



What Kind of Space? Multi-stakeholder Initiatives and the Protection of Land Rights

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Abstract. Private and voluntary standards are forms of transnational regulation that have grown in importance over the past two decades. In the realm of sustainability standards, multi-stakeholder initiatives have become the most prevalent form because of their supposed virtues of inclusiveness and participation. Social NGOs actively participate in drawing up these sustainability standards, introducing a rights-based approach and urging companies to engage with local communities as rights holders. Yet, what changes come about ‘on the ground’? This article explores this question through an analysis of the Roundtable on Sustainable Palm Oil (RSPO) and its impacts on land tenure conflicts. Drawing on case studies of negotiation processes in Indonesian villages, observation of RSPO international conferences and interviews with key stakeholders, this article highlights the tensions between a rights-based approach and the search for conflict resolution. Informed by pragmatic sociology, it argues that negotiation processes triggered by the RSPO imply the translation of rights and personal attachments into options that are mutually beneficial to companies and local communities. Shared interests, however, may only fall under the domain of economic interests, the main drivers of company policies. As a result, the potential outcomes of negotiations fall short of the local actors’ expectations and claims; thus subjecting RSPO to heavy criticism for not delivering on its promises to protect land rights.

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Introduction

‘We asked about RSPO. They said it opens space... Like what?... What kind of space? For whom?... And real proofs that RSPO is in action? In defending which side?’ (Villager of Central Kalimantan, Indonesia).

These questions raised by an Indonesian villager who lost access to his land as a result of oil palm plantation expansion are directed at a transnational voluntary standard called the Roundtable on Sustainable Palm Oil (RSPO). National and international civil society organizations have increasingly used such sustainability standards to address the impacts of large-scale investments in land, more recently referred to as ‘land grabbing’ (Borras et al., 2011; Sassen, 2013). Typically, they called upon national judiciaries and legislatures to enforce or change national laws (Fortin and Richardson, 2013). These processes, however, are slow and paved with numerous obstacles. Furthermore, it has been pointed out that national governments play an important role in facilitating land grabbing as they create the conditions to attract national and foreign investors whose activities depend on large-scale land acquisitions. Without necessarily abandoning such efforts of national reforms, advocacy networks have therefore explored alternative ways to resolve conflicts and protect land rights of local communities (Fortin and Richardson, 2013). Private voluntary standards, which have become an important form of transnational regulation since the end of the twentieth century, figure as one of the ways through which changes are sought.

Thus, faced with what they consider as a failure of governments to address the social and environmental problems of globalization, some NGOs have encouraged companies to participate in private multi-stakeholder roundtables to set sustainability standards and monitor compliance to these standards through third-party certification (Hatanaka et al., 2005; Fuchs et al., 2009; Cheyins and Riisgaard, 2014). Over time, the ‘voluntary’ nature of these initiatives has become more relative since states and regional institutions increasingly promote and occasionally require adherence to such certification schemes as a condition to access their markets. Thus, there may be overlap between public and private standards (Bain et al., 2013). For example, the European Union has formally integrated them into its Renewable Energy Directive (RED; Directive 2009/28/EC of the European Parliament and of the Council, OJ L 140, 5 June 2009, pp. 16–62) in order to ensure that biofuels are produced in a sustainable manner (Fortin and Richardson, 2013). Given their growing significance, it is crucial to understand to what extent sustainability standards actually alter practices on the ground.

This article focuses on the RSPO, which was the first of a series of roundtables that have developed in the 2000s for a single commodity (the Round Table on Responsible Soy, the Better Sugar Cane Initiative, the Better Cotton Initiative) or else for a group of commodities (the Roundtable on Sustainable Biofuels) (Ponte and Cheyins, 2013). The RSPO was formally created in 2004 under the Swiss civil code. From that moment on, the stakeholders involved worked on a common definition of sustainable palm oil. They defined seven principles covering the economic, environmental and social dimensions of sustainable development. These principles were then split into a series of criteria, indicators and guidance. After a two-year pilot implementation, the Principles and Criteria were approved by the Executive Board and adopted by the RSPO General Assembly in November 2007. The first shipment of certified palm oil arrived in Europe at the end of 2008. By 2012, 38 companies had obtained

the RSPO certification. Most of them are based in Indonesia and Malaysia as these two countries represent 80% of the world production. Nevertheless, certificates have also been granted to companies from other countries such as Brazil, Cambodia, Colombia, Ivory Coast, Papua New Guinea and Solomon Islands. Overall, 20% of the world's palm oil production is now certified (RSPO, 2015).

Representation in the RSPO is channelled through a number of stakeholder categories, with each of them given two seats on the Executive Board.¹ Four categories have been defined to represent the actors of the supply chain: producers, palm oil processors, manufacturers and retailers. In addition, banks and investors constitute another category as their role is considered as significant in the palm oil industry. Finally, two categories were created for the so-called environmental and social NGOs. On the environmental side, the World Wide Fund for Nature (WWF) plays a leading role. WWF's objective is to fight against forest conversion or, more precisely, the conversion of high conservation value areas. On the social side, we find a number of international and national NGOs that have pushed for a social agenda within the RSPO by drawing attention to the situations of palm oil smallholders, plantation workers and indigenous communities.

These social NGOs introduced a rights-based approach into the RSPO. Regarding land tenure conflicts, this approach implied promoting the recognition of principles recognized in international human rights law such as the protection of customary rights of indigenous peoples and the right to free, prior and informed consent (FPIC). They urged companies to engage with local communities as rights holders and to initiate conflict resolution processes. In practice, they effectively managed to force a number of RSPO member companies to make room for discussion and negotiation with local villagers. Yet it remains an open question 'what kind of space' was thus created, as strikingly expressed by the villager quoted above. What does conflict resolution mean in practice? Informed by pragmatic sociology, this article explores the effects of the 'win-win' discourse characterizing multi-stakeholder initiatives such as the RSPO. It argues that negotiation processes triggered by the RSPO imply the translation of rights and personal attachments into options that are mutually beneficial. As a result, they fall short of local actors expectations and claims; thus leading to numerous cases of deadlock in the negotiation processes.

These issues have been explored through fieldwork in Indonesia, the world's largest producer of palm oil. As a result of increasing world demand in vegetable oils, the expansion of oil palm plantations has been particularly rapid during the last decades. Since the end of the 1990s, new plantations have grown on an average of 500 000 hectares per year. Currently, oil palm plantations cover more than nine million hectares of the Indonesian territory (Direktorat Jenderal Perkebunan, 2014) and this figure is likely to double by 2020 (McCarthy, 2008). The promotion of biofuels and the expanding vegetable oils market in countries such as India and China play a significant role in this trend. At the local level, this situation has resulted in many villagers being excluded from their lands. Conflicts are thus a common feature of oil palm expansion. In 2011, the Indonesian NGO Sawit Watch counted some 664 unresolved land disputes between companies and local communities (*Jakarta Post*, 2011).

The article is organized as follows. Section 1 lays out theoretical perspectives that are useful in exploring impacts 'on the ground' of sustainability standards and presents in more detail the analytical perspective of 'grammars of commonality in the plural' (Thévenot, 2014b), which will prove particularly relevant to capture issues at stake in land conflicts. Section 2 then describes the RSPO with a focus on land rights

and conflict resolution. Finally, the last section goes down to the micro level of negotiation processes between villagers and subsidiaries of RSPO member companies. This level of analysis thus makes it possible to take into account the personal lives that might (or might not) be affected by such initiatives.

Exploring the Impact 'on the Ground' of Sustainability Standards

The end of the twentieth century witnessed the development of private and voluntary standards as well as new institutions responsible for enforcing them. Increasingly assuming a role that was traditionally filled by governmental agencies, third-party certification emerged as a prominent regulatory mechanism (Hatanaka et al., 2005). Third-party certifiers are typically defined as 'independent organizations with the expertise to provide assessment and verification of the company's compliance with standard' (Tanner, 2000, p. 415). In order to fulfil such role, third-party certifiers must themselves be accredited by relevant organizations. Indeed, accreditation has emerged progressively as a mechanism to standardize third-party certification, thus participating in the emergence of a 'tripartite standard regime', a regime that includes standard setting organizations, certifying organizations and accreditation bodies (Loconto and Busch, 2010).

This complex architecture is intended to guarantee the independence and objectivity of the whole process, thus enhancing sustainability since producers would change their social and environmental practices to pass the audit and obtain the certificate. Yet, this depiction of linear implementation does not reflect the actual effects of standards as they touch the ground. Global standards collide with specific 'local realities' where diverse actors such as firms, farmers, public institutions or NGOs translate and negotiate their content (Ouma, 2010). Thus, certification should be seen as embedded in complex legal, political and social contexts (Bartley, 2010). It does not 'operate in a de-politized level playing field' (Ponte, 2008, p. 168) but is shaped by power dynamics and the political-economic interests of various actors (Selfa et al., 2014).

Although studies on voluntary standards and certification have initially focused on standard-setting processes (Bartley, 2010), a growing number of scholars have progressively undertaken to explore issues of implementation and impacts on the ground (for a literature review in the forestry sector, see Graeme et al., 2008). In this endeavour, some analytical perspectives are particularly fruitful. Within political economy much attention has been paid to the outcomes of certification in development countries, with a specific focus on weaker players and inclusion-exclusion dynamics within the supply chain (Ponte and Cheyens, 2013). For instance, it was shown that certification generally marginalizes small-scale producers because of their lack of managerial resources and access to networks (see, inter alia, Ponte, 2008). Other analytical approaches valuable for understanding the dynamics of implementation fall under the range of 'practice-oriented' perspectives. Through the lenses of 'assemblage' or '*dispositif*', some scholars have highlighted the heterogeneous processes that arise when a diversity of actors use standards pragmatically, thus arguing that standards govern at a distance not so much by being implemented as rules but by facilitating the emergence of specific '*agencements*' (Loconto, 2014b) and being appropriated and strategically used by multiple actors (Köhne, 2014; Silva-Castañeda and Trussart, forthcoming). Science and technology studies constitute an important source of inspiration for analysing the practice of certification through

its epistemological and ontological dimensions. From this perspective, the development and enforcement of standards partly depend on the extent to which interests of plural actors are translated and enrolled in a third-party certification process, with more recent contributions emphasizing that differences and conflicts between actors are not just epistemological (related to the meaning of standards) but also ontological (pointing to different realities) (Konefal and Hatanaka, 2011; see also Van der Kamp, 2013; Loconto, 2014a). Finally, the so-called ‘pragmatic sociology’ (also known as convention theory) is particularly useful for exploring the normative dimension of standards by highlighting how plural forms of legitimacy (Boltanski and Thévenot, 1991), are unevenly recognized in standard setting and implementation (Ouma, 2010; Silva-Castañeda, 2014). Within this sociology, later developments around ‘regimes of engagement’ (Thévenot, 2006) and related ‘grammars of commonality in the plural’ (Thévenot, 2014b) have contributed to refine our understanding of inclusion–exclusion dynamics within these multi-stakeholder arenas (Cheyns, 2011; Silva-Castañeda, 2012; Cheyns and Riisgaard, 2014).

This article contributes to this emerging literature by analysing to what extent sustainability standards are effective instruments for securing land rights, a dimension on which only few studies are as yet available (Fortin and Richardson, 2013; Köhne, 2014; Selfa et al., 2014). To this end, it relies on a theoretical framework recently developed by Thévenot to account for different arrangements, or ‘grammars’, of commonality in the plural (Blokker, 2011; Thévenot, 2014b). Before entering into the description of this framework, some explanation on previous works is needed.

Thévenot is one of the founders of the ‘convention theory’. In their seminal book *On Justification: Economies of Worth*, Boltanski and Thévenot (1991) identify a number of ‘orders of worth’ to which actors refer when they aim to justify themselves in the public space. There are six such orders of worth: industrial, market, domestic, civic, fame and inspiration. These orders constitute different modes of legitimate evaluation, each of them oriented towards a particular view of common good. The industrial order of worth, for instance, evaluates according to the principles of technical efficiency and reliability. In the domestic convention, tradition and trust are deemed to be legitimate justifications. Evaluations in the market order of worth look at price, and the civic order views worth in terms of general societal benefits, justice and equity. To this horizontal plurality of forms of legitimacy, Thévenot later added a vertical plurality of ways in which humans relate to the world around them. He coined them ‘regimes of engagement’ (Blokker, 2011; Thévenot, 2014b). Thus, in addition to the first regime, developed with Boltanski, that refers specifically to situations of dispute and justification in the public sphere (Boltanski and Thévenot, 1991), he defined more local regimes of engagement: the regime of planned action and the regime of familiarity (Thévenot, 2001, 2007).

Building on these analytical categories, Thévenot developed the notion of ‘grammars of commonality in the plural’ (Thévenot, 2014b) in order to highlight the plural ways in which people create commonality and deal with differences. This framework is particularly useful to analyse sustainability standards since they are shaped and implemented by heterogeneous actors. How can diverse concerns be taken into account? How can a composite community be maintained? Which kinds of difference are integrated? There are two basic operations for the creation of commonality: communicating and composing. The first operation relates to the transformation process required to share a concern with others. The second refers to arranging the dissimilar voices to form a common world. Thus, based on these two operations, Thévenot

defines three 'grammars'. In the 'grammar of plural orders of worth', communicating means connecting one's concern to a specific worth, thus linking personal attachments or interests with a broader vision of common good. Since orders of worth differ fundamentally in the way they envision common good, composing entails a controversial process. Yet, agreements can be reached in the form of compromises. By contrast, the 'liberal grammar' implies that the composition comes about through negotiation, the objective being to find a balance of interests. To this end, the concern has to be communicated as a choice for options, thus framed as interests or opinions. Finally, the 'grammar of common affinities' implies modes of communicating that do not require a detachment from personal attachments, unlike the two previous grammars. In that sense, it is more hospitable to intimate and familiar ways of relating to the environment (the regime of familiarity). Deep concerns, feelings and attachments are directly invested in common places, an emotional arousal indicating that the communication has been fulfilled (Thévenot, 2014a). Taken together, these grammars will prove very useful for uncovering the complexity of land conflicts and the related obstacles to conflict resolution.

Methods

The empirical analysis is based on both field research in Indonesia and desk research for the follow-up study. Between 2008 and 2010, fieldwork in Indonesia included: observation of three RSPO international conferences in Bali, Kuala Lumpur, and Jakarta; semi-structured interviews with RSPO stakeholders and critics; and case studies at the local level. Overall, 52 actors were interviewed, including: representatives of companies that are members of RSPO; villagers in conflict with their subsidiaries; civil society organizations (local, national, and international NGOs, peasants and indigenous movements); representatives of the RSPO Executive Board and General Secretariat; auditors of certification bodies; consultants; the deputy chairman of the Indonesian Commission on Human Rights; and other specialists of the land tenure issue in Indonesia.

In order to investigate impacts on the ground, I chose three RSPO member companies and travelled to the provinces of Riau (Sumatra) and Central Kalimantan (Borneo) to interview villagers and representatives of local NGOs in conflict with their recently certified subsidiaries. These companies were: PT Musim Mas, an Indonesian company that is a major player in the vegetable oil refining industries in Indonesia; Wilmar International Ltd, the world largest processor and trader of palm oil; and United Plantation Bhd, a major Malaysian plantation group that obtained the first RSPO certificate. The villagers interviewed had sent complaint letters to the RSPO stating that the behaviour of their subsidiaries was in breach with RSPO Principles and Criteria. Among the issues raised by villagers, land tenure conflicts were explored in more depth, particularly in the province of Central Kalimantan. Compared to Riau where oil palm plantation expansion was particularly strong between 1991 and 1997 (Casson, 1999), Central Kalimantan is a more recent area of expansion. Given that palm oil companies arrived around 2003 (Potter, 2008), land conflicts were still a major issue when I visited the area; unlike in Riau where the villagers' claims were more focused on water pollution, lack of employment opportunities and legal recognition of their enclaves rather than land restitution.

This study called for significant documentary work. In addition to reviewing reports from NGOs, companies and certification bodies, I analysed the documents

specifically related to land conflicts: letters written by villagers to the companies, district heads and NGOs; responses to these letters; press releases; land certificates; maps; permits; meeting minutes; and documents describing the mechanisms of dispute settlement. For the follow-up study, documentary analysis was based on the RSPO website for data and statistics on land conflicts and on reports of various organizations, some of them relating to the same case studies as those presented in this article.

The Roundtable on Sustainable Palm Oil, Land Rights and Conflict Resolution

From 2002 onwards, WWF and the multinational company Unilever assembled key players of the palm oil sector in order to initiate a roundtable on sustainable palm oil. These actors defined the key characteristics of the roundtable and officially established it in 2004. As a result of this initial balance of interests, environmental concerns dominated the RSPO agenda when Oxfam Novib and the Indonesian NGO Sawit Watch joined the Executive Board (Pesqueira and Glasbergen, 2013; Silva-Castañeda and Trussart, 2015). In order to advance their social agenda, these NGOs built on internal alliances with insider NGOs like Forest Peoples Programme, Both ENDS, Solidaridad, and Pesticide Action Network. Playing on an insider-outside dynamic, they also took advantage of external pressures from NGOs that oppose the RSPO, such as Greenpeace and Friends of the Earth. In that way they managed to bring social impacts of oil palm production to the fore, thus drawing particular attention to the situations of indigenous communities, smallholders and plantation workers. Most importantly, they advocated for a rights-based approach: introducing a language of rights into the standard and encouraging companies to engage in dialogue with local communities as rights holders (Chao et al., 2012).

These NGOs played an active role in drafting the Principles and Criteria of RSPO. In relation to the land issue, two aspects were considered as key. First, they demanded the recognition of customary rights given that they see the lack of such recognition as the root of many land disputes in palm oil producing countries. It was included in the standard most notably under Criterion 2.3, which states that companies must ensure that the use of land for oil palm does not diminish the legal or customary rights of other users. Second, they insisted on the principle of free prior and informed consent (FPIC), which is recognized in a number of international conventions related to indigenous rights. This demand was accepted without major difficulty during the negotiation of the Principles and Criteria. At that time, producers were more preoccupied with the high conservation value criteria, one of the hottest debates in the history of the RSPO (Silva-Castañeda and Trussart, 2015).

These two elements – customary rights and FPIC – can be found in most standards of multi-stakeholder initiatives such as the Forest Stewardship Council (FSC), the Round Table on Responsible Soy (RTRS), the Roundtable on Sustainable Biofuels (RSB) and Bonsucro (Chao et al., 2012). Thus, in all standards, customary rights must be recognized, documented and respected. Discrepancies between standards might, however, relate to the definition of rights holders and to the related issues of food and water security. As for the FPIC principle, the FSC, RSB and RSPO standards refer to it explicitly, while it is only mentioned in the guidance and appendix of Bonsucro and RTRS. Discrepancies also relate to who has the right to FPIC: indigenous peoples alone (Bonsucro), indigenous peoples and local communities (FSC, RSPO), landowners, users and stakeholders (RSB) or traditional owners (RTRS) (Chao et al.,

2012).

Another important dimension has to do with the process of conflict resolution. In most standards, the absence of legitimate disputes must be proven unless a process of conflict resolution has been put in place. Although their characteristics vary from one standard to the next, in general it should be consensual and underway and also in line with the FPIC (Chao et al., 2012). In other words, companies seeking certification should start a process of conflict resolution that follows a number of principles such as that of informed and free consent by local communities.

In order to facilitate dispute resolution between the parties, the RSPO created the Dispute Settlement Facility (DSF) in 2008, under the leadership of the NGO Both ENDS. In this regard, the RSPO constitutes an interesting case given that other schemes might consider developing a similar project at a later stage (Chao et al., 2012). The need to create such a space within the RSPO stemmed from the considerable amount of criticism and complaints it faced. By late 2008, the very first certificate issued by RSPO was welcomed with strong controversy: Greenpeace simultaneously releasing a report revealing that the certified company, United Plantations, continued 'business as usual' in Indonesia (Greenpeace, 2008). This report severely threatened the legitimacy of the RSPO and, as a result, the role of NGOs participating in the RSPO (Schouten and Glasbergen, 2011). And it was only the first of a wave of criticism: many reports, public campaigns and formal complaints have been raised since then. In this context, the DSF was partly seen as a way to alleviate the workload of the RSPO grievance panel.

Statistics put forward in the RSPO website give the impression that a majority of complaints are closed (31 out of 49 complaints are 'closed' or 'closed for monitoring') (RSPO, 2014). Yet a closer look at these figures reveals that reality is more complex. First, the cases 'closed for monitoring' may refer to cases in which there is a process of conflict resolution going on – be it through negotiation or mediation. In those cases, however, there is no guarantee that a solution will eventually be reached since such processes might end up in deadlock, as the next section will illustrate. Second, a number of the cases labelled as 'closed' were closed without the agreement of villagers or civil society organizations (Köhne, 2015). This raises an important issue regarding forms of legitimacy and proof that prevail within the RSPO (Silva-Castañeda, 2012, 2014). Indeed the Principles and Criteria refer to the notions of 'legitimate conflicts' or 'demonstrable rights', yet it is not clear what they actually mean. As a result, some villagers' complaints are excluded on the grounds that they do not 'represent' the community or that they are unable to demonstrate the legitimacy of their claims. Thus, a deeper analysis of RSPO statistics and data reveal that only three cases of land conflicts have been successfully resolved. This figure should still be interpreted cautiously given the limited information available on the website regarding the actual agreements reached by the parties (RSPO, 2014). Yet, it already reveals the limited proportion of cases resolved; a proportion that is even smaller if we consider that NGOs and villagers expressing public criticisms against RSPO are not necessarily willing or able to follow the formal grievance procedure and hence fall out of the scope of these statistics.

Thus, despite the large number of actions undertaken by complainants and RSPO stakeholders, most conflicts are on-going or even escalating, with some of the negotiation processes resulting in complete deadlock (Colchester and Chao, 2013; Ng and Lim, 2013). In the next section, case studies will reveal the challenges that the parties face in their search for conflict resolution.

Spaces of Negotiation

In this section, we come closer to the lives of villagers of Central Kalimantan to explore what conflict resolution means on the ground. Two transformations will be exposed: the conflicting issues at stake are reduced to options; and conflicting interests are transformed into shared interests. This will be articulated and contrasted with an analysis of the discourse of key RSPO stakeholders.

The 'Liberal Grammar': Translating Rights and Personal Attachments into Options

In Indonesian, the English term 'negotiation' can be translated into two different terms. *Berunding* means 'to confer, consult, meet, discuss, deliberate, negotiate' while *negosiasi* means 'negotiation, discussions to reach an agreement' (Indodic, <indodic.com>). Local NGO representatives use these terms to distinguish two phases of the process. Before the *negosiasi*, parties should discuss (*berunding*) in order to establish clearly the object of the conflict. It is generally during this phase that the parties engage in a participatory mapping in order to establish the boundaries of the disputed land. This first stage is still 'open' as explained by one interviewee. The *negosiasi*, on the other hand, implies the objective to reach an agreement between the parties. Indeed, in an Indonesian dictionary, *Kamus Besar Bahasa Indonesia*, this term is defined as 'the process of bargaining through a discussion (*berunding*) to reach a mutual agreement between one party and another'. Thus the process of negotiation is associated with the idea of bargaining.

In most cases of direct negotiation between companies and villagers, companies jump the first step as they intend to reach a solution to the conflict. Illustrative of this tendency is the negotiation process involving two villagers from Kalimantan Central and the local subsidiary of an international palm oil company, the local subsidiary of an RSPO member company. The conflict involving the villagers Eko and Agung is related to plots of land inherited from their ancestors who practised shifting cultivation. On these lands they had meranti trees, whose wood has a commercial value, along with fruit and rubber trees. This land also held family graves. In 2005, when the company started its operations in the area, bulldozers entered on their lands while the villagers were absent. They returned to find that the graves of their relatives had been destroyed and most of the trees had been cut. They addressed their demands to public and customary authorities. They also met the company representatives in order to discuss the amount of the monetary compensation but they could not reach an agreement. Thus, the situation was stalled when a certification body conducted the RSPO audit in 2009. Following this audit, the company started a more formal negotiation process with the two villagers; the parties signed a document called 'Mechanism of Dispute Settlement about the Destruction of Eko and Agung Family Graves'.

The mechanism of dispute settlement signed by the villagers Eko and Agung included a list of steps that the parties would have to take. The planning mentioned three dates: first, the company would send its proposals; second, the villagers would give their answers; third, a meeting would take place if the parties had not found an agreement. On the planned date, the villagers received a letter from the company. This letter presented two options: monetary compensation; or else establishing a plantation in the area that belongs to the villagers, starting from land clearing, seed, planting and maintenance for one year. On the following date, the villagers sent

their answers. They did not accept the company's offer and asked for a different amount of money. Hence, the conflict crystallized on the amount of compensation for the destroyed graves. Yet, the villagers questioned this restricted focus, as expressed in the following excerpt of an interview with them:

'Actually I don't want to put it into the value of money! How much is my loss? There are various kinds of loss... feelings, time, effort, going back and forth, up and down, it required money... First my dignity, how is it? It's related to my faith, culture... When I went to the Police, I said, I don't want to make this difficult for the company. I can't force them to pay for the value as big as this... but what about the calculation because my basic rights... they are all protected by the Constitution' (Villager A, Central Kalimantan).

The villager points to the difficulty entailed in transforming loss into a monetary value. Heterogeneous elements are brought to the fore: rights and the Constitution, culture, faith, time, money. 'Feelings' were particularly stressed during the interview. The villagers explain that they were 'destroyed along with the graves'. Confronted with the spectacle of the destroyed trees, they 'felt something had been taken from [them] and until now the feeling still exists'. Thus, they express the intimate nature of the link existing between them and their surroundings, the latter constituting a familiar environment as the family graves emblematically reveal. In that sense, land has to be understood as a 'dwelled-in environment' (Centemeri, 2015), a material and affective space that plays an important role in the intimate self-assurance of a person (Breviglieri, 2012). The frequent use of the word *harga diri* (translated by 'dignity'), which combines 'value' (*harga*) and 'self' (*diri*), also points to the highly intimate and personal dimension of the conflict.

The time passed without receiving any answer of the company holds an important place in the villager's complaints. In their view, this lack of reaction was particularly humiliating. After some years, the company finally contacted the villagers recognizing their responsibility in the damage of the graves and offering compensation. Yet, the negotiation that followed was perceived as an additional offence:

'They came again and made a bargain... they are, I said, just making fun of me. Why? Reduce again, reduce again, that's the nature of the company, that I know!' (Villager B, Central Kalimantan).

As this quote highlights, the villagers reject the approach of the company that reduces the process to a mere bargaining between parties that are primarily defending their economic interest. Anchored in a 'liberal grammar', this approach profoundly differs from a 'grammar of common affinities' signalled, in the villagers' discourse, by the word 'compassion', which points to the idea of suffering *with* someone, sharing a *common* perception of a situation.² Thus, one of the two villagers stresses the absence of such attitude:

'I told Mister X, the manager of the company : Why don't you have compassion for me?' (Villager A, Central Kalimantan).

In order to understand the resistance to the practice of 'negotiation', another dimension of the conflict must be considered: the desire to establish faults and guilt. This dimension is expressed more insistently by a villager acting as an intermediary between Eko, Agung and the company:

'The guilty should be punished. If the problem could just be solved by

compensation, it will continue everywhere. So that's why Mr Agung is still standing until today, looking for justice' (Villager C, Central Kalimantan).

Thus, this intermediary links the two villagers' concerns to a broader vision of common good, one relying on the civic order of worth (Boltanski and Thévenot, 1991) which establishes justice and equality as guiding normative principles.

A similar message appears strongly in the discourse of Laggeng, who lives in a neighbouring village. This man had been invited by an Indonesian NGO to attend an international conference of the RSPO (Bali, November 2008). During the debate time of a plenary session, he took the microphone and started to denounce the company that had occupied his land. One month later, in December 2008, he received an invitation from the company to undertake a mapping of the claimed area. The parties met to undertake the mapping one month after the conference. Company representatives, however, did not recognize the results of this mapping. They argued that most of these lands had already been compensated and only recognized two hectares as legitimately claimed. On various occasions, company representatives went to Laggeng's home to offer him some monetary compensation. The villager, however, has always refused these deals as he considers that 'the basis should be clear'³ in order to start the negotiation process. Indeed, an underlying issue has never been discussed with the company:

'I got criminalized, meaning I got jailed, which was inappropriate with my mistake... I defended the land, didn't sell it, why was I thrown into jail? Here is the question that has not been clarified until now... a clarification that can please me... First, return the status of my land according to the existing SKTA [Customary Land Notification Letter]. Secondly, they just have to admit that they were at fault of having been tilling and planting [oil palms] and throwing people to jail... and they have to pay a compensation for damages... We will question and fight so that my rights can be returned... and the sense of justice is felt for me' (Villager D, Central Kalimantan).

Laggeng was jailed for six months for 'unpleasant conduct', without trial or verdict. He wants the company to recognize its guilt and offer compensation for damages. Unlike Villager C quoted above, there is no direct criticism of the logic of compensation. But the high amount of money requested might represent a form of punishment in the eyes of the villager. Like in the case of Eko and Agung it is a demand for justice that appears in his claims.

As illustrated through these examples of negotiation processes, alternative dispute resolution (ADR) mechanisms are shaped by the 'liberal grammar' (Thévenot, 2014b). Disputes would be conflicts of interests between actors who make choices between various options. Thus, behaviours would follow the logic of calculation and instrumental rationality. Yet, most conflicts do not fit this model. Parties often conceive their disputes as conflicts of principles and values. The issue for plaintiffs is not merely to negotiate a number of interests but also to defend their rights and establish fault (Merry and Silbey, 1984).

This framing of alternative dispute resolution is particularly visible in the RSPO arena dedicated to conflict resolution: the 'Dispute Settlement Facility' (RSPO DSF Working Group, 2009). Overwhelmed with complaints related to conflicts between villagers and local companies, mainly on land tenure, RSPO stakeholders created a space dedicated to facilitating dispute settlement through the use of mediation. Its

first objective is to 'provide a means for achieving fair and lasting resolutions to disputes in a more time efficient and less bureaucratic and/or legalistic manner, while still upholding all RSPO requirements including compliance with relevant legislation' (RSPO DSF Working Group, 2009). This formulation highlights the inherent tension between alternative dispute resolution and the rights-based approach that the social NGOs in charge of the DSF programme are supposed to uphold. It is considered that mediators would offer guidance on the 'recognition and regulation of rights and responsibilities' (RSPO DSF Working Group, 2009). Yet, influential actors within the DSF stress the importance of moving away from a discourse in terms of rights in order to find a solution. This message is expressed by mediators invited to share their experiences during RSPO pre-meetings on dispute settlement, but also by NGO representatives who play a central role in the initiative:

'I think the RSPO has a duty as a multi-stakeholder platform that is aiming for sustainable palm oil... well, society in the end has to benefit from the palm oil sector. How do we make that happen? One of the things, and I think it is where it starts and where it ends, is that all stakeholders notably those that so far have been at the losing end are capacitated to translate their rights in options which are also beneficial for them' (International NGO representative, skype interview).

The interviewee points to the process of translation involved in formulating issues of rights in terms of options. This transformation is seen as a necessary step in order to unlock situations of conflict. Indeed, speaking in terms of rights would lead the parties to stick to their positions while a formulation in terms of options would open the way to finding a settlement. NGOs play an important role in this transformation process as they intend to empower local actors by building their negotiation capacities (Cheyns, 2014). The overall objective is to enhance their bargaining position and achieve more 'beneficial' situations. To this end, they help local communities frame their concern through the interest format prevailing in these arenas, in line with a 'liberal grammar' that flattens issues of justice and personal attachments to a single level of interests (Cheyns, 2014).⁴

Win–Win Solutions: From Conflicting Interests to Shared Interests

The previous section showed how justice principles and affective attachments are sidelined when conflicts are framed in terms of interests. A closer look at negotiation discourses and practices reveals that these interests are themselves reduced to those that are common to the parties in conflict. This corresponds to a change of negotiation styles promoted in the field of conflict management. With the publication of *Getting to Yes: Negotiating Agreement without Giving In*, Fisher and Ury (1983) popularized the distinction between interest-based and position-based negotiations. These authors question the classical vision of negotiation according to which actors would define positions and progressively adapt them in order to reach an agreement with the other party. Instead of going from positions to counterpositions and compromise, an interest-based approach implies that negotiators identify their interests before defining specific solutions. Once these interests have been clarified, the parties together define alternatives that could satisfy the interests of the various parties. The latter then choose a solution among these options. The accent is put on cooperation, the search for shared interests and win–win solutions. Thus, negotiation is not

conceived as a zero-sum game in which a gain for one party would automatically imply a loss for the other side.

Within the RSPO, the interest-based approach is explicitly put to the fore. During pre-meetings of the Dispute Settlement Facility programme, mediators outlined the advantages of this approach. It was also specifically mentioned in the dispute settlement mechanism regarding the destruction of the Eko and Agung family graves. This win-win approach is in line with the spirit of the RSPO, which was defined as 'multi-stakeholder organization that promotes the growth and use of sustainable palm oil through co-operation with the supply chain and open dialogue among stakeholders' (RSPO, 2008). Thus, during the negotiation process, parties should move away from conflictive interests and positions in order to 'lead to more lasting and sustainable cohabitation of palm oil industry and local communities' (International NGO representative, skype interview). Guided by the ideal of 'liberal civility' in which disagreement is avoided (Cheyns, 2014; Thévenot, 2014b), this vision of negotiation entails that the main challenge for dispute settlement lies in the transition from asserting rights and positions to allowing 'dialogue in a way that is mutually respectful' (Mediator, Kuala Lumpur).

Shared interests, however, may only fall under the domain of economic interests, as these are the main drivers of company policies. Therefore, companies generally propose two solutions to land conflicts: monetary compensations or contract farming schemes. However, rural dwellers do not limit their claims to monetary or economic demands, as the previous section shows. Land does constitute a productive resource but it is also a 'dwelled-in environment', a place to which they are attached because of the intimate and familiar links they have forged with it (Thévenot, 2001; Centemeri, 2015). For this reason, local villagers addressing their demands to RSPO often claim land restitution as illustrated by the following intervention during a pre-meeting of the DSF programme:

'If RSPO wants to be a place of resolving conflicts with communities... If RSPO is serious, they really have to make it clear to companies... Companies need to be willing to relinquish the land' (Indonesian villager, Kuala Lumpur).

These claims are supported by some social NGOs, in particular national ones such as Sawit Watch. Relying on the principle of FPIC and customary rights recognized in the RSPO Principles and Criteria, these NGOs argue that local communities have to be recognized as legitimate holders of the land (even without a certificate) and have the right to reject a company's project for an oil palm plantation. If companies have failed to take into account the views of the local communities, they should recognize their fault and be committed to resolving the conflict, notably through land restitution. Yet, other social NGO members of RSPO consider this to be a 'too high expectation'.

'I think what is the most likely outcome of such processes is that there is a financial compensation agreed for past damage, which is not going to be a lot of money in most cases and which is not going to get the land back and certainly not going to get the forest back... Don't get me wrong, I would hope that their situations result in the more community-beneficial scenarios... but in reality there are plantations that have been established 20 years ago... From the business point of view, I think they would also be looking for a set of measures that is doable and that is also manageable in terms of

process and costs' (International NGO representative, Netherlands).

Moving away from a human rights approach that would entail recognizing local villagers' rights and providing significant remedies such as restitution (United Nations General Assembly, 2011), the NGO representative reduces issues at stake to the level of interests: the search for 'beneficial' solutions for local communities, on the one hand, and the recognition of companies' preoccupations in terms of process and cost, on the other hand. He does not present this scenario as an ideal one. Instead, he considers it as what could 'realistically' be expected from the RSPO. Although some actors are trying to pull the RSPO in other directions, his view might likely be confirmed in the future given the weight and effects of the win-win approach that lies at the heart of RSPO.

Conclusion

Private and voluntary standards constitute a form of transnational regulation that has grown in importance over the past two decades. In the realm of sustainability standards, multi-stakeholder initiatives have progressively become the reference because of their supposed virtues of inclusiveness and participation, the cornerstones of their legitimacy (Cheyns and Riisgaard, 2014). Representing the social pillar of sustainable development, 'social NGOs' have decided to engage with the corporate sector through commodity roundtables, thus hoping to change company practices and improve situations of local actors in production sites. These NGOs have introduced a rights-based approach within these initiatives. Through their participation in drafting the standards, they linked voluntary standards to international human rights laws. They then urge companies to comply with these standards by engaging with local communities as rights holders. But what changes have come about 'on the ground'? To what extent have these initiatives effectively played a role in securing local actors' rights?

The RSPO provides an interesting case for exploring these questions through a focus on land rights. NGOs such as Oxfam Novib, Forest Peoples Programme and Sawit Watch played an important role in the drafting of the Principles and Criteria. They managed to include in the standard important elements in relation to the protection of customary rights and the principle of free, prior and informed consent. Conflict resolution also became an important issue as illustrated by the creation, under the leadership of the NGO Both ENDS, of the DSF: a space for facilitating dispute settlement through the use of mediation. Despite these efforts, most conflicts are on-going or even escalating; and the RSPO is under heavy criticism for not delivering on its promises to protect land rights.

Drawing on case studies of negotiation processes in Indonesian villages, observation of RSPO international conferences and interviews with key stakeholders, this article highlights the tensions between the rights-based approach that NGOs are supposed to uphold and the search for conflict resolutions. Exploring such tensions requires untangling the plural issues caught up in land conflicts, an analytical exercise that benefited from the framework of the 'grammars of commonality in the plural' (Thévenot, 2014b). Thus the empirical analysis reveals how the liberal grammar prevalent in RSPO reduces land disputes to conflicts of interests between actors who make choices between various options, thus excluding two dimensions that hold a significant place in land conflicts – especially when this exclusion causes ad-

ditional offense and frustration. The first level of affective and personal attachment comes from a familiar engagement with the world. Indeed, in addition to being a productive resource, land constitutes a familiar environment, a place to which rural dwellers are attached because of the intimate bonds they have forged with humans and non-humans (Centemeri, 2015). The second level, principles of justice, points to the public space, linking together many similar destinies and thus formulating a general critique. Yet the approach put forward by most RSPO stakeholders stresses the importance of moving away from a discourse of rights. As framed in the local negotiations and in the DSF, alternative dispute resolution aims at translating personal attachments and rights into options that are mutually beneficial. Shared interests, however, may only fall under the domain of economic interests, as these are the main drivers of companies' policies. As a result, the most likely outcomes of negotiations are monetary compensations and contract farming schemes, solutions that fall short of local actors' expectations.

Notes

1. With the exception of palm oil producers who received four seats to represent Malaysia, Indonesia, the smallholder sector and the 'rest of the world'.
2. On compassion in penal affairs, see the subtle analysis of Barbot and Dodier (2014).
3. Thus, when asked if there was a negotiation process with the company, Laggeng answers 'Oh, no, there isn't, there hasn't been a negotiation because [...] the basis should be clear' (Villager D, Central Kalimantan).
4. For an analysis of the role of local NGOs in reintroducing justice and attachments, see Cheyns (2014).

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