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## AUTHOR'S NOTE

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- 1 Among contemporary regulatory normative instruments, alongside national legislation and international law, private and voluntary standards are becoming increasingly important, and claim to compensate for the deficiencies of these laws. This rise in standards has been accompanied by a shift in standardizing responsibility from nation states to international entities, such as the International Organization for Standardization (ISO), or supranational ones, such as the European Committee for Standardization (CEN), followed by private organizations that are not linked to States. This is the case with transnational sectors and value chains confronted with considerable economic challenges, such as the multi-stakeholder “Roundtable for Sustainable Palm Oil” [RSPO] examined in this article.
- 2 The first part of this essay introduces the surveys and analytical framework that we have developed to deal with a new mode of government, by standards, in search of legitimacy. The analysis focuses on the normative political model underlying the “multi-stakeholder initiatives”, as well as a major democratic requirement put forward by NGOs who number among these stakeholders : the "*Free, Prior and Informed Consent*". The second part presents a comparison of the powers, ideal functions and principles of a State governed by national law with those of the RSPO government. The third part focuses on the issues raised by the pluralism of normative and evaluative registers confronted by this government. It addresses the ways in which the concerns of

stakeholders identified as the most vulnerable ("smallholders", "local communities") must be transformed to become acceptable according to the RSPO standard and its government, whether they are expressions of their agreement for land use by companies, requests, or complaints they have submitted.

## 1. A government by standards in search of legitimacy: underlying political constructions

- 3 Industrial compatibility standards were the first standards, conveyed the simple function of uniformization and continue to do so. By contrast, new certification standards foster the highly diversified quality of marketed products, providing the tools for a new "moral economy" (Busch 2000, 2011). While the common good towards which the former are directed is *industrial* efficiency,<sup>1</sup> which increases with the compatibility of products, new standards have begun to support the prerogatives of nation states that must guarantee a *civic* good. Through certification standards awarded to products and services, they qualify for fundamental or basic goods such as safety, health, environmental protection, equity, respect for people and the fight against discrimination. The resulting "standardized market" ("*marché aux normes*" : Thévenot 1995) and "standardizing liberalism" ("*libéralisme normalisateur*" : Thévenot 1997), which form the backbone of the often-imprecise notion of neo-liberalism, have acquired an unprecedented political and moral significance. To respond to critics who point to its lack of democratic legitimacy, and to meet this ambition of "governing by standards" (Ponte Gibbon & Vestergaard 2011, Thévenot 1997, 2009), new procedures have been established. These will be discussed in this chapter, in relation to both their principles and their practical implementation.

### 1.1. A combination of surveys permitted by a consistent analytical framework

- 4 In order to understand how this new mode of transnational government in search of legitimacy operates, we have relied on an integrated series of surveys and research conducted within the same analytical framework over several years<sup>2</sup>. On this basis, it was possible to observe this type of "sustainability standards" for certification, which has a transnational vocation and is intended to compensate for the shortcomings of nation states and their legal systems. Established to govern multinational agro-industrial value chains, these standards bypass the representatives of the scientific community and those of nation states (Ponte & Cheyns 2013). Nowadays, they cover a wide range of major global agro-industrial sectors : coffee, soya, sugar cane, cotton, flowers, aquaculture, beef, and biofuel. Our surveys focus on the certification standard for "sustainable palm oil" and its government : the RSPO.
- 5 Our approach of politics focuses on "grammars" that normatively govern the practical operations required to transform concerns into a common format – *communicate*, in this sense – and integrate differing voices to *compose* the common good of a community. The conventional formatting these operations require and the coordination powers they confer are central to our analysis. We have identified several of these "grammars of commonality and difference", which specify the practical transformations actors are required to make for their different voices to be heard in the public sphere. In order to

highlight these often-underestimated transformations, we have followed the actors concerned from the places in which they dwell and work, and their personal and local attachments to the environment in question. We have studied these transformations with an analytical grid that distinguishes between valued relations with this environment – *engagements* – from highly personalized familiar engagement to engagements that are justified by reference to the common good (Thévenot 2006, 2014).

- 6 Our analysis begins with the personally *familiar engagement* in a cultivated and inhabited land that is valued because of the ease it generates. This evaluative format is far removed from the format of public engagement, and is extremely demanding in terms of its communication to a non-familiar alter ego. Public participative mechanisms established to offer individuals an audience are highly restrictive due to the “participation formats” deemed acceptable (Richard-Ferroudji 2011). They disqualify the kind of good and evaluation format in which the weakest actors engage (Charles 2012, 2015). To study how this government by standards considers goods and rights, our investigation followed the most vulnerable people (“small farmers” and “local communities” living alongside new industrial plantations, in Indonesia), from their remote village to the annual roundtable “convention” held in a major international hotel in a regional metropolis. This research highlighted the chain of transformations that their concerns must undergo in order to have their grievances heard. It also demonstrated the major support of a variety of NGOs that facilitate this chain of transformations leading to conventional formatting.

## 1.2. The *liberal* grammar of interests and engagement in *plan*

- 7 “Grammars of commonality and difference” differ greatly in terms of the transformations they impose on personal concerns to ensure they can be expressed in public. *The grammar of orders of worth* (Boltanski & Thévenot 1987, 1991) requires voices to address the common good, meaning that personal familiar attachments must be significantly transformed. By contrast, the “*liberal*” grammar of interests (Thévenot 2008, 2015a) is less demanding: familiar commitments must be transformed, not directly into the format of the common good but into that of an interest (“stake”) for which the individual chooses to take a public stand, with the coalition of these interests constituting the good of the community. However, the work required to transform intimate attachments into individual and detached choices between options – “opinions”, “preference”, “interest” – should not be underestimated. These options, from which the individual chooses, must be presented to all other participants of the liberal public as common-knowledge “action plans” they could themselves choose. The background format of *engagement* in a plan – or project – is presupposed by the individual's desire to achieve an objective – the option. The dispute is channeled through a comparison of evaluations reduced to individual preferences for such optional plans. It is through a negotiation between these plans that the good of the community is composed. The common goods in dispute in the *grammar of orders of worth*, such as the solidarity of *civic worth* required in the fight against inequalities, as well as the good of close *familiar* attachment to the environment and its uses, are disqualified (Cheyns 2011).
- 8 Our analytical framework thus highlights types of oppression that are not limited to the exclusion of participants. It shows that the notions of freedom, or horizontality,

often used to characterize the liberal public, are misleading because they overlook these constraints of transformation as well as the superior hierarchical position of a voice that is expressed in the public format of individual autonomous choice, with regard to expressions that are disqualified for being overly intimate or personal ("self-centered", "narcissist").

- 9 According to a current variant in *liberal* grammar, interests belong not only to an individual but to a group of individuals (Eranti 2008, Luhtakallio & Thévenot 2018, Moody & Thévenot 2000). They do not claim to directly contribute to the common good, but must form an "alliance" with other interests within a "coalition" to do so. In the so-called "multi-stakeholder" mechanism that governs the sustainable palm oil standard, the different collective interests (*stakes*) are explicitly assigned to seven categories of stakeholders, with each individual stakeholder theoretically being granted equal votes<sup>3</sup>.

### 1.3. A democratic requirement put forward by NGOs, the "Free Prior Informed Consent [FPIC]": which standard for agreement?<sup>4</sup>

- 10 Among the NGOs already mentioned for their roles in criticizing the government in relation to certification standards, the Forest Peoples Programme has long defended the notion of "Free Prior Informed Consent" (hereinafter, FPIC), as evidenced by its ex-director and founder Marcus Colchester (see his interview in this volume). This format of expression of agreement is now used in the healthcare field, where such "informed consent" is required from patients on various occasions. This format, and its related pragmatic approach to individual choice between public options, is grounded on the *liberal* grammar where the public sphere is composed of autonomous individuals choosing between optional plans identifiable by all. Such a grammar of commonality does not correspond to those traditionally developed in indigenous communities, such as the ones affected by industrial oil palm plantations. In our first meeting with Marcus Colchester, we raised this problem with him. He replied that this normative framework covers the mode of consent not only of individuals but also of peoples, mentioning that the notion extended to people's rights to self-determination.
- 11 Given the weight of the liberal matrix in government by standards, but also in international law and among NGOs that we have seen in action, this point needs to be examined closely. On the strength of his training and experience, Colchester is one of the most knowledgeable individuals on this subject. After a solid grounding in anthropology (he earned a PhD in social anthropology from the University of Oxford in 1982) involving fieldwork with the Sanema Indians of Venezuela (linked to the Yanomami), followed by various other missions on the impact of development projects, he turned to applied anthropology<sup>5</sup>. In 1990, he established and headed the Forest Peoples Programme (FPP), an organization initially directed at linking NGOs concerned with deforestation with "forest peoples". FPP has become a recognized organization for the promotion of human rights and support for the self-determination of "forest peoples", a term that refers both to indigenous peoples and to other groups with long-term links to the forest. Colchester is very aware of the tension that runs through anthropology – which also exists in human sciences more generally – between an individualistic approach and other approaches that give way to collective consciousness, social forms, and the imagined community. His orientation, which

favors the latter, criticizes the former and even opposes an ideology of "freedom" that is more libertarian and anarchist than liberal, which he believes distorts the work of Pierre Clastres and Jacques Lizot, French anthropologists who also wrote about the Yanomami (Colchester 1982). Professionally, he is also on the front line when it comes to observing a similar tension in law, particularly international law, where the individualist axis has long predominated. While the United Nations Declaration of Human Rights and the two United Nations Covenants on Civil, Political, Economic, Social and Cultural Rights highlight the rights of the individual vis-à-vis the State, the UN Charter is based on a collective notion of the "right of peoples" ("We, the peoples of the United Nations...") (Colchester 2002). If "international human rights tools are *unashamedly individualistic in their emphasis*", the International Labor Organization adopted its Convention 107 as early as 1957 – "on Indigenous and Tribal Populations" – which concerns the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries (id.).

- 12 In his fight for the rights of peoples, Colchester must also face unexpected opponents, such as anthropologist colleagues. In a conference discussion at the London School of Economics, he delivered the paper "*Facing Kuper : Indigenous Peoples, Human Rights and Democratic Development*" in the presence of the famous anthropologist Adam Kuper, known for his criticism of North American cultural anthropology (Kuper 1999). Colchester had to respond to the latter's opposition to the concept of "indigenous peoples" on the grounds that it would imply "primitive peoples" privileged by "special rights", and would threaten to freeze them in traditional mores according to a "bad" and even "racist" conception of anthropology, similar to the references made by Nazis to blood and soil (Colchester 2006).
- 13 At the beginning of his interview (see its publication in this volume), Colchester re-examines "the two forms of consent that have reached the world of human rights". One is an individual right established in response to Nazi experiments on prisoners. The other is a right of peoples, which has a different origin since it dates back to the French Revolution and the American declaration of independence, which highlighted the consent of the governed. Colchester links this second FPIC genealogy, including the Americans involved in the Second World War, to Lenin's language on self-determination, the right of peoples to self-determination having been included in the UN Charter after the war (Colchester, interview in this volume).
- 14 In his book *Nazi Medicine and the Nuremberg Trials : From Medical Warcrimes to Informed Consent*, Paul Weindling traced the first FPIC genealogy starting with the revolts of prisoners in Nazi camps. They had ironically called themselves "Rabbits" (in the sense of guinea pigs) when protesting against experiments that had nothing to do with their status as prisoners, and by gathering testimonies and evidence which were later used in the Nuremberg Trial (Weindling 2004, 11-26, Chap. 1 "The Rabbits Protest"). In their book on "Informed Consent", Ruth Faden and Tom Beauchamp trace how this category shifted, having originated in the world of medicine, and how it first appeared in North American case law in 1957 before becoming more widespread. The first part of the book, dedicated to the foundations of the FPIC category in moral theory, highlights the liberal principle of individual autonomy. The principle of justice is also mentioned, though it is not accorded the same importance as this individual autonomy (id., 7,15). More recently, Pamela Lomelino has revisited the philosophical foundations of the FPIC category, in terms of its relations both with autonomy and with the community

(Lomelino 2015). In Anglo-Saxon literature, feminist criticism is the predominant resource for highlighting the limits of the classical liberal conception of autonomy, as well as for recognizing relationships of dependence<sup>6</sup>. Based on feminist criticisms of autonomy, Lomelino highlights how the role of the community is not recognized and how this constrains the notion of autonomy. She considers the classical conception of autonomy in support of the FPIC category (1) to neglect dependency relationships and (2) does not account for the impact of social structures on autonomy (id., 54). She then develops a "relational" conception of autonomy in accordance with Gerarld Dworkin's approach. According to his broad conception, the latter posits that a person whose rule of conduct is to follow the advice of his mother, friends, boss or director of conscience, is autonomous (Dworkin 1988, 21). With such a normative definition, the distinctions between grammars of commonality are blurred, as, therefore – and this is of primary importance to us here – is the analysis of the tensions and oppressions that one format of engagement brings to bear on others. From the perspective of intercultural comparison, a variant of the FPIC category has been proposed to make it more suited to the Far East, changing its orientation from "individual-directed" to "family-oriented", and enabling it to embrace a Confucian doctrine of care for relatives (Fan 2015, 7,11). Neither this variant of the FPIC category, intended to render it more culturally relevant to the East, nor the extension proposed by Gerald Dworkin, help to identify tensions between deeply dissimilar normative constructions of dispute and agreement.

- 15 These remarks bring us back to the question initially directed at Colchester, concerning the relationship between the FPIC category and the normative foundations of the liberal political and legal tradition. His answer, which he developed at the beginning of his interview (included in this volume), traces, as mentioned, two genealogies that are now covered by the category, and, according to his expression, "meet in the world of human rights". However, their differences remain considerable and the second genealogy of the rights of peoples that he draws from the notion of self-determination is itself diverse with regard to the authors he cites. Due to the underlying political constructions, there is a significant gap between Thomas Paine, whose liberal cosmopolitanism is already an attempt to combine the rights of individuals with the rights of nations (Lamb 2014), and Lenin's positions on the "right of nations to self-determination" (Lénine, 1973 [1914]). Is it safe to use a common FPIC name to cover all these conceptions ?
- 16 This extended use could be strategic for fostering alliances between international organizations. However, does it not risk maintaining a bias in favor of the individual understanding of the consented agreement, and its normative basis in a liberal tradition ? Colchester is aware of this difficulty and mentions, in this regard, the strong tensions between a liberal grammar that serves to promote individual rights and common constructions that allow room for customs. We will return to this in the third part of this essay, where we consider the transformation of the various evaluative and normative formats requested by the RSPO, as well as the place of the FPIC framework extended to the self-determination of peoples in it.

## 2. The ideal functions and principles of government by standards, compared to those of a national rule of law

- 17 There is considerable controversy surrounding the global expansion of palm oil cultivation according to an industrial model – from Africa to Indonesia and Malaysia, which now produce 85 per cent of palm oil. Criticisms have focused on deforestation, the extinction of primary forests and the threat to the species that live there, biodiversity, the destruction and burning of peatlands that increase global warming, the control of multinationals over the lands of local and indigenous populations, the type of agro-industrial model spread on a large scale that carries asymmetries and violence<sup>7</sup>, human rights and labor rights violations that can go as far as physical violence. The palm oil certification standard was created at the initiative of the WWF and Unilever to address these criticisms. Avoiding the discussions between the experts and nation states involved in ISO standards, with the aim of moving faster and more efficiently, the standard seeks to respond to criticisms about the lack of legitimacy of standardization bodies that operate outside of any public debate. The aim of this new mode of government through standards to replace nation states in some of their prerogatives in the defense of rights prompted us to compare this normative system with that of a national state governed by law considered in its ideal functions<sup>8</sup>. To politically inscribe fundamental goods and rights in certification standards, it appears to have been necessary to transform them into objectives and measure their achievement objectively, imposing the kind of reductions that entail "governing by objective" (Thévenot 2015b, 2015c). The bodies that draw up standards and control their enforcement and the principles and criteria that shape them constitute a new kind of private government that contrasts with the public government of a State that provides guarantees to its citizens through legislative, judicial, and police powers. The standardization of a product and its production are granted priority over the normativity of the law.

### 2.1. Normative texts

- 18 The core of government by standards lies in the standard itself, which serves as the main normative text. The standard is organized around eight higher "principles" broken down into "criteria", "indicators", and "guidelines". We shall introduce this by paying special attention to the additions that were made when the standard was revised in 2013<sup>9</sup> and which result from certain criticisms and accepted changes.
- 19 Table 1 : Normative texts

Representative government	Government by RSPO standards and mention of some changes made in 2013
Constitution	"Transparency, inclusiveness, consensus" codified by the International Social and Environmental Accreditation and Labeling Alliance (ISEAL)



Law Implementing regulations	<p>Standard “Principles &amp; criteria RSPO 2013” (Principles, criteria, indicators, and guidelines)</p> <p>Principle : 1 Commitment to transparency</p> <p>Principle : 2 Compliance with applicable laws and regulations</p> <p>Criteria : 2.2 &amp; 2.3. Land Law and FPIC. ADDED "legal, customary or user” rights.</p> <p>Guidance : ADDED “Company policy should prohibit the use of mercenaries and para-militaries in their operations”.</p> <p>Indicators : ADDED "participatory mapping”.</p> <p>ADDED "Companies should be especially careful where they are offered lands acquired from the State by its invoking the national interest (also known as 'eminent domain')”.</p> <p>Principle : 3 Commitment to long-term economic and financial viability</p> <p>Principle : 4 Use of appropriate best practices by growers and millers</p> <p>Principle : 5 Environmental responsibility and conservation of natural resources and biodiversity</p> <p>Principle : 6 Responsible consideration of employees and of individuals and communities affected by growers and millers</p> <p>ADDED : "Participation means that affected parties are able to express their views through their own representative institutions, or freely chosen spokespersons, during the identification of impacts, reviewing findings and plans for mitigation, and monitoring the success of implemented plans”.</p> <p>ADDED : 6.12. "No forms of forced or trafficked labour are used”. 6.13. "Growers and millers respect human rights”.</p> <p>Principle : 7 Responsible development of new plantings</p> <p>ADDED : 7.8 on greenhouse gases (GHG).</p> <p>Principle : 8 Commitment to continual improvement in key areas of activity</p> <p>“National interpretations”: of the generic standard (Malaysia, Indonesia, Cameroon, Colombia, etc.)</p>
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- 20 The eight principles are heterogeneous in terms of legal norms, but their order indicates a certain priority. Given its place, the first one ("1. Commitment to transparency") occupies a superior position since it concerns the publicity and communication requirements in the procedure. It takes up a similar principle to the one put forward by the International Social and Environmental Accreditation and Labeling Alliance (ISEAL): "transparency, inclusiveness, consensus". The second principle would bewilder lawyers or ordinary citizens since it stipulates that *stakeholders* are voluntarily committed by the standard in respecting the law ("2. Compliance with applicable laws and regulations"). The 2013 additions to the *criteria* under this second *principle* reveal practices that contravene the law. The *guidance* section is completed by the following statement : “Company policy should prohibit the use of mercenaries and para-militaries in their operations.” In the *indicators* section, an addition refers to a requirement that is included not in national laws but in international conventions : participatory mapping, which involves mapping land use rights with communities ("affected parties"). Another addition expressly mentions that offers by the State may not comply with international conventions, or even national law : "Companies should be especially careful where they are offered lands

from the State by its invoking the national interest (also known as 'eminent domain')."

<sup>10</sup> Criteria 2.2 and 2.3 on land rights and Free, Prior and Informed Consent have been supplemented with a more varied consideration of "legal, customary or user" rights, leading to a clearer consideration of customary rights relating to land use.<sup>11</sup>

- 21 The following two principles return to what was originally at the core of the standard, as initially conceived by the companies involved, and oriented by the *market* and *industrial* orders of worth. Principle 3 deals with "long-term economic and financial viability". Principle 4 specifies, in great detail, the "appropriate best practices by growers and millers" (water management, pesticides, soil, environmental and health risks, etc.) which prescribe the ways of doing things for producers, in accordance with an industrial agricultural model that is deemed more productive. This meticulous prescription of technical tasks included in the standard has no equivalent in law.
- 22 Principle 5 introduces a completely different order of worth – a green one (Blok 2013, Lafaye & Thévenot 1993, 2017, Thévenot Moody & Lafaye 2000) – and the related values initially defended by the environmental NGO WWF, which set the standard with Unilever: "Environmental responsibility and conservation of natural resources and biodiversity".
- 23 Principle 6 considers the goods and woes of the most vulnerable human actors in the sector, farmers and their communities, as well as employees of plantations and processing companies: "Responsible consideration of employees and of individuals and communities affected by growers and millers". It should be noted that the obligation to respect social rights is replaced with "responsible consideration". The additions to the standard in 2013 raise some sensitive points. In particular, illegal and forced labor prohibited in the 2007 version – although only as a "guidance for indicators" – now appear as "criterion" 6.12: "No forms of forced or trafficked labour are used".
- 24 Principle (6) is first considered (6.1) through the standard tool of "social impact assessment" ("indicator" 6.1.1) and procedures to mitigate these impacts, which assume the format of "plans".<sup>12</sup> It is only in the "Guidance" section that the signs of the struggle led by the NGO Forest Peoples Programme, alongside other NGOs such as Oxfam Novib, are identified in order to stipulate the terms of agreement based on the concept of Free, Prior and Informed Consent: "Participation in this context means that affected parties are able to express their views through their own representative institutions, or freely chosen spokespersons, during the identification of impacts, reviewing findings and plans for mitigation, and monitoring the success of implemented plans". "Cultural and religious values" and other "community values" are considered in "potential social impacts". The following criterion – criterion 6.2 – focuses entirely on the agreement by promoting "open and transparent methods for communication and consultation". The indicators focus on the written recording of consultations and communications (6.2.1), the appointment of "official management" responsible for these issues (6.2.2), and the establishment of a "list of stakeholders" (6.2.3). It should be noted that in the Guidance section, the development of consultation and communication requirements, particularly with local communities, encourages the use of the "multi-stakeholder forum" device, which may be incompatible with the traditional modes of expressing agreement. The following criteria relate to the existence of a complaints and grievances mechanism (6.3), as well as to the key point of the "negotiations concerning compensation for loss of legal, customary or user rights [...] through a documented system that enables indigenous peoples, local communities

and other stakeholders to express their views through their own representative institutions" (6.4).

- 25 Criterion 6.5 introduces the principles of minimum remuneration by mentioning only law or collective agreements ("at least legal or industry minimum standard"), working and living conditions, including the difficult issue of provisions for daily life : "make demonstrable efforts to monitor and improve workers' access to adequate, sufficient and affordable food" (6.5.4). In the widespread case in which workers are housed by the company on the plantation and forced to use the company's shop because there is no possibility of going to other businesses, it is a well-known fact that the high prices charged allow the company to recover a significant part of the salary paid. A 2012 audit report mentions the 2009 audit report, which already specified, for the same company, that no formal action had been taken to address the issue of high grocery prices and food prices at the oil mill cafeteria. Regarding the prices themselves, the audit report can only point to the absence of labels in the store, focusing, as is often the case (Power 1997), on registration and written procedures ("records").<sup>13</sup>
- 26 The following criteria specify rights relating to the ILO's four categories of fundamental labor rights,<sup>14</sup> covering freedom of association and the right to collective bargaining (6.6.), the prohibition of child labor (6.7.) and forced labor (6.12.), and the elimination of discrimination in employment (6.8.). However, only three of the eight fundamental conventions of these rights are explicitly mentioned.<sup>15</sup> Finally, two criteria concern the elimination of harassment (particularly of women) and the commitment to "respect human rights" (6.13), the sole indicator of which (6.13.1) is that a "policy to respect human rights" is "documented and communicated".
- 27 In short, after procedural principle 1 and principle 2, dedicated to the respect of national law and elements of international law, principles 3, 4, 5 and 6 integrate a wide range of human goods into the standard and, therefore, into the supposed measurable properties of the product and its production chain<sup>16</sup>.
- 28 During negotiations with NGOs, these principles gradually led to the consideration of various rights, including customary rights. However, their concrete implementation remains questionable. In the field of labor, for example, under the influence of social NGOs, the standard incorporated fundamental principles and rights from its first version in 2007, including the criteria of freedom of association, non-discrimination and the prohibition of child labor. However, at the time of the 2013 annual conference, a coalition of NGOs and trade unions demonstrated on the streets to report violations of workers' rights on plantations, including certified plantations. On the same day, several groups of participants gathered in the conference room to add children's rights, women's rights – particularly against harassment – and, more broadly, rights on the workplace to the agenda. These meetings were a continuation of the efforts of the "Human right" working group, led by Oxfam and a multinational company, and, at the same time, of the workers' Alliance. The protests and new measures undertaken reflect a criticism of the lack of effect of the earlier references to labor law in the standard. In general, they raise the difficult question of the implementation of the standard (see also Colchester's interview) and legitimate powers.

## 2.2. Sovereignty: legitimate powers and functions

- 29 The second comparative table deals with the legitimacy of the powers established by each of the two normative systems being compared (Table 2). The RSPO standard aims to achieve legitimacy beyond that of bilateral contractual agreements. It boasts a large constituency that gathers together 40 per cent of the world's palm oil production. To ensure legitimacy, the standard rolls out a "multi-stakeholder" plan intended to give an equal voice to individuals representing the multiple interests at stake. For these purposes, these interests are divided into seven categories: oil palm producers; processors or traders; consumer goods manufacturers; retailers; banks/investors; environmental NGOs; and social NGOs.
- 30 The executive power (Board) plays an essential role in organizing the roundtable and setting the conference agenda. Its composition reflects the requirement that all interests should be involved in order to reach a consensus between the seven stakeholder categories. Outside the Board, several hundred participants are invited to speak at annual conferences, in working groups, and in the General Assembly. The annual conferences are based on a very traditional format of plenary meetings with certain members selected to deliver presentations, yet they also include other modes of communication inspired by participative management such as "open space technologies" and "world cafés". The *liberal* political grammar – often referred to as "horizontal" since every interest-holder is considered to be on the same level – *de facto* encounters many imbalances, between multinational corporations and small farmers from Sumatra or Borneo for instance. The most widespread and relevant criticism concerns the resulting balances of power which go against the stated horizontality. The opportunities offered by this mechanism to exchange and compose an agreement lead small farmers to engage in the process, but also cause less visible and more insidious oppressions on which our investigation has focused.
- 31 The exchanges promoted by "open space technologies" encourage participants to take a placard and write a question on it, in order to gather other participants around them who are interested in such the subject. On this "market", which offers as many discussion groups as there are placards, NGO professionals who are well-versed in participation techniques mix with individuals who are not at all familiar with them. Certain discussion groups offer an opportunity to hear rare testimonies. We witnessed auditors criticizing their own practices because they are dependent on the audited firms that pay them and that tend to guide their work (observation made during the Medan conference in 2013). By contrast, small farmers proved somewhat embarrassed about engaging in this competitive process.
- 32 The "world café" is another technique used. Here, participants are gathered around a table for twenty minutes, much like in "speed-dating", and asked to voice their opinions and preferences on a particular question, before moving onto another table and issue. These formats, which are well-suited to a "market" of ideas and an ephemeral connection in the exchange, reduce the content of the concerns raised by the affected people (Cheyns 2011, Thévenot 2019).
- 33 Which bodies are in charge of police and justice functions? When it comes to these duties, the differences between this system and the rule of law are substantial. Even though mercenaries working for companies often resort to violence, there is no organ entrusted with the legitimate use of force in this form of government by standards. The

only police elements draw on the managerial audit method, which in turn draws on the normative format of plans and objectives that can be objectively measured, as seen in Table 1.

34 The questionable independence of audit practices also considerably limits how this police function is conducted. These costly audits are financed by companies prone to sanctions, rather than an independent fund (Silva-Casteneda 2015). Beyond this potential conflict of interests, the auditors value forms of evidence that are centered on achieving plans ; this leaves little room for the forms of evidence articulated at the local level by the affected communities, and for the expression of their woes (Idem). The audit identifies deviations and breaches of the standard according to the "tick the box" approach, by checking the boxes of a questionnaire using a kind of "digital" method that prepares for quantification<sup>17</sup>.

35 Table 2: Sovereignty, legitimate powers and functions

<i>Representative government</i>	<i>RSPO Government</i>
<i>Constituency</i>	Participants to the roundtable: 40 per cent of the world's palm oil production.
<i>Elected representatives expressing the general will</i>	Seven categories of <i>stakeholders</i> ; each member has an equal voting right in the General Assembly. Oil Palm Growers Palm Oil Processors and/or Traders Consumer Goods Manufacturers Retailers Banks and Investors Environmental/Nature Conservation NGOs Social/Development NGOs No Nation-State representatives, No academic / research institutions.
<i>Executive</i>	An Executive Board, consisting of 16 seats representing each of the 7 categories mentioned above and appointed for a renewable term (WWF, Unilever, and Oxfam were members for several terms).
<i>Public debate deliberation</i>	Use of management methods: stands, world cafés, open space, working group conducted in a project approach with all stakeholder categories.
<i>Police</i>	Audit.
<i>Justice, dispute resolution</i>	Dispute Settlement Facility, Complaint System. In this system, the highest penalty is certification withdrawal.

36 The justice and dispute resolution function is also very different. The RSPO has implemented two systems: the RSPO Complaints System, charged with handling complaints ; and the Dispute Settlement Facility, which relies on mediation. In the former, the experts who are mandated to judge the cases are stakeholders, and neither

system has set up adversary proceedings in which the parties to the conflict appear before a judge. Membership of the Complaint panel (adjudication body) and of the Board (executive body) only became incompatible in 2013. In the last section, we will return to the conflict management practices.

### 2.3. The audit “police”: who watches the watchman?

- 37 Even though the audit is conducted by third parties, mechanisms to control the auditors are also set up to address its shortcomings. According to enacted rules, the RSPO auditors receive accreditation from and are controlled by a higher-ranking body, the accreditor – chosen by the RSPO body. However, because of failures in the monitoring system, many NGOs control the audit themselves. Non-member NGOs, journalists, or civil society representatives place pressure on the monitoring system in a manner not explicitly expected by the RSPO operatives. NGOs members or non-members of the roundtable even form coalitions in which they explicitly come up with such a task division<sup>18</sup>.
- 38 Since the launch of the RSPO, Greenpeace has lobbied from the outside and posed a serious threat for the companies, especially their shareholders and investors. Greenpeace’s “Burning up Borneo” campaign, launched in 2009, is emblematic of how this NGO constitutes a media threat for European buyers. Pursuant to a “conflict-cooperation” strategy (Valor and Merino de Diego, 2009), this threat has driven companies within the sector to join forces with other more “cooperative” (or “collaborative”) NGOs such as WWF, a leader in such roundtables, and has also led them to join the roundtables (RSPO, RTRS, etc.): “When a company is reluctant, we can tell them : look at what awaits you (talking about Greenpeace) outside (of the roundtable)” (WWF Netherlands 2009).
- 39 This “good cop, bad cop” strategy has been documented and analyzed as a first step in the implementation of soft regulations such as private standards (idem). In this global audit surveillance system, the role played by non-member NGOs became apparent when the sustainable palm oil plantation certification mechanism was set up. In 2008, Greenpeace issued a report<sup>19</sup> in which it denounced the fact that the first company group certified under RSPO violated the RSPO environmental and social protection standards in some of its plantations. In its field investigations, Greenpeace found that the company had violated some of the RSPO criteria with which it needed to comply to obtain partial certification of its plantations. In its report, Greenpeace called for a moratorium on further deforestation, even if it does not challenge the RSPO mechanism that other NGOs, in a collaborative approach, are developing (notably, WWF).
- 40 Since then, and notably in the years 2013–2016, the efficiency of the global monitoring system established by the RSPO has been regularly questioned by non-member NGOs, who are often connected to member NGOs. Even if such NGOs did not develop the RSPO standard, the reports they issue show how they monitor the enforcement of the RSPO standard by controlling the certifiers and thus “policing the police”.
- 41 In 2013, 19 member and non-member NGOs, ranging from the most local to the most international (including the Forest Peoples Programme), released the “Conflict or Consent ?” report.<sup>20</sup> The report revealed how Indonesian communities were the victims of a variety of harms and human rights violations committed by RSPO-certified

companies.<sup>21</sup> The fact that companies who own the RSPO-certified plantations violated the FPIC was identified in particular. Just before the RSPO annual conference, the signatory NGOs published the report (during press conferences) and discussed it with other NGOs in a pre-conference workshop, in order to draft a common action plan. The same year, as mentioned earlier, a coalition, uniting NGOs and local, national, or international workers' unions, organized a street demonstration outside the RSPO conference in Medan to denounce how fundamental labor rights were being violated in palm oil plantations even though the standard had incorporated these rights in 2007.

- 42 In November 2015, the Grassroots and EIA NGOs issued a report in which they criticized the work of auditors and their ability to identify and reveal the violations and damages done to the rights of the communities ("Who Watches the Watchmen?"<sup>22</sup>). The NGOs released the previously mentioned report ("Conflict or consent?") to the press just a few days before the 10<sup>th</sup> RSPO conference was to open in Kuala Lumpur. That same year, a journalist from the *Wall Street Journal* published an investigation revealing that certain Malaysian plantations audited and certified by the RSPO, and controlled by the powerful government agency FELDA,<sup>23</sup> used forced labor (see *infra*). A year later, in November 2016, Amnesty International revealed that other plantations certified by the RSPO and belonging to Wilmar, a Malaysian conglomerate, had committed human rights abuses (notably by using forced labor).
- 43 By reporting on how inefficient the mechanism of the audit is in securing fundamental rights, NGOs have made a difference. In 2013, NGOs forced the RSPO Board to revise its mechanism for handling complaints, as well as to change the concepts used in the mechanism – see *infra* section 3.3, "Transforming the formats". They also managed to ensure that the General Assembly adopted a resolution on the independence of members charged with ruling on the complaints (resolution 6f in 2013). For the first time, this resolution made it possible to impose sanctions on member companies at the highest levels by suspending or withdrawing their certifications. In the RSPO normative system, these sanctions are the harshest penalties.
- 44 Consequently, the investigation conducted by the *Wall Street Journal* journalist in 2015 revealing labor abuses in RSPO-certified plantations, followed by a series of NGO public actions and a reaction by the RSPO complaint panel, led one of the world's largest palm oil growers (810 000 ha), and an influential member of the roundtable (FELDA, Board member since 2006), to lose its certification. The journalist's investigation was in fact shared in a press release issued by a coalition of international NGOs in which they called on the RSPO to launch an "independent investigation". The RSPO Complaint Panel also relayed the demand when filing a complaint against the three FELDA plantations implicated. ASI, the body that had accredited the certifier to blame, was asked to verify the auditors' work. At first, the ASI report did not find that the auditor had failed to record the use of forced labor but identified other defects in the audit ("major non-compliance"). However, non-member NGOs openly criticized the report for failing to diagnose any "sort of evidence of forced labour" when it mentioned several practices internationally accepted as indicators of forced labor (such as the fact that the plantation company management had detained the workers' identification papers). Following a series of investigative reports, the complaint panel decided to suspend the certification of one of the three plantations (in order to give the plantation time to comply). Two months later, the company itself decided to opt out of the

certification applications for each of its 58 plantations, while at the same time initiating an action plan (which will be evaluated) and committing to once again comply with the specifications.

- 45 The following year, in 2016, another founding member of the RSPO, the IOI group,<sup>24</sup> had its certification suspended for three months, after an environmental NGO (AIDEnvironnement) filed a complaint in 2015 alleging it had violated environmental standards (Ketapang case). However, at the end of the three-month suspension, the IOI recovered its certification after the complaint panel approved its one-year rectification plan.<sup>25</sup> This case underscores the discrepancy between the development of the “equal voice” multi-stakeholder system and the existence of an imbalance of power. It also reveals how NGOs try to counter this by mobilizing significant resources. Indeed, in 2010, the same NGO had already filed a complaint against IOI in the Ketapang case, and the Board, which was still the sovereign body at the time, had issued a “good behavior” notice :
- 46 With regards to Ketapang, the RSPO Grievance Panel has concluded that there is insufficient evidence to prove that HCV areas were deliberately cleared by IOI in Ketapang or that the estates involved were knowingly proceeding to clear land without being in possession of all permits required”, (signed letter of the executive secretariat following the Board’s decision).
- 47 In response, AIDEnvironnement criticized the Board for engaging in a rhetorical maneuver, by “inventing language”<sup>26</sup> to protect the IOI (the characterization of an act committed “deliberately and knowingly”), and flagged the Board’s inability to sanction its members, notably those with a seat on the Board (IOI) :
- 48 In an apparent attempt to justify its unwillingness or inability to enforce RSPO’s written rules on IOI Group, RSPO’s Grievance Panel frivolously invented language that does not exist in RSPO’s standards and procedures (“deliberately” and “knowingly”).
- 49 Until 2013, sanctions adopted by the complaint panel had to be approved by the Board. This mechanism ended when resolution 6f was adopted in 2013 after a coalition of NGOs pushed for the adoption of the resolution, requesting that the members ruling on the complaints be independent from the decision body that is the Board (executive board). NGOs had to lay the groundwork and coordinate for resolution 6f to pass. Prior to the vote, NGOs needed to gather documents that reflected the situation on the ground, coordinate in workshops, undertake a campaign, and launch a petition. Following the adoption of resolution 6f, AIDEnvironnement had to again file a complaint in the Ketapang case, and the company was finally sanctioned.
- 50 Given the existing power balances, NGOs need to act strategically. NGOs try to have an impact on the divestment bait which for certain companies represents a means to avoid sanctions or relieve themselves of previous commitments negotiated. The case mentioned in the interview with Marcus Colchester (in this same volume) touches on another complaint filed against the IOI (IOI-Pelita) and is not an isolated situation. Filed in 2010 by the Long Terang Kanang communities and the Grassroots NGO, the complaint revealed a land dispute that had been ongoing for over twenty years and focused on abuses to the rights of local communities (human rights, FPIC). The complaint resulted in several resolution procedures, including a mediation process within the RSPO Dispute Settlement Facility. In 2017, NGOs condemned IOI Pelita’s



divestment project after six-month-long negotiations and the finalization of an action plan that the parties had agreed on :

- 51 If IOI sells its stake in IOI-Pelita it would be the final straw, proving once and for all that IOI cannot be trusted. If this sale goes through, then major brands would have no choice but to stop buying from IOI altogether. The RSPO would also have to expel IOI for such a gross violation of its rules,” said Bagus Kusuma, forest campaigner for Greenpeace Southeast Asia<sup>27</sup> ;

### 3. Considering and transforming the concerns of local communities into the form of the standard

- 52 We have laid out the key limits to the government by standards, which are mostly rooted in its limited capacity to enforce standard provisions. In this non-state government where members voluntarily commit to respect the standard, the functions of the police and justice are limited. In this last section, we will further analyze these limitations by focusing on the transformation of the concerns of local communities, and what the RSPO standard and its government require for these concerns to be considered, whether or not they relate to consent or taking into account woes in dispute resolution. The conceptual framework on the different “formats” of goods and evidence involved provides a basis for analyzing the range of transformations required and the sacrifices these impose.
- 53 We have stressed that the RSPO standard is based on the format of plans and objectives. At the same time, however, it is progressively opening itself up to the consideration of rights, particularly collective and customary rights. What sorts of tensions are created when these different normative forms intersect ? How does the RSPO government take the abuses and woes suffered by the most vulnerable populations into account ? To answer these questions, we will examine various mechanisms that lead to discrepancies, distortions, or even obstacles in the transformations chain required to take these concerns into account.

#### 3.1. Transforming human rights into the format of the standard

- 54 Let us begin with the transformation of concerns into the format of human rights, since this goes beyond the RSPO framework and can be found in the different contributions compiled in this digest. What must be done when formatting the concerns of people among the most vulnerable – aiming at kinds of goods with a completely different format – into rights ? The liberal model of modern law, and notably of human rights, now the *lingua franca* of States and NGOs, relies on the will of autonomous individuals. Human rights build on the *liberal* grammar that governs a community of individuals opting between *plans*, and contrasts with other constructions of commonality and difference that rely on other *regimes of engagements* (Thévenot 2014, 2015a). This autonomy goes against the kind of dependencies that are valued in the spiritual or familiar attachments of inhabitants on meaningful places such as a forest that the community is entrusted to take care of. Since the 1970s, the extension of individual rights to include a new generation of indigenous collective rights has sought to resolve such limitations. The post-WW2 international human rights treaties promoted first and second generations of rights, which focused on private property and positive law

rather than custom. At the initiative of indigenous people representatives, a third generation of rights helped expand human rights to the collective rights of populations and their right to self-determination. Marcus Colchester identifies this emancipatory approach and notes that empires and colonial powers had a long-standing practice of tolerating the customs of the people they controlled. This shows that the recognition of these collective rights does not prevent the continued exercise of control over these people (Colchester, 2011). He also stresses that the post-WW2 and Cold War contexts favored this liberal conception of rights geared at protecting the individual from a State seeking to encroach upon the individual's autonomy. Karen Engle, whom Colchester mentions, highlights that the 2007 United Nations Declaration on the Rights of Indigenous Peoples had a "fragile architecture". She explains that this unstable compromise with the liberal model, led at the same time to a limitation and a recognition of types of self-determination for indigenous peoples, since "neoliberal" "multiculturalism" fits quite comfortably with indigenous cultural rights (Engel 2011, pp. 160-161). Marcus Colchester, as somebody who has relentlessly advocated for the extension of the notion of consent to the consent of "the peoples" in certifications, but also in plantations, constructions of dams and mines, is aware of the sorts of tensions that exist between the dual history mentioned above and the FPIC normative format (Colchester 2002), given that the latter is infused with this liberal grammar.

- 55 Dealing with normative pluralism is not only favorable for the recognition of customs – which are often more flexible than statutory law – but can also promote more equal access to land than that resulting from the individual right of ownership. For example, in his interview, Colchester indicates that in Kalimantan (Borneo), there is a collective use of the land, and that communal lands cannot be sold. This customary right of use of collective lands prevents the development of a concentrated market of lands as well as the creation of individual titles of private property.
- 56 This need to accommodate indigenous customs is challenged, however, when those very customs are seen to violate human rights. Female genitalia mutilation is often mentioned as an example of such practices<sup>28</sup>. Colchester cites the "Manilla Declaration" (2000 : Manilla declaration of the international conference on conflict resolution, peace building, sustainable development, and indigenous peoples), which stresses that such tensions must be pacified by indigenous peoples themselves and not through external intervention :
- 57 "The conference also acknowledges that in revalidating the traditions and institutions of our ancestors it is also necessary that we, ourselves, honestly deal with those ancient practices, which may have led to the oppression of indigenous women and children. However, the conference also stresses that the transformation of indigenous traditions and systems must be defined and controlled by indigenous peoples, simply because our right to deal with the legacy of our own cultures is part of the right to self-determination."
- 58 An implicit tension relies on the broadening of the FPIC framework (from the choice of the liberal individual), to the consent of a community, requiring that the community give its consent and that a representative be appointed as spokesman of the collective will. Such a requirement collides with agreement approaches that disregard this mode of representation, whether these approaches rely on "big men" or hinge, on the contrary, on "decentralized authority", "diffuse power", or "acephalous political

organization” (Colchester 2002, 3), or resort to symbolic and metaphorical expressions of myths and rituals (Colchester 2011, p. 22)<sup>29</sup>.

- 59 Colchester stresses that, when the FPIC standard extends to peoples, it departs from the formal contractual arrangement and the kind of clear-cut decision expected to finalize negotiations, which remain the primary objective of companies in their interactions with communities. On the other hand, communities want to establish a relationship of trust with their neighbors, which would go beyond the question of the use of land. It is for this reason that Colchester promotes the idea of a repetitive process that would allow the parties to make mutual concessions rather than simply sign a document for the transfer of lands (see interview with Colchester). This last point now brings us to consider the tensions between local or indigenous concerns and the format of the plan, rather than with the human rights format.

### 3.2. Tensions between concerns and the format of plans and objectives

- 60 We have stressed that, in accordance with this government through planning and objectives, companies aim to arrive at an objectified decision. However, because the objective is reified in this plan system, opening up the FPIC to custom and self-determination creates tensions with this system. Companies request a single, fast, and standardized operating procedure for the FPIC to be applied. They want to be able to “tick the box” and use checklists so that plans can be carried out objectively. In response to such a request, Colchester states that the FPIC is intended to involve the members of the affected communities, implies that many different methods can be used to obtain consent, and thus cannot simply fall within the framework of a standardized plan : "There is not AN answer. There have to be different answers for different circumstances and different peoples. [...] You cannot have a standard operating procedure for how you do FPIC, because it is their operating procedure, not yours" (see Colchester’s interview in this volume).
- 61 Thus, in order to put forth a FPIC that extends to peoples and introduce substantial normative principles removed from the liberal model, NGOs confronted companies’ attempts to reframe the FPIC within the form of the plan. In his interview, Colchester mentions how companies have difficulties interpreting the FPIC. He also mentions how, due to the actions of these companies, the drafting of the FPIC implementation handbook<sup>30</sup> became extremely procedural.
- 62 The "tick the box" format is also adjusted to the skills of auditors, more oriented towards the quantification and control of formal or written documents already prepared for the plan format. The 2015 report entitled “Who watches the watchmen” criticized how auditors were unable “to identify indigenous rights land claims and risks of forced labour”. Similarly, Colchester stresses that, while auditors can determine whether companies comply with national law (such as a legal land use permit), whether a business plan exists, or whether tasks such as clearing a forest are completed, they have trouble finding out whether people are satisfied with their working conditions, whether they are being fairly treated, or whether women have experienced harassment. He also mentions how local NGOs are discouraged from the “working groups” to which the RSPO often resorts, which focus on very technical work and “multiple details”.

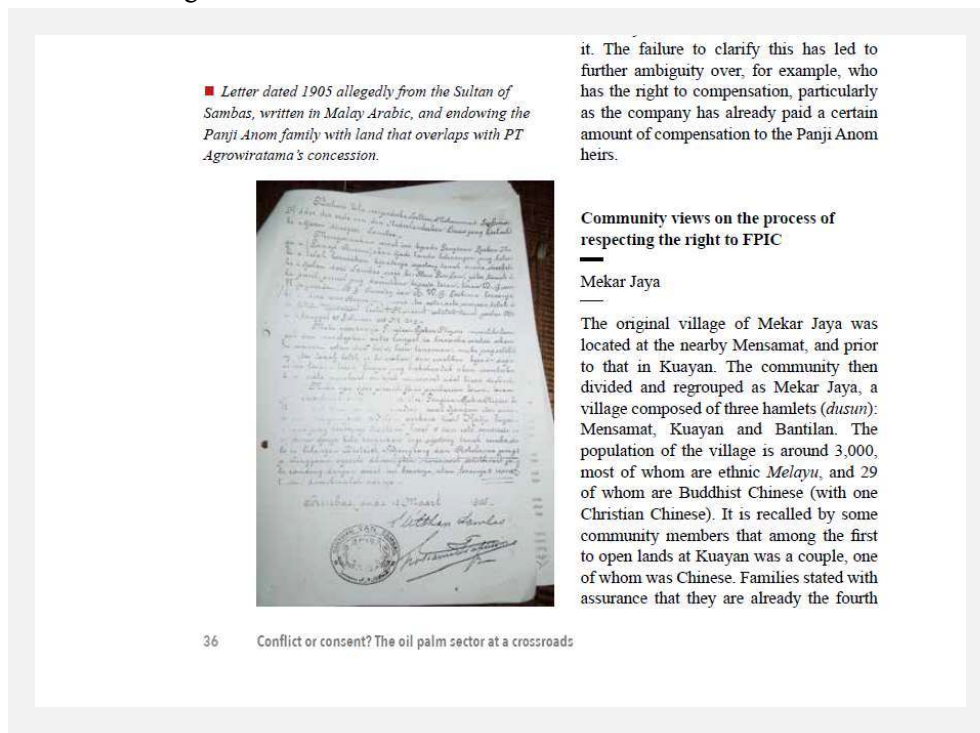
- 63 NGOs can thus subject the RSPO government to a critical test through various modes of action (at press conferences, workshops to which interested parties are invited, or even street demonstrations). Nevertheless, these actions are then frequently reframed and processed in the format of the plan, tending to reduce the scope of their criticisms or substantial principles put forward.

### 3.3. Transforming formats to bring forward local concerns and complaints

- 64 A long and complex chain of NGOs is needed in order to place these new questions on the agenda, raise local complaints at the transnational level, or direct them towards the complaint-handling mechanism. Even if such an idea is not explicitly encompassed in this form of governance by standard, NGOs acting not only as stakeholders or as defenders of a common environmental resource are the backbone of the RSPO governmental approach. While transnational NGOs interact with multinational companies as equals and favor the same more formalized and public evaluation methods, other NGOs, by establishing a local presence and connecting with actors on the ground, are best able to embrace a local and personalized format. These organizations help to transform local concerns – based on attachments – into a format that fits the government by standards, especially to gain access to the complaint procedures. Even if the “objectives” reduce those concerns, this chain of NGOs acting together gives way to a wide range of knowledge and assessment formats, from the universal form of fundamental rights or informed consent of peoples to the format of beneficial familiar uses. Certain NGOs welcome and favor a wide variety of formats and aim to facilitate internal critics as well as external critics voiced outside of the RSPO. These organizations conduct investigations among the local communities affected (Colchester Chao 2013). Often carried out by members of these NGOs trained in anthropology, the investigations accommodate knowledge and evaluation formats that differ from evaluative formats related to the objectives of good practices and industrial expert knowledge.
- 65 The “Conflict or consent?” report (see supra § 2.3) showcases the common work achieved by a chain of NGOs. This report, within detailed case studies, shed light on the complaints put forward by local communities. It also helped raise more general issues. We have already mentioned how the report facilitated the adoption by the General Assembly of a resolution on the independence of the jury ruling on complaints (resolution 6f). The report also led to the development of a guide that reinforced the legitimacy of the notion of the FPIC (guidelines for the implementation of the FPIC) and to a study carried out on “intermediary” organizations that would improve local communities’ access to the complaint mechanism. Finally, the report ushered in an overhaul of the complaint mechanism procedures. This overhaul took place in a context in which the forms of evidence used by the RSPO were being criticized on the basis that they restricted local communities’ access to the complaint mechanism.
- 66 Beyond an effective and strategic coalition of NGOs, which supports a more critical participation in the roundtable, it is the joint work of NGOs in a complex chain of varied skills that allowed this report to have such a powerful impact. Considered by RSPO participants to be “well-documented”, the report is based on varied information and knowledge formats, which allow the complaint to be escalated to the transnational

level without suffering drastic reductions. This involves very detailed knowledge of legal and legislative texts, official documents, and plantation operating procedures, and – contrary to the expert forms of evidence specific to audits – local testimonies gathered on the ground, photographs taken on sites to highlight the local living conditions and the attachments to the land (for example, photographs of locations where graves had been destroyed), old written testimonies (dating back to the 19<sup>th</sup> century and signed, for example, by the Sambas sultan in Arabic script), as well as a series of other local forms of evidence that make sense to residents.

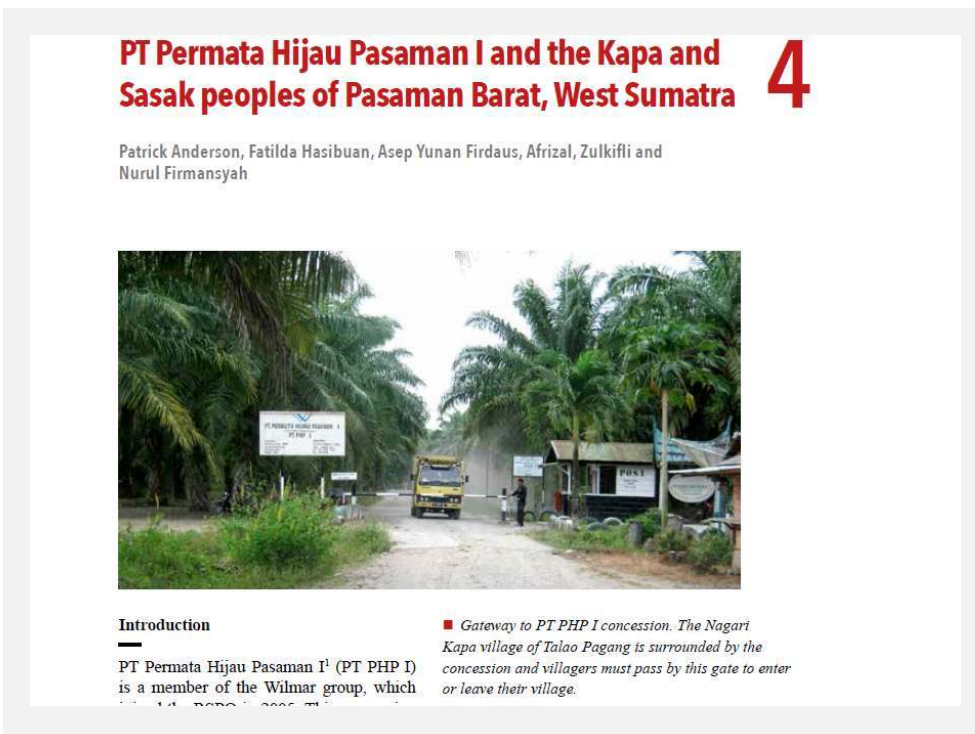
- 67 The “Conflict or Consent ?” report attempts to shed light on more diverse range of woes caused by the expansion of plantation companies : how livelihoods have deteriorated ; how populations are uprooted and villages landlocked, and how “familiar” goods or lands – that are integral to the individuals’ lives, where ancestors are buried, where there are sacred trees, or where familiar and spiritual uses passed down from one generation to the next – are lost.



- 68 Photograph 1: Use of a letter dating back to 1905 and written in Malay Arab letters by the Sambas sultan (Colchester and Chao, 2013).



69 Photograph 2 : The report explains that these graves were destroyed to build a road on the plantation. The road was then rerouted and the location of the graves marked with a sign (Colchester and Chao, 2013).



70 Photograph 3 : Entrance door to the concession ; the concession surrounds the village and inhabitants must go through this gate to enter or leave their village (Colchester and Chao, 2013).

71 The support and extension provided by these NGOs to the RSPO government is also reflected in their support with the handling of complaints in the two channels mentioned above : The RSPO Complaints System, and the Dispute Settlement Facility

(mediation). Again, the availability of a variety of more or less local and interrelated NGOs helps ensure that marginalized voices are heard and that some place is given in the dispute to formats, such as personal attachments and fundamental goods promoted by a sense of injustice, which are discarded in the “objective” approach (Cheyngs 2014). Local NGOs play an essential role in according attention to certain forms of evidence, which make sense on the local level but are less understandable for an international community unfamiliar with these sites. As such, NGOs promote their “transformation”. Familiar landmarks which make sense locally, which would, for example, make it possible to draw a border line, are invisible to auditors or people unfamiliar with the location. Such is the case, for example, with certain trees, because of their age and history, where a code or a name may have been carved. If local dwellers understand such landmarks, they face a significant challenge : that these forms of evidence are recognized or even seen by an auditor, whom the opposing party (the plantation company in conflict with the residents) has provided with an arsenal of technical, procedural, and formal documents (Silva-Castaneda, 2012b).

- 72 Bringing these forms of evidence to a transnational instance such as the RSPO is also quite a challenge. The complaints local communities put forward to the roundtable are received by its executive secretariat and then handled by a panel of experts (appointed stakeholder members of the roundtable). These complaints must be organized, first by the plaintiffs in order to meet the complaint admissibility requirements, and then by the executive secretariat, who classifies the documents and summarizes certain facts for the panel of experts. The experts do not go to the sites, or hear the parties, for the experts’ identity must remain anonymous.
- 73 This situation, in which experts mostly work remotely, goes against the wishes of the local communities who are affected and who would like the experts to come and see what is happening “on the ground”. By making such a request, local communities are voicing a major concern. Experts need to visit these sites to gain access to all sorts of non-movable or not easily movable forms of evidence, to appreciate the sincerity of their complaint – which is often challenged by the accused company – and to understand the damage they have suffered.<sup>31</sup> Colchester also mentions how NGOs would like experts from the panel or the RSPO to see how things are on the ground, rather than just base their examinations or rulings on what he calls an “e-mail ping pong” : reports and written exchanges between the RSPO and the parties (see his interview in the volume).
- 74 Given that the panel and the secretariat do not visit the sites, local NGOs play a role in formatting the evidence by favoring their transformation. In order to raise the complaint at a transnational level, and particularly at the Complaint System level, transforming the evidence in the proper format is a crucial operation. For example, these NGOs come into play by rewriting the conflict narratives as “chronological elements” to respond to the Complaint System requests more adequately.
- 75 NGOs also help draw up maps out of ancient and familiar landmarks through participatory mapping exercises where local and collective testimonies are valued. In this way, familiar landmarks identified on the ground by a village elder can be put into GPS coordinates, and these maps can reach a wider audience : “*With these participatory maps we can convert the local knowledge, the local landmarks (as rivers, trees) into boundaries that can be understandable by modern practices.*” (NGO, Jambi, 2013 ; see also : Thévenot

2019). Participatory mapping is also used to promote a variety of practices and land uses against the palm oil monocrop.

- 76 The ability of local and national NGOs to use different formats of evidence is linked to the diversity of their members and, for many of them, to their proximity to local communities (some share their daily lives). NGOs can also do this by using a networking system that entails a coordination between NGOs on the ground and national NGOs, which themselves have contacts with international NGOs and the RSPO (see also Köhne 2014).

## Conclusion : one foot in, one foot out

- 77 In an entrepreneurial spirit eager to encourage innovation, the prescriptive texts of this system of governance by certification standards show how it can be an original autonomous system. As a result, through our comparative analysis, we have emphasized its distinctive features. However, by analyzing how the system operates and making reference to the evolutions and critical situations it causes, as well by reviewing forms of oppressions that go well beyond the most blatant power imbalances, it became necessary to situate the normative tools of this form of government among a wider range of normative modes with which it is explicitly or impliedly intertwined.
- 78 The participation of the poorest and/or most vulnerable populations remains costly and the structural limitations of this system of governance by standards and objectives affect the ability to consider the kinds of good with which these poor populations are preoccupied. Is there still reason for such populations to participate in the apparatus ? As a matter of fact, some farmers' organizations, such as Via Campenisa, have decided not to join the system in order to criticize it. The relationship between these poor populations in Indonesia – and even more so in Malaysia – and national governmental agencies, the relevant justice system, or companies in the palm oil industry is such that it restricts how criticisms can be voiced. Given the civic irresponsibility of companies and how multinationals have the upper hand over States (on these questions, see Leader 2018), the RSPO is a system wherein the “smallest”, in the eyes of public and private agents with which they must deal on a daily basis, can find support from NGOs in order to bring forward accountability requirements. In one of the cases we followed in Indonesia, the strategy that was developed to defend the most disadvantaged was to combine participation in the RSPO with other means of defending small farmers, by creating their own union, organizing public demonstrations, or taking on long-term efforts to have the national legislation amended.

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## BIBLIOGRAPHY

Blok, Anders, 2013, "Pragmatic sociology as political ecology: on the many worths of nature(s)", *European Journal of Social Theory* 16(4): 492-510.



- Boltanski, L., Thévenot, L., 1991, *De la justification. Les économies de la grandeur*, Paris, Gallimard.
- Boltanski, L., Thévenot, L., 2006, *On justification. Economies of worth*, Princeton, Princeton University Press (transl. by Catherine Porter, 1st French edition 1991).
- Busch, L., 2000, "The Moral Economy of Grades and Standards", *Journal of Rural Studies*, 16(3) : 273-283.
- Busch, L., 2011, *Standards. Recipes for reality*, Cambridge, MIT Press.
- Colchester, Marcus, 1982, "Les Yanomami, sont-ils libres ? Les Utopies Amazoniennes, une critique. A look at French Anarchist Anthropology". *Journal of the Anthropological Society of Oxford* 13 (2) : 147-64.
- Colchester, Marcus, 2002, "Indigenous rights and the collective conscious", *Anthropology Today*, 18(1), pp. 1-3.
- Colchester, Marcus, 2006, "Facing Kuper : Indigenous Peoples, Human Rights and Democratic Development", talk to the London School of Economics organised by the LSE Students Union Anthropology Society and DESTIN society, 13 February.
- Colchester, Marcus, Chao, Sophie (eds), 2013, *Conflict or Consent*, Forest Peoples Programme, Sawit Watch and TUK INDONESIA.
- Charles, Julien, 2012, "Comment la cartographie méconnaît les habitants. Le formatage de la participation dans une commune belge", *Participations. Revue de sciences sociale sur la démocratie et la citoyenneté* n° 3, pp. 155-178
- Charles, Julien, 2015, *Une participation sans condition ? Une sociologie des épreuves de l'engagement participatif*, Paris, Desclée de Brouwer (préface de L. Thévenot).
- Cheyns, Emmanuelle, 2011, "Multi-stakeholder initiatives for sustainable agriculture : limits of the 'Inclusiveness' paradigm", in Ponte, Stefano, Gibbon, Peter and Vestergaard Jakob (eds.), *Governing through Standards. Origins, Drivers and Limitations*, London, Palgrave, pp. 210-235.
- Cheyns, Emmanuelle, 2014, "Making 'minority voices' heard in transnational roundtables : The role of local NGOs in reintroducing justice and attachments", *Agriculture and Human Values*, vol 31 n° 3, pp. 439-453.
- Cheyns Emmanuelle and Riisgaard Lone, 2014, "Introduction to the symposium". The exercise of power through multi-stakeholder initiatives for sustainable agriculture and its inclusion and exclusion outcomes, *Agriculture and Human Values*, vol 31 n° 3, pp. 409-423.
- Cheyns Emmanuelle, Silva-Castañeda Laura, Aubert Pierre-Marie, 2018, "Missing the forest for the data ? Conflicting valuations of the forest and cultivable lands", *Land Use Policy* (forthcoming).
- Colchester, Marcus, 1982, "Les Yanomami, sont-ils libres ? Les Utopies Amazoniennes, une critique. A look at French Anarchist Anthropology". *Journal of the Anthropological Society of Oxford* 13 (2) : 147-64.
- Colchester, Marcus, 2002, "Indigenous rights and the collective conscious", *Anthropology Today*, 18(1), pp. 1-3.
- Colchester, Marcus, 2006, "Facing Kuper : Indigenous Peoples, Human Rights and Democratic Development", talk to the London School of Economics organised by the LSE Students Union Anthropology Society and DESTIN society, 13 February.
- Colchester, Marcus, 2011, "Divers Paths to Justice : Legal pluralism and the rights of indigenous peoples in Southeast Asia – an introduction", in Colchester, Marcus, Chao, Sophie (eds), *Divers*

- Paths to Justice : Legal pluralism and the rights of indigenous peoples in Southeast Asia*, published by Forest Peoples Programme (FPP) and Asia Indigenous Peoples, pp. 17-39.
- Dworkin, Gerald, 1988, *The Theory and Practice of Autonomy*, Cambridge, Cambridge University Press.
- Engle Karen, 2011, "On Fragile Architecture : The UN Declaration on the Rights of Indigenous Peoples in the Context of Human Rights", *The European Journal of International Law* 22(1) : 141-163.
- Eranti, Veikko, 2018, "Engagements, grammars, and the public : from the liberal grammar to individual interests", *European Journal of Cultural and Political Sociology*, 5(1-2) Special issue on "Politics of Engagements", pp. 42-65.
- Faden, Ruth R. & Beauchamp, Tom L., 1986, *A History and Theory of Informed Consent*, Oxford, OUP.
- Fan, Ruiping, 2015, *Family-Oriented Informed Consent : East Asian and American Perspectives*, Cham, Springer.
- Köhne, M. (2014). Multi-stakeholder initiative governance as assemblage : Roundtable on Sustainable Palm Oil as a political resource in land conflicts related to oil palm plantations. *Agriculture and human values*, 31(3), 469-480.
- Kuper, Adam, 1999, *Culture. The Anthropologists' Account*, Cambridge, MA-London, Harvard University Press.
- Lafaye, C., Thévenot, L., 1993, "Une justification écologique ? Conflits dans l'aménagement de la nature", *Revue Française de Sociologie*, vol. 34, n° 4, oct.-déc., pp. 495-524.
- Lafaye, C., Thévenot, L., 2017, "An ecological justification ? Conflicts in the development of nature", in Cloutier, C., Gond, J.-P. and B. Leca (eds.) *Justification, Evaluation and Critique in the Study of Organizations : Contributions from French Pragmatist Sociology*. Research in the Sociology of Organizations, Bingley, U.K. : Emerald Group.
- Leader, Sheldon, 2000, "Three faces of justice and the management of change", *Modern Law Review*, vol. 6, january, pp. 55-83.
- Leader, Sheldon, 2005, "Two ways of linking economic activity to human rights", *International Social Science Journal*, 2005, n° 185, pp. 541-550.
- Leader, Sheldon, 2009, "The Collateral Protection of Rights in a Global Economy", *New York Law School Law Review*, 53(4), pp. 805-814.
- Leader, Sheldon, 2010, "Labour Rights in the World Economy", in Lyon-Caen Antoine et Perulli Adalberto (dir.), 2010, *Valutare il diritto del lavoro. Evaluer le droit du travail. Evaluate labour law*, Padova, Cedam, pp. 113-122.
- Leader, Sheldon, 2018, "Institutional Variety, Civil Society and Basic Rights", in Jeammaud, Antoine, Le Friant, Martine, Lokiec, Pascal, Wolmark Cyril (eds.), *Le droit sans frontières*, Paris Dalloz.
- Lénine, 1973 [1914], *Du droit des nations à disposer d'elles-mêmes*, Paris Ed. Sociales, Moscou Ed. du Progrès.
- Li, Tania Murray, 2015. *After the land grab : Infrastructural violence and Indonesia's oil palm zone*. 17 p. BICAS, MOISAIC, LDPI, RCSO, Transnational Institute.
- Lomelino Pamela J., 2015, *Community, Autonomy and Informed Consent : Revisiting the Philosophical Foundations for Informed Consent*, Cambridge Scholars Publishing.

- Luhtakallio, Eeva & Thévenot, Laurent, 2018, "Politics of Engagement in an Age of Differing Voices" (introduction to the special issue) *European Journal of Cultural and Political Sociology* 5(1-2), 1-11.
- Lyon-Caen, Antoine, Champeil-Desplats, Véronique, (eds.), 2001, *Services publics et droits fondamentaux dans la construction européenne*, Paris, Dalloz.
- Lyon-Caen A., Lokiec P. (eds.), 2005, *Droits fondamentaux et droit social*, Paris, Dalloz.
- Lyon-Caen Antoine et Perulli Adalberto (dir.), 2010, *Valutare il diritto del lavoro. Evaluer le droit du travail. Evaluate labour law*, Padova, Cedam.
- Manila Declaration Of The International Conference On Conflict Resolution, Peace Building, Sustainable Development And Indigenous Peoples, organized and convened by Tebtebba Foundation (Indigenous Peoples' International Centre For Policy Research and Education) in Metro Manila, Philippines on December 6 - 8, 2000.
- Moody, M., Thévenot, L. 2000, "Comparing Models of Strategy, Interests, and the Public Good in French and American Environmental Disputes", in Lamont Michèle and Thévenot Laurent (eds.), *Rethinking Comparative Cultural Sociology : Répertoires of Evaluation in France and the United States*, Cambridge, Cambridge University Press, pp. 273-306.
- Pattaroni, L., 2005, « Le care est-il institutionnalisable ? Quand la « politique du care » émousse son éthique », in Paperman, Patricia et Laugier, Sandra (eds.), *Le souci des autres*, (Raisons Pratiques 16) Paris, Ed. de l'EHESS, pp. 177-200.
- Ponte, Stefano, Gibbon, Peter and Vestergaard Jakob (eds.), 2011, *Governing through Standards. Origins, Drivers and Limitations*, Palgrave Macmillan.
- Ponte, Stefano and Cheyns, Emmanuelle, 2013, "Voluntary standards, expert knowledge and the governance of sustainability networks", *Global Networks*, 13(4), 459-477.
- Power Michael, 1997, *The Audit Society. Rituals of Verification*, Oxford, Oxford University Press.
- Raymond, Mark & Denardis, Laura, 2015, "Multistakeholderism : anatomy of an inchoate global institution", *International Theory* 7 :3, 572-616.
- Richard-Ferroudji, A., 2011, "Limites du modèle délibératif : composer avec différents formats de participation", *Politix*, 24(96) : 161-181.
- Richards, A., Kuper, A. (eds), 1971, *Councils in action*, Cambridge, Mass., Cambridge University Press.
- Silva Castaneda, L. 2012a. *Les dispositifs de certification à l'épreuve des conflits fonciers : le cas de la table ronde sur l'huile de palme durable* (Doctoral dissertation, UCL-Université Catholique de Louvain).
- Silva-Castañeda, Laura 2012b. A forest of evidence : third-party certification and multiple forms of proof – a case study on oil palm plantations in Indonesia. *Agriculture and human values* 29 : 361-370.
- Silva-Castañeda, L. (2015). What Kind of Space ? Multi-stakeholder Initiatives and the Protection of Land Rights. *International Journal of Sociology of Agriculture & Food*, 22(2).
- Thévenot, L., 1984, "Rules and implements : investment in forms", *Social Science Information*, vol. 23, n° 1, pp. 1-45.

- Thévenot, L., 1995, "Des marchés aux normes", in Allaire, G., Boyer, R. (eds.), *La grande transformation de l'agriculture : lectures conventionnalistes et régulationnistes*, Paris, INRA-Economica, pp. 33-51.
- Thévenot, L., 1997, "Un gouvernement par les normes ; pratiques et politiques des formats d'information", in Conein, B. et Thévenot, L. (dir.), *Cognition et information en société*, Paris, Ed. de l'EHESS (Raisons Pratiques 8), pp. 205-241.
- Thévenot, L., 2006, *L'action au pluriel. Sociologie des régimes d'engagement*, Paris, La Découverte.
- Thévenot, L., 2008, "Sacrifices et bénéfices de l'individu dans un espace public libéral", *Cahier d'éthique sociale et politique*, n° 5, pp. 68-79.
- Thévenot, L., 2014, "Voicing concern and difference. From public spaces to common-places", *European Journal of Cultural and Political Sociology*, 1(1) 7-34.
- Thévenot, Laurent, 2015a, "Making commonality in the plural, on the basis of binding engagements", in Dumouchel Paul and Gotoh Reiko (eds.), *Social Bonds as Freedom : Revising the Dichotomy of the Universal and the Particular*, New York, Berghahn, pp. 82-108.
- Thévenot, L., 2015b, "Autorités à l'épreuve de la critique. Jusqu'aux oppressions du 'gouvernement par l'objectif'" in Frère Bruno (sous la dir.) *Le tournant de la théorie critique*, Paris, Desclée de Brouwer, pp. 216-235.
- Thévenot, Laurent, 2015c, "Certifying the world. Power infrastructures and practices in economies of conventional forms", in Aspers, Patrick and Nigel Dodd (eds.), *Re-Imagining Economic Sociology*. Oxford : Oxford University Press, pp. 195-223.
- Thévenot, L., 2019, "A new calculable global world in the making : governing through transnational certification standards", in Mennicken, Andrea & Salais, Robert (eds.), *The New Politics of Numbers : Quantification, Administrative Capacity and Democracy*, Palgrave (forthcoming).
- Thévenot, Laurent, Moody, Michael, Lafaye, Claudette, 2000, "Forms of Valuing Nature : Arguments and Modes of Justification in French and American Environmental Disputes", in Lamont Michèle and Thévenot Laurent (eds.), *Rethinking Comparative Cultural Sociology : Repertoires of Evaluation in France and the United States*, Cambridge, Cambridge University Press, pp. 229-272.
- Valor C. & A. Merino de Diego A., 2009 « Relationship of business and NGOs : an empirical analysis of strategies and mediators of their private relationship », *Business Ethics : A European Review*, 18(2), 110-126.
- Weindling, Paul Julian, 2004, *Nazi Medicine and the Nuremberg Trials : From Medical Warcrimes to Informed Consent*, New York, Palgrave.

## NOTES

1. The description of common goods in italics refers to the plurality of "orders of worth" (Boltanski and Thévenot 1991, 2006).
2. This series of surveys focused on the vulnerable voices exclusion, due to the limited participation and knowledge formats used in the process of developing the standard (Cheyns, 2011, Cheyns and Riisgaard 2014, Ponte and Cheyns 2013) and its implementation (Silva-Castaneda, 2012a, 2012b and 2015). It was followed by an analysis of the modes of action of a chain of NGOs that facilitate the inclusion of "affected persons" within the mechanism (Barbureau, 2010, Cheyns, 2014), as well as their access to the RSPO's complaint mechanisms, with L. Thévenot in 2013 (Thévenot 2019) then with C. Dumont in 2015. We thank the people who

facilitated these latest surveys, including the NGOs Sawit Watch, Walhi, Forest People Programme, and the RSPO Secretariat.

3. The reference to the "multistakeholder" government has been widely used in the Internet field. A more precise analysis has shown that the inequality of weight of the actors differentiated by "stakes" (*state, firm, civil society*) contravened the model (Raymond & Denardis 2015).

4. The legal category of consent, which refers to the fact of deciding in favor of a legal act, convention or contract, is based on the legal category of the autonomy of the will, whose normative foundations and limits we discuss in the first part. It is for that reason that we have retained the notion of "agreement" in the title of this section, which is less clearly specified by this doctrine and broader in its meanings and normative foundations.

5. In 2001, this earned him the Lucy Mair Medal for Applied Anthropology, awarded by the UK Royal Anthropological Institute.

6. As our chapter seeks to show, the political and moral sociology of engagements offers other critical resources that can also help to identify the limits of feminist criticism. These are due to the short-circuit between personal "care" and its public and political recognition. On these limits, see Pattaroni 2005.

7. Li (2015) refers to "infrastructural violence", linked to market concentration (monopoly of concessions for the purchase of regimes).

8. However, the following comparison should not obscure the fact that the two systems are intertwined.

9. The revision of the standard is planned every five years, according to ISEAL principles; it is again in progress in 2018.

10. See the details on this issue provided by the interview with Marcus Colchester published in this volume, particularly the tensions arising from the confrontation between national law and the application of the FPIC principle.

11. This consideration is confirmed in Principle 7.5. (and 7.6.) concerning the establishment of new plantations, where the mention of the FPIC is clarified with the addition of "affected local peoples understand they have the right to say 'no' to operations planned on their lands". Reference is made, via an annex, to ILO Convention 169 (Indigenous and Tribal populations) and the UN Declaration of the Rights of Indigenous Peoples.

12. "6.1 Aspects of plantation and mill management that have social impacts, including replanting, are identified in a participatory way, and plans to mitigate the negative impacts and promote the positive ones are made, implemented and monitored, to demonstrate continual improvement." 6.1.3 specifies that these "plans" will be "documented and timetabled", drawn up "in consultation with the affected parties"; 6.1.4 that they will be revised at least every two years

13. SIRIM QAS international, 2103, "RSPO surveillance assessment report", Sime darby plantation sdn.bhd. rajawali certification unit (sou 32), Bintulu district, Sarawak, Malaysia assessment date : 5th to 9th November 2012.

14. ILO Declaration on Fundamental Principles and Rights at Work, 1998.

15. Conventions 87, 98 and 138.

16. The last two principles are more specific and target new plantations (7. "Responsible development of new plantings" with the addition of 7.8 on greenhouse gases) as well as their continuous improvement (8. "Commitment to continual improvement in key areas of activity").

17. See Part 3 and Marcus Colchester's interview in this volume for more details about the limitations of the audit mechanism, especially concerning this objectively-oriented approach, and how it restricts compliance with and attention to the FPIC.

18. The "Dutch coalition soya" unites NGOs that are members of the Roundtable on Responsible Soy (RTRS), such as the WWF, and outsider NGOs – such as Friends of the Earth, and, during the

initial years, Greenpeace, two NGOs that were not members of the RTRS – for the development of common strategies in the soya industry.

19. Greenpeace Pays-Bas, 2008. United Plantations certified despite gross violation of RSPO Standards. 13 p.

20. M. Colchester & S. Chao (eds), 2013. *Conflict or Consent ? The oil palm sector at a crossroads*. Forest Peoples Programme, Sawit Watch and TUK INDONESIA, 417 p.

21. This report focuses on 16 different conflicts in African countries, Malaysia, and Indonesia.

22. Grassroots & EIA, 2015. *Who watches the watchmen ? Auditors and the breakdown of oversight in the RSPO*, 24 p.

23. The Federal Land Development Authority (FELDA) is a Malaysian government agency which has launched a number of private corporate entities. The largest of these, FELDA Global Ventures Holdings (FGV), is considered to be the world's largest plantation operator, with 811,140 hectares (2,004,400 acres) of oil palms.

24. Malaysian conglomerate founded in 1969 (230 000 ha of plantations in Malaysia and Indonesia).

25. The plan entails that the IOI will report every three months on the progress made under the plan, before undergoing a new independent verification after a year.

26. AIDEnvironment. « Talking Responsibility. Review of IOI Group's majority owned active subsidiaries in Ketapang District » (diaporama).

27. <https://www.greenpeace.org/usa/news/international-ngos-condemn-ioi-groups-plan-divest-conflict-palm-oil-plantation/>

28. By contrast, from the viewpoint of such customs, the death penalty can appear to be an excessive punishment.

29. The first step of the sociology used here was dedicated to “investments in forms” that facilitate the agreement through the device of conventional equivalence forms, and led to the use of anthropological literature on tribal councils for reference (Thévenot 1984). The collective reference work that was read and cited focused on the “Action councils” (Richards & Kuper 1971). The book was co-edited by Audrey Richards and the very same Adam Kuper that Colchester would have to confront 35 years later in London...

30. *Free, Prior and Informed Consent: Guide for RSPO members* (2015), by Marcus Colchester, Sophie Chao, Patrick Anderson and Holly Jonas.

31. See also Richard-Ferroudji 2011 for a more in-depth analysis of this request for intermediaries to visit the site on the ground and its relevance in terms of forms of evidence.