a permanent fixture within the RSPO, must take up the challenge with renewed rigour and credible action; the RSPO's new watchword must become enforcement.

Aerial view of deforestation for oil palm development.

TABLE 3

FAILINGS	CONCLUSIONS
Oversight of certification bodies	Assurance Services International (ASI) monitors and provides oversight of certification bodies, including through both compliance and witness assessments that are now published on its website. It has the authority to suspend certification bodies based on poor performance and has utilised this to some degree. Yet its integration into the RSPO system is not perfect; assessments and suspensions by ASI are not linked to the RSPO website, making it difficult to determine compliance and where differences in non-compliance issues have occurred. Nor are certification bodies always suspended when under-performing for no apparent reason.
Poor technical knowledge	The RSPO has put in place more guidance and training for certification bodies but this has been patchy and incomplete. Guidelines have not been finished or published. There has not been an assessment of the impact and effectiveness of such measures.
Conflict of interest	This has not been resolved, either in terms of certification bodies being involved in complaints or with regard to the RSPO being both the complainant and administrator of its own complaints.
Weak guidance on Social and Environmental Impact Assessment	Guidance remains weak and has not been completed.
Weak consultation in the New Planting Procedure (NPP)	The process remains very poor. The NPP is still verified by the certification bodies and checked by the RSPO Secretariat – and open to abuse. NPP comments when submitted are not necessarily addressed. Many highly flawed, low quality NPPs remain approved.
Weak guidelines for post-New Planting Procedure (NPP) monitoring	There is no process in place for post-NPP monitoring. Monitoring and verification of NPP implementation in assessments undertaken by certification bodies is still unclear.
Weak guidelines on Free, Prior and Informed Consent (FPIC)	FPIC guidelines under the New Planting Procedure have been produced, which is an improvement. The effectiveness of these and related training have not been tested.
Fraudulent behaviour	Assurance Services International (ASI) is tasked with suspending certification bodies and complaints involving auditors should be raised by the RSPO with ASI. In practice the RSPO has still put little focus on identifying and sanctioning fraudulent behaviour.
Evasion of the New Planting Procedure (NPP)	There remains no known system in place for determining whether RSPO members have evaded the NPP and no procedure for what to do if they have.
Weaknesses in the complaints system	The complaints system remains poor and is still failing to adequately address and resolve complaints in line with the RSPO's standards.

Table 3: Conclusion of efforts by the Assurance Task Force to address failings from the original *Watchmen* report.

THE RSPO MUST:

Urgently commission an independent evaluation of the Assurance Task Force to:

- Determine the fulfilled and unfulfilled actions of the Assurance Task Force and their impact
- Compile the findings and recommendations from the studies undertaken as part of the Assurance Task Force
- Consider whether the actions detailed under the Assurance Task Force have met or are likely to meet the objectives of the Task Force and GA12 Resolution 6h through an external party to audit the activities and impacts
- Ensure all uncompleted actions, recommendations and objectives from the Task Force are actioned under the Assurance Standing Committee

Make the audit process more robust by:

- Establishing independent peer reviews for draft audits before the certification decision
- Harmonising the P&C interpretation between the RSPO, certification bodies and Assurance Services International (ASI) and ensuring it is objective and normative
- Mandating ASI to undertake an annual analysis of non-compliance issues in audits, which is used to inform training and competency levels of certification bodies
- Establishing a tracking system for non-compliance issues and an integrated system for the suspension of companies and certification bodies
- Enforce a zero-tolerance policy with ASI against fraudulent certification bodies and assessors
- Harmonise and publish information on the suspension of certificates

Stop the abuse of the New Planting Procedure process:

- Verify that spatial data submitted by companies includes all its concessions
- Monitor land clearing in all uncertified plantations to ensure the submission of New Planting Procedures
- Automatically raise non-submission of New Planting Procedures to the Investigation & Monitoring Unit or to the complaints system and suspend companies which repeatedly fail to submit New Planting Procedures

- Map and monitor HCVs in both uncertified and certified concessions
- Mandate the HCV Resource Network to undertake a quality review of pre-2015 assessments (including as part of the Annex 5 process under the P&C 2018)
- Widen the mandate of ASI to include the verification of and investigations into New Planting Procedures

Substantially improve its complaints system by:

- Publishing all documents on the case tracker relating to complaint cases, including those from complainants, the respondent and the RSPO
- Widening the mandate of ASI to include oversight of the complaints system, notably for all complaints initiated by the RSPO itself
- Providing regular updates to complainants, at least once every three months
- Make compensation plans public, as required under the Remediation and Compensation Procedure

Ensure the newly formed Assurance Standing Committee:

- Acts urgently and robustly in light of the failings of the Assurance Task Force
- Identifies a clear set of actions to achieve its objectives, taking fully into account an independent review of the Assurance Task Force
- Utilises independent, competent experts to fulfil its objectives as well as facilitate and manage the process, recognising the limitations in time and expertise of the RSPO Secretariat and its abject track record of running the Assurance Task Force
- Invites non-RSPO members to provide oversight and scrutiny, including the HCV Resource Network, ASI and NGOs
- Undertakes an annual analysis of the effectiveness of its actions, to be conducted by an independent third party

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