Sustainability of Bioenergy: the contribution of private sector initiated certification
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Highlights

- Private sector based standards and certification systems play an increasing role in promoting sustainability of bio-energy;
- Low market share, weaknesses in standards and certification limit their contribution to sustainability.
- Private sector base certification systems should be strengthened and eventually become part of public regulation.

Abstract

As a result of cooperation between private sector players and non-government organisations, many sustainable commodity standards and associated certification systems have been developed over the last decades. They fill in the gap left by weak public governance in producer countries. Although initially developed for forestry and food with an emphasis on biodiversity, social and human rights issues have been included and the certification systems are becoming increasingly important for promoting sustainable bio-energy. The recognition of several private sector initiated certification schemes under the EU-RED regulation has provided an additional strong stimulus. The question asked in this article is: “To what extent does the application of these standards effectively contribute to the sustainable production of bioenergy?” The question is answered on the basis of research available and illustrated by four short case studies. Three elements of the effectiveness of the application of private sector based sustainability standards are analytically distinguished: market conversion to sustainability standards, the strengths of the standards and the quality of certification. First, it will be concluded that market conversion is low and will remain so for the foreseeable future despite important pressures from consumer and energy markets. Second, it will be shown that many

standards are still weak, especially on those issues that matter most for the sustainability of bio-energy: issues related to land and human rights. Third, strengths and weaknesses of the certification process will be summarised. Also here, certification is weakest in those areas that are central to bio-energy sustainability. As a result, many certificates are being given without clear proof of compliance. Grievance mechanisms have proven to be able to correct faulty certification systems to a certain extent, but at the cost of valuable time. Moreover, certification systems lack the capacity to deal efficiently with all complaints filed by affected communities. Combining the three factors, the conclusion is that certification on the basis of private sector based standards is not very effective yet. However, there are no alternatives available that are more effective today. Present private sector based standards and certification systems should be strengthened and at the same time well-organised public institutions should be developed that eventually can include the standards into legislation and transfer sustainability issues to the public domain where they belong.

1 Introduction

The production of biomass for energy production (both for local use and as an export commodity) has the potential to deliver positive impacts for sustainable development. Under the right conditions, it can contribute to creating better living conditions in biomass producing regions and to fighting climate change by reducing the world's dependence on fossil fuels. However, if biomass developments are not governed and managed appropriately, they will instead threaten food security, degrade ecosystems, accelerate climate change, violate land use rights, and reproduce unequal access to political power without fostering socio-economic development.

Public governance in many biomass production areas is weak. Even if good legislation is present, enforcement is more than often the major bottleneck in countries that produce cane sugar, soy, palm oil, wood and other commodities for global biomass markets. In this situation, private sector based standards and associated certification systems have emerged as a pragmatic alternative. Especially standards and certification systems developed in multi-stakeholder settings, in which industry, trade, environmental and social NGOs participate, have provided a 'private governance' alternative where public institutions lack strength and determination. Major global sustainability standards have been developed for forestry and agriculture. Originally they were mainly linked to timber-related and food supply chains (De Man and Burns, 2006; Nikoloyuk et al., 2010), but have rapidly gained importance for commodities used for bio-energy.

Given that these certification systems have now been implemented for a number of years, the question addressed in this article is: "To what extent does the application of these standards effectively contribute to the sustainable production of bioenergy?"

To answer this question, first give a short overview of the development of private (mainly multi-stakeholder based) sustainability standards for a variety of commodities will be given: the main drivers for developing these standards, the historical development of main standards, the relevance for the sustainability of bio-energy and the main elements of the resulting initiatives and standards, with special attention to the governance of standard setting and certifying organisations.

Then the effectiveness of private sector based standards for sustainable commodities will be discussed, which is composed of three different elements: the conversion rate (the part of the global market that adopts the standard), the strength of the standard (the degree to which the standard

contains binding requirements for issues of high priority) and the quality of certification (the degree to which certification guarantees that the standard has been effectively implemented on the ground). The argument will be supported by four case-studies: industry-NGO alliance for soy production in Brazil, certified ethanol production in Guatemala, FSC certified forestry in Uganda, and RSPO certified oil palm plantations in Indonesia and Malaysia. As there is far longer experience with private sustainability standards in supply chains linked to the food and wood-based industries, evidence in this article is not restricted to commodities for bio-fuel production only.

It will be concluded that there are severe limitations to the effectivity of private standards and certification on all three points: Conversion is limited; not all priority issues are sufficiently being considered; more than often certification cannot guarantee full compliance with the standard. However, it will be argued that there is no immediate alternative to applying these standards and certification systems. They should be seen as the first step only. In a next step, public policy and public institutions will need to play a more important role.

2 The Emergence of Private Sustainable Commodity Standards

2.1 A short history

Today many (partly global) standards for the production and trade of 'sustainable' commodities and products are available that have been formulated by the private sector or by multi-stakeholder organisations, in which the private sector, non-governmental organisations and others cooperate. Generally public institutions do not play a major role in most initiatives for setting such 'sustainability' standards, if they play a role at all. These initiatives provide – or claim to provide – a 'private governance' alternative to more classical public regulation in areas where public institutions lack power or motivation. Examples can be found in two 'families 'of private standards. The first family is primarily linked to ecology and biodiversity in forestry and agriculture and encompasses FSC for forestry and timber, RSPO for palm oil and RTRS for soy. The second family is primarily linked to human rights and social responsibility in different sectors such as the textile industry and mining. Examples are SA8000, BSCI, ETI for the textile industry and a number of mining related standards (De Man, 2013, 2012, 2010).

The development of private governance based sustainability standards started right after the United Nations Conference on Environment and Development (UNCED or 'Rio'). At the UN level, an agreement on the effective protection of the world's remaining natural forests was severely blocked by the conflict between interests of the global North and the global South. As a result, the diplomatic processes for forest protection after 'Rio' – notably the 'Montreal' process - lacked ambition and speed. In this context, NGOs and private sector players looked for a more effective alternative with a higher speed. The result was the development of the Forest Stewardship Council (FSC), which became operational in 1993. The governance model, based on cooperation between private sector players and non-government organisations, was certainly not based on unlimited trust in the blessings of private sector engagement. It was based on a realism and pragmatism. This, at the time, was the only model that could be used to move global forest protection forward. There was no time to wait for the resolution of global North-South conflicts (more detailed information in the work of Cashore: Cashore, 2002; Cashore et al., 2007).

Almost 10 years later, the FSC governance model, with some changes and simplifications, was copied to a number of sustainability initiatives for agricultural commodities, starting with palm oil (RSPO) and soy (RTRS). Again WWF was the driving NGO. WWF, more than other environmental NGOs, was willing to engage in positive partnerships with major private sector players. The Roundtable for Sustainable Palm Oil, for example, was set up in a close cooperation between Unilever and WWF between 2002 and 2003[1]. Other NGOs, such as FoE, kept more distance. As can only be expected, the original focus of these WWF-initiated initiatives, 'Roundtables', was protecting biodiversity and more specifically forest protection: direct forest protection in FSC or indirect through criteria on land-use change in other standards. As these initiatives developed and their governance structure was extended to include social NGOs such as Oxfam, social and human rights issues were increasingly included into the Roundtables' agendas and associated standards. Climate issues became gradually more important, too.

2.2 Roundtables: structure and governance

2.2.1 Four components

25 years after 'Rio', we see a large family of Roundtable-based multi-stakeholder standard-setting and certification initiatives with a converging pattern in the content of the standards, their governance structure and their associated certification schemes. In the meantime, meta-standards for such Roundtables have emerged that are stimulate further convergence, the most important being ISEAL (ISEAL Alliance, 2015).

For analysing the role Roundtables play with respect to sustainability of commodities in general and sustainability of bio-energy in particular, it is important to clear distinguish between four different elements: multi-stakeholder communication, standard setting, certification and accountability. Roundtables may be strong on one element, but weak on others.

1. Multi-stakeholder communication
   Commodity roundtables, such as RSPO, provide important platforms for informal exchange of information between players with widely diverging interests, for example between the palm oil industry, local and international NGOs, commodity traders and investors. They provide early warning signals that can prevent serious conflicts before they become publicly visible. This is a very important role Roundtables play, even if it is their least visible.
2. Standard setting
   Setting standards, based on balancing the inputs of the participating stakeholders, is the centrally important output of Roundtable organisations. Roundtables are certainly more successful in standard setting than many global or multilateral organisations. FSC, RSPO, RTRS and other roundtables have managed to create broadly accepted standards in much less time than most official state-driven or UN-based processes normally require.
3. Certification and Accreditation
   Most multi-stakeholder based commodity roundtables have instituted their own certification system, a system that certifies that the behaviour of a certified player (farmer, trader, retailer, etc.) conforms to the standard set by the roundtable. Usually this is done by 'accredited' certifiers. In that case the Roundtable defines a process for accrediting certifiers.

[1] At the time, the author was responsible for creating RSPO's governance structure on behalf of WWF and private sector partners.

4. Accountability mechanisms
   In addition to the systems of certification, most roundtables have installed a mechanism of bottom-up accountability, such as formal grievance systems. They give those affected by the certified operations the opportunity to file complaints related to non-conformity between standards and reality, including unacceptable behaviour of roundtable members.

Roundtable governance structures reflect the organisation of those four qualitatively different elements. The Roundtable as a platform is usually an association with members from different stakeholder groups, in some cases organised in different chambers or with fixed number of votes for each group of stakeholders. Stakeholders are then both industry (along the entire supply chain: from farmers until retailers), financial players (investors), social and environmental NGOs. In their starting phase, some of the roundtables did not adequately separate their different tasks and responsibilities, with a high risk of conflicts of interests: leading companies in the roundtable structures could then influence the outcomes of certification, for example. An indication that presently the different powers in the roundtable structures (i.e. the legislative, judiciary and executive powers) is the recent withdrawal of RSPO certificates from one of the most powerful players in RSPO, one of the founding members, see Case 4 in this article.

2.2.2 Unequal representation in roundtable governance

Roundtables may have become a pragmatic and more effective alternative to public regulation, but their governance is fundamentally undemocratic. As Ponte points out (Ponte, 2014), [the current situation] "is opening space for competing initiatives that are less democratic, quicker, and more aligned with industry interests ….". Roundtables may claim to be based on 'balanced representation' (see for example ISEAL Credibility Principle 5 on 'Engagement' (ISEAL, 204): "Standard setters engage a balanced and representative group of stakeholders in standards development", including representatives from a variety of private players along the entire supply chain and many different social and environmental NGOs. However, the dominance of global NGOs with their institutionalised cooperation structures with global business and the under-representation of local grassroots interests are often criticised. In her analysis of the role of soy certification in Brazil (See Case 1 in this article), Baletti shows how industry together with large and rich international NGOs cooperate against the interest of the local communities.

CASE 1: DOMINANCE OF GLOBAL PLAYERS
Breaking Grassroot Resistance by Global Stakeholder Coalitions
(based on Baletti, 2014)

Private sector and NGO based standard initiatives and certification systems often imply a devolution of state authority to other players, notably international NGOs. The family of global commodity initiatives described in this article (FSC, RSPO, RTRS and others) have in common that primarily powerful global players are participating: global industry and global NGOs, who also have strong communication links with global organisations such as the World Bank. Leading multi-stakeholder based standard setting and certification initiatives are mainly governed by global players, who represent global rather than regional or local agendas.

Baletti analyses sustainability problems of the Brazilian soy industry in the early 2000s. Large scale expansion of soy production was being planned in the Amazons region. Cargill, the world's leading trader and processor of soy was organising the logistics needed for future soy transport by

constructing a new port in Santarém in 2006 (check). This development created high levels of conflict and resistance, both on the global and on the local/regional level. On the global level, Greenpeace published its report *Eating Up the Amazon*, asserting that multinational companies like Cargill were responsible for large scale forest destruction. On the local and regional level, there was growing resistance against the large-scale agricultural developments mainly related to displacement of smallholder farmers.

The industry answer to the risk of losing their 'licence to operate' was to create alliances with powerful NGOs. Most prominent was the alliance between Cargill and TNC, The Nature Conservancy. Cargill supported TNC financially and together they developed plans for a more sustainable development of soy production in the Amazons. Central elements in their cooperation were the so-called Soy Moratorium and the 'Responsible Soy Partnership'. On a global level, around the same period,the Roundtable on Responsible Soy RTRS was initiated by WWF in cooperation with a number of international private sector players, including Unilever, basically copying the governance model used for the Roundtable on Sustainable Palm Oil RSPO, which was initiated three years earlier.

The basis of the Cargill-TNC cooperation was to accept the unavoidable growth of the soy industry in the Amazons and at the same time to organise measures to minimise deforestation and other negative effects, thereby at the same time contributing to the implementation of Brazil's forest code.

By re-defining the conflicts over Amazonian soy expansion in the terms of the global NGOs and the global private sector companies, the grassroots perspective effectively disappeared. It can be argued that international NGOs gave legitimacy to the actions of the global soy industry in a way that they could simply deny the worries expressed at the grassroots level.

Baletti concludes: "… in the Responsible Soy program, grassroots actors were literally eliminated as stakeholders, and in the Moratorium they were effectively eliminated. In both cases, by locating the effective site of politics at the transnational scale, the possibility of a 'solution' emerging from below was also effectively eliminated, rendering grassroots actors marginal or even irrelevant to the process …".

Baletti's work demonstrates very well that 'multi-stakeholder' alliances and 'multi-stakeholder based' standard setting and certification systems are biased with respect to the stakes represented: "To be a stakeholder … implies agreement on a very particular set of stakes."

2.3 Sustainability Standards for Bio-energy

Private sector initiated standards play an important role in defining and certifying sustainability of raw materials used for generating bio-energy. One the one hand, some single-commodity standards are important, notably the RSPO standard for palm oil, the RTRS standard for soy (both used to produce bio-diesel) and the Bonsucro standard for cane sugar (used to produce ethanol). On the other hand, a number of multi-commodity standards have been developed for bio-fuels from different sources, the most relevant being RSB (Roundtable on Sustainable Biomass) and ISCC. Another family of standards relevant to bio-energy production are finance-related standards that assess the sustainability of investments. Most financial standards for sustainability (such as Principles

for Responsible Investments, Equator Principles and UNEP Finance Initiative) today are still weak (see De Man, 2010: 6 and Annex 1), highly general and not linked to any robust verification mechanism. One financial standard, however, plays an important role in bio-energy investments in developing countries in which the International Finance Corporation IFC, the private sector arm of the World Bank, participates.

TABLE 1: SELECTED SUSTAINABILITY STANDARDS RELEVANT FOR BIO-ENERGY

	Start	Biodiversity	Use Rights	Indigenous People	Food Security	Climate	Accepted by EU RED?
Forest Stewardship Council	1992	P6 on Environmental Impact	P2 on Tenure and Use Rights	P3 on Indigenous People	NO	yes	no
Roundtable on Sustainable Palm Oil RSPO	2004	P5	C2.2	C2.1	only C7.1 (on EIA)	RSPO-RED 2.1 on GHG	RSPO-RED
Rountable on Responsible Soy RTRS	2006	P4	P1.2 on legal use rights P3.2 on trad. land users	P3 on resp. community relations	NO	RTRS-EU-RED VII-1 on GHG emissions	RTRS EU-RED
Bonsucro	2006	P4 on biodiversity & ecosystem services	C1.2 on title to land	C5.8 on stakeholder engagement. Also through Intern. Conventions	NO	Section 6: Additional mandatory requirement under EU RED	Bonsucro EU
Roundtable on Sustainable Biomass	2008	P7 on conservation	P12 on Land Rights	C2b on FPIC P5 on Rural and Social Development	P6 on local food security	P3 on Greenhouse Gas Emissions	yes
ISCC	2010	P1 on biodiversity and carbon stock	P4 on human rights, labour rights, land rights C5.1 on land use and traditional rights (major must)	not explicitly addressed	C4.22 on food security	P1 on biodiversity and carbon stock	yes
IFC Performance Standards	2006 (currently 2012)	PS6 on Biodiversity and Natural Resources	PS5 on Land Acquisition and Involuntary Resettlement	PS7 on Indigenous People	not separately addressed	PS1, PS3	not applicable

partly based on De Man, 2012; A more detailed comparison of a larger number of EU approved schemes can be found in German and Schoneveld, 2012: table 2.

Apart from biodiversity and climate related issues, human rights issues are highly relevant when addressing the sustainability of bioenergy production, especially land use rights, the rights of indigenous people and food security. In Table 1, four single-commodity standards (FSC, RSPO, RTRS, Bonsucro), two multi-commodity standards (RSB, ISCC) and the IFC Performance Standards have been listed. All standards contain principles and criteria for biodiversity and climate change. All standards do address land use rights in some way or another and most standards separately address the rights of indigenous people. Food security – a centrally important issue for bio-energy production – is being explicitly addressed only by the multi-commodity standards RSB and ISCC. RSB seems to set

the highest standard here: not only should bio-energy projects avoid negative impacts on food security, their effects should be positive.

2.3.1 RED-recognition and the emergence of hybrid governance

Although the relevant standards are the result of private sector and NGO initiatives, they are increasingly playing a role in the public domain. The main cause is linked to the Renewables Directive 2009/28/EC which mandates levels of renewable energy use. To be counted as a legitimate contribution, there are a number of requirements on greenhouse gas savings, carbon stock and biodiversity, see table 2. There are several paths to compliance, including certification on the basis of so-called voluntary schemes recognised by the EU. As indicated in table 1, most of the voluntary schemes listed there have been recognised, at least the versions that explicitly include the EU requirements, such as RSPO-RED or Bonsucro-EU. There are many more schemes recognised by the EU, see table 2. Private sector initiated standards and certification schemes have thus become instruments in public regulation and criteria developed in the public law is becoming incorporated into private sector schemes.

TABLE 2: EU-RED Requirements and Paths to Compliance

	TARGET (2020) translated into individual country targets	The directive requires that 20 percent of the energy consumed within the European Union is renewable.
	CRITERIA FOR SUSTAINABILITY	
1	Greenhouse Savings	Biofuels must achieve greenhouse gas savings of at least 35% in comparison to fossil fuels. This savings requirement rises to 50% in 2017. In 2018, it rises again to 60% but only for new production plants. All life cycle emissions are taken into account when calculating greenhouse gas savings. This includes emissions from cultivation, processing, and transport.
2	Carbon Stock	Biofuels cannot be grown in areas converted from land with previously high carbon stock such as wetlands or forests.
3	Biodiversity	Biofuels cannot be produced from raw materials obtained from land with high biodiversity such as primary forests or highly biodiverse grasslands
	PATHS TO COMPLIANCE	
1	national authority	providing data to national authority
2	voluntary scheme	using a recognised 'voluntary scheme'
3	recognised agreement	bilateral or multilateral agreement recognised by the Commission
	19 RECOGNISED VOLUNTARY SCHEMES (2016)	ISCC, Bonsucro, RTRS, RSB, 2BSvs, RBSA, Greenenergy, Ensus, Red Tractor, SQC, Red Cert, NTA 8080, RSPO, Biograce, HVO renewable diesel, Gafta Trade Ass., KZR INIG, Trade Ass. Sch. for Combinable Crops, Universal Feed Ass. Sch. See https://ec.europa.eu/energy/node/74

For being acceptable to EU-RED, the EU benchmarks the schemes to their own sustainability criteria, which uniquely focus on carbon and biodiversity. Human rights related criteria are conspicuous by

their absence. As a result, under the EU scheme, those schemes that lack even a rudimentary check of land-use and other human rights issues have become acceptable and can be chosen by producers that aim for minimising costs and complexity.

Especially in the domain of bio-fuels, new 'hybrid' models of governance are developing, in which "we are witnessing the birth of new hybrid governance forms where public and private come together in complex configurations that include civil society, business and a plethora of non-traditional actors" (Ponte and Daugbjerg, 2014: 96; see also De Man and Burns, 2006; De Man, 2013; Nikoloyuk et al., 2010 and the earlier work by Cashore et al. on 'private governance': Cashore, 2002; Cashore et al., 2007).

3 The Effectiveness of Private Sustainable Commodity Standards

3.1 Standard Effectivity: three components

One might conclude that both by pressure from citizens and consumer markets and by pressure from public (EU) policy, pressure in the direction of sustainability is increasing. Whether that is really the case not only depends on the quality of the standards, but also on many other factors when implementing the standards and certifying against these standards.

The effectivity of applying sustainability standards to commodities can be logically split into three components. The first component is the market share for a certain commodity (such as sugar or palm oil) that is being produced according to a sustainability standard. There may be high standards around, but if only niche markets use that standard, the overall contribution to sustainability can be neglected. The second component is the strength of the standard, both the width (are all relevant issues being covered?) and the height (how high does the standard set the level of performance?) of the standard. Standards that do not include the real issues or do not set performance requirements high enough will not contribute much to sustainability. Last but not least, the third component reflects the degree to which the standard as formulated on paper is really enforced on the ground. As the instrument to ensure enforcement is generally certification, the third component is the quality of certification, the decisive link between requirements and real performance.

3.2 Market Conversion

Since the introduction of the FSC standard and certification system in 1993, markets for certified raw materials such as timber, palm oil, soy and sugar have been developing steadily, initially in markets for forestry-related consumer products and food, more recently for bio-energy as well, mainly under the influence of the EU RED directive. The application of private sector based sustainability standards in not a success story. Only relatively small parts of global commodity markets have been converted to 'sustainable commodities' on the basis of private sector based standards. The majority of (agricultural) commodity markets remain uncertified, without any guarantee on their sustainability. Forest certification, although being the first bulk commodity for which sustainability standards became available in the early 1990s, has not managed to certify more than xxx % of yyy. This figure is the combination a number of independent certification systems including FSC, PEFC and ….. . RSPO certified palm oil appears to do much better. Only x years after formulation of the standard, xx % of global palm oil area/production ??? has been certified. The bad news, however, is

that a large portion of the palm oil from 'sustainable' plantations is not being sold as 'sustainable palm oil'. The certified production capacity is larger than the demand for sustainable palm oil. Recognition of certification schemes by EU RED may have a positive impact on conversion rates in the near future. Nevertheless, it remains highly unlikely that any global commodity will reach a higher conversion rate than 25% (De Man, 2013: 43). Markets explicitly demanding certified commodities are very much limited to critical consumer markets (markets for food in Europe, and North America) and markets where public authorities require so (such as bio-energy markets in the EU).

3.3 Standard Strength

Whether applying sustainability standards to bio-fuel production really contributes to sustainability, evidently depends on the strength of the standard. As mentioned above, its contribution can only be effective if it covers the right issues. Originally many sustainability standards (especially those developed by WWF and partners) had a strong emphasis on biodiversity. Gradually more social and human rights issues were included in them as more social NGOs became part of the standard setting organisations' governance structures. In the context of bio-energy sustainability, a number of rights-related issues are particularly important, especially land-related formal and informal rights, food security and the rights of indigenous people, as has been discussed above with respect to table 1 Basically all schemes of importance have included principles and criteria that formulate requirements for these issues. As German and Schoneveld (2012) have shown, there are considerable differences with respect to the depth and completeness the different schemes deal with labour rights, land and resource rights, food security and livelihood impacts. Labour rights are being covered more or less adequately by most schemes, but land rights and food security are only superficially covered, if at all, by most schemes. On most issues, RSB looks like the most serious scheme, whereas schemes like ISCC (ISCC, 2015, see also Tomei, 2015) are particularly weak on land rights and food security.

CASE 2: A WEAK STANDARD
ISCC Certified Ethanol from Guatemala: rubber stamping unacceptable practice
(based on Tomei, 2015)

Biofuels produced in the global South exported to the EU are linked to a number of serious sustainability issues. A good example is ethanol production in Guatemala all of which is exported, mainly to EU markets. For being eligible for the EU RED scheme, the Guatemala ethanol producers opted for using the EU approved ISCC system, most probably because the industry saw the ISCC more practical and easier to implement than alternative certification schemes such as RSB.

Biofuel development in Guatemala is connected to serious issues for the local people concerned, notably land access, food security, trade unions and law enforcement.

With respect to land access, ISCC's principles 4 and 5 matter most. Principle 4: "biomass production shall not violate human rights or land rights". Criterion 5.1: "the producer can prove that the land is used legitimately and that traditional land rights have been secured". Although ethanol producers did not have any problem to get the ISCC certificate for their production, research shows that there are huge land-use problems still present and that there is no reason to believe that traditional land rights have been secured. Sugar cane plantations have factually deprived people from land and

income: “This loss of land access has resulted in a reduced ability to maintain adequate livelihoods, with the result that farmers and their families were increasingly dependent on monetary income. This often meant seeking employment on the very sugarcane estates that they felt had deprived them of land.” (Tomei, 2015). Negative effect on food-security did not prevent ISCC from granting the certificate, based on the false argument that biofuel was not produced from staple food crops. Food security, however, was negatively affected by depriving people from their land. It would have been difficult for the industry to apply for the RSB certificate instead.

Freedom to join labour organisations and to perform collective bargaining is part of the ISCC criteria. Daily reality in Guatemala, one of the most dangerous places in the world to be a unionist, makes such freedom illusionary. Nevertheless, ISCC did grant the producers their certificate on the basis of the fact that Guatemala is signatory to the relevant ILO conventions, which formally grant workers the freedom to join labour organisations. Tomei concludes: “Rather than providing a benchmark to which biofuel producers should conform, the ISCC’s sustainability certification effectively rubber stamped questionable labour practices”.

ISCC’s Principle 6 covers compliance with national and international law. It “requires that biomass production takes place in compliance with all applicable regional and national laws and shall follow international treaties”. It is not difficult to discover that there is no shortage of laws in Guatemala and that the country is party to many relevant treaties, but that implementation is very weak if laws are being enforced at all.

On the basis of a detailed analysis, Tomei convincingly shows that the ISCC certificates have been granted although there was no effective compliance of the Guatamala biofuel industry to any of the ISCC criteria that matter most to local communities and workers affected. ISCC certification effectively rubber stamped questionable practices with respect to all major issues including land-use, food security and labour rights.

This case shows that although the important issues were being addressed on paper in the ISCC Principles and Criteria, they were not taken seriously during the certification process at all.

(Tomei, 2015)

3.4 Quality of Certification

3.4.1 The Quality of Evidence

The best sustainability standard will not contribute much to sustainability if it is not well implemented. In the end, good implementation of a moderate standard can contribute more to sustainability than bad implementation of the best possible standard. As certification is the dominant tool by which implementation of standards is motivated and eventually verified, we focus on the quality of certification. What does it mean when cane sugar for ethanol production has the Bonsucro EU certificate? What does it mean when palm oil for biodiesel is RSPO-RED certified? It means that the producers have managed to acquire a certificate for their production on the basis of evidence that the they have complied with the production standard. Whether this is really the case, depends on the quality of the evidence and the quality of using this evidence.

All certification systems rely on a certain combination of self-audits, external audits, action plans and final certification. Audits are based on regular inspections and random checks to gather information on compliance or non-compliance with the standards. For reliably doing their work, certifiers need sufficient skills, sufficient time, independence and freedom to do a good job. As a rule, certification systems use an accreditation system by which certifiers are given their licence as a certifier and by which they can lose this licence as well. Of course, there is no guarantee that all cases of non-compliance will be discovered during certification, but the better the certification and accreditation system, the more likely it becomes.

3.4.2 The Limits of Certification

Certification is based on measuring compliance by checking the behaviour of an economic subject (or the outcomes of that behaviour) on the basis of a list of criteria (the standard). The farmer can be checked whether he only uses officially allowed chemicals or a production company can be checked whether it pays a living wage and respects labour rights, for example. In many cases, checking compliance is pretty straightforward.

Unfortunately, more than often sustainable commodity standards contain criteria for checking outcomes that are the result of the behaviour of more than on subject or that is dependent on cooperation between them. For checking collective responsibility, certification is not an appropriate tool. Certification without a clear subject to check is difficult and leads to confusion. This is exactly what happens with regard to criteria on a number of human rights and land related issues. Certification systems contain criteria on respecting formal and informal land rights, refraining from developing agriculture in high conservation areas, securing living wages, etc. Complying with such criteria is not easy for private sector companies, as they are dependent on well-functioning public institutions and legal systems that clearly define and register land rights, forestry planning or wage systems. These certification systems hold private sector companies responsible for things they certainly can influence but can seldom control on their own. The obvious reason that these criteria have become part of private sector based certification systems is the absence of strong public governance. However, to comply with such criteria actually requires stronger public institutions than are present today. In terms of the distinctions made by John Ruggie of the Human Rights Council, securing human rights is the duty of the State, whereas it is the private sector's responsibility to respect these rights. Private sector responsibility is complementary to the duty of the State, but cannot entirely replace it. (Ruggie, 2008; see also De Man, 2012)

CASE 3: LIMITS TO CERTIFICATION

Certifying what cannot be certified: use rights in Uganda

(based on De Man, 2012: 15-19, updated)

This case on establishing FSC certified plantation forestry (not specifically for producing biomass) in Uganda actually shows the limits of certification when it comes to certifying compliance with right-related criteria. It also shows the complexity, not only when different interests (NGOs, industry, local communities) play a role but also different standards, in this case FSC and the IFC performance standards.

The UK based New Forest Company (NFC) had acquired a 50-year licence to grow eucalyptus and pine in three different districts of Uganda and was acquiring finance from different sources to start their operations in the early 2000s. Finance was made available by HSBC, the Agri-Vie Agribusiness

Fund and the European Investment Bank. The International Finance Corporation (IFC) made an equity investment in the Agri-Vie Fund. Under pressure of one of the investors, HSBC, early application for FSC certification was made. Because of the IFC investment in the Agri-Vie Fund, apart from the FSC standard, IFC performance standards would equally apply.

FSC certificates were granted in 2009. Although the certifier SGS saw the sensitive nature of some of the land related issues, there was no reason to withhold the certificate. The issues were mainly framed in terms of 'encroachment' into state-owned forest land.

When in 2011 Oxfam wrote a critical report on "land grabs" with the NFC Uganda case as one of the important cases, the FSC standard provided the main arguments for criticising the NFC business development. Oxfam argued that this development was in strong violation of FSC's principles and criteria and that SGS had come to completely wrong conclusions. According to Oxfam, there was no question of 'encroachers' occupying state-owned forest land, but of the Ugandan state giving out forest licences in areas that were occupied by their traditional population. The conflict about 'encroachment' versus 'legitimate use-rights' developed.

Oxfam fundamentally questioned the quality of the FSC certification carried out by SGS. FSC reacted: "FSC takes the findings of the Oxfam report very seriously and is committed to ensuring that Principle 2 requiring demonstrated land tenure and use rights, as well as other relevant principles and criteria, are upheld. FSC has filed an official complaint with SGS Qualifor in order to ensure that any contradictions with FSC's Principles and Criteria are investigated with the utmost rigor." SGS, in their reaction, did not see any reason to change their conclusions and accused Oxfam to "sensationalise" the land grab issue. FSC reacted by referring the case to their accreditation body ASI, but did not withdraw the certificate.

At that time, IFC, as an investor into the Agri-Vie Fund came into the picture. IFC said to take Oxfam's findings very seriously and undertook their own (confidential) investigations. The issues were related to IFC performance standard 5 on compensation of displaced communities and persons. Compensation was required by IFC, but forbidden by the Uganda government. Two Ugandan communities then filed a formal complaint to IFC which was found eligible for further assessment in 2012. As a result, the IFC compliance advisor and ombudsman (CAO) started a mediation process to find a collaborative solution to the problems. FSC decided to await the outcomes of the IFC/CAO procedure. Because of a lack of capital, NFC had to suspend new plantings and accused Oxfam to have caused the loss of valuable investments and to have contributed to poverty: "we are very sad to have to suspend planting and lay off workers, forcing people back into poverty."

Eventually, the CAO mediation attempts were successful and cooperation between all parties, including the affected communities, NFC and Oxfam was established. Recently Oxfam wrote:

"Oxfam welcomes that both the Mubende and Kiboga communities were able to reach agreements with NFC through mediation. Oxfam supported the communities in the mediation process as an advisor because we felt that it offered the best opportunity for the communities to achieve redress As part of the agreement reached with the Kiboga community, NFC will contribute funds into a community-run cooperative that has been set-up by the affected community. NFC will also implement development projects to benefit the Kiboga community." (See Oxfam, 2014)

This case clearly shows that often reality becomes visible and solutions become apparent only long after certification. It is difficult to say whether SGS could easily have done better during certification. NFC, SGS and the NGOs were working in a difficult and confusing environment in which the final truth about use rights was difficult or almost impossible to establish. Without a working legal system and without properly functioning public institutions, certifying land rights is virtually impossible. The access to a well-organised grievance mechanism (here provided by IFC-CAO) eventually provided a solution, more than four years after FSC certification.

Examples of real difficulties of implementing and certifying criteria for access to land can be found in many case-studies (an excellent example is Case 3 in this article). Companies are required to respect informal land rights in countries where nobody knows what the informal rights of different community groups are and where governments are linked to the interests of particular communities. In the Uganda case (Case 3), NGOs talked about 'traditional rights' whereas the government, company representatives and certifiers framed the issue as 'illegal encroachment'. On the basis of a limited number of visits and interviews, even the best certifier will have problems to find the truth, if that is possible at all. Certificates become thus based on information that is very difficult or even impossible to check. Certification then tends to include tasks that go far beyond what certification systems can reasonably manage.

3.4.3 The importance of grievance mechanisms

Taking into account the often highly complex situations with respect to formal and informal rights and, in many cases, the absence of any reliable documentation of them, it is not surprising that certifiers often initially assume compliance with rights related requirements that in a later stage will be contested (for details see De Man, 2012). Many examples can be found in the area of forest (FSC), oil palm (RSPO) and soy (RTRS) certification where the certificate was contested, not during the certification process, but generally after the certificate was granted. Affected communities, more than often assisted by local or international NGOs, file their complaints using the grievance mechanisms of private certification systems like RSPO or FSC or the mechanisms provided by a financial institution such as IFC. The grievance mechanisms can result in processes that eventually lead to withdrawal of the certificate even if that may easily take years. Why is non-compliance with such rights-related requirements becoming a topic after certification and not during the certification process? A plausible explanation is that it is generally risky for local communities to raise their voice against powerful economic interests before and during certification, but certification provides them with the means and power to question the projects through the grievance mechanisms the certification systems provide. Good examples are how FSC-certification strengthened local communities in Uganda (Case 3). RSPO-certification did the same in Indonesia. Another example is how IFC-finance gave communities access to the World Bank/IFC complaint system run by the CAO compliance office (see Case 4 and De Man, 2012). Although certification, in such cases, has not managed to prevent non-compliance with important rights-related requirements, it helps, through its grievance system, to address non-compliance issues at a later stage. Fortin and Richardson confirm findings of the author's earlier research (De Man, 2012): "… the real value of these roundtable certification schemes might lie less in their ability to enforce standards than their … role in enabling scrutiny, providing new possibilities for corporate accountability in transnational commodity chains" (Fortin and Richardson, 2013: 141)

However, there are two serious problems with this indirect path to compliance through accountability. First, grievance procedures may take years until they result in outcomes from which the affected communities can benefit. Second, private sector based certification systems such as RSPO only have a very limited capacity for processing grievance cases. And again, as during the certification process, the lack of good documentation on formal and informal rights can frustrate the process. In other words, the private sector based grievance mechanisms can play a role in securing certain rights, but they do not have the authority, the knowledge base and the capacity to effectively fill in the gap in public governance.

CASE 4:
Grievance does matter: how a leading palm oil producer loses its licence to operate
(based on De Man, 2012: p. 12-14, updated)

From the early days of RSPO palm oil certification, there have been complaints about cases of non-compliance. Many complaints have been filed to either the RSPO grievance system or, in case of IFC finance involved, to IFC's compliance department CAO. In most cases, the pattern looks similar. Certificates are issued to the plantation owner and only after that complaints about non-compliance arrive at the grievance department. In case of Wilmar's plantations financed by IFC, the main complaints referred to violating land rights and human rights. IFC's investments into Wilmar provoked three complaints that were found eligible by CAO and that led to several mediation attempts and compliance investigations (see CAO, 2009 and CAO, 2016).

In the case of IOI, the RSPO grievance procedure played a central role. IOI, a leading palm oil company and one of the founding members of RSPO, has been subject to fierce criticism several times. In 2010, two NGOs, the international NGO *Friends of the Earth* and the NGO *Grassroots* published reports that accused IOI to have breached several RSPO rules. The *Grassroots* report referred to IOI Pelita's operations in Sarawak (Malaysia). Apart from violating several criteria of the RSPO standard (unauthorised development of plantations, encroaching on peat land, lack of Environmental Impact Assessment, etc.), IOI had allegedly acted against RSPO's Code of Conduct (on transparent engagement with interested parties) and RSPO Certification System Requirements (on non-certified holdings)

In 2011, a number of NGOs, including Friends of the Earth and a number of Indonesian NGOs filed their grievance against IOI. The main argument stressed evident non-compliances with several requirements of RSPO's Certification System. The Grievance panel accepted the grievance case and stressed IOI's lack of open communication with interested parties: "Members will commit open and transparent engagement with interested parties, and actively seek resolution of conflict." As a consequence, RSPO decided to suspend all ongoing certification awaiting the resolution of the case. RSPO did not revoke existing certificates yet.

IOI did not accept RSPO's analysis or conclusions and argued that they were working on finding solutions. They did not agree on suspending the ongoing certification: "The said suspension was predicated upon complaints made against IOI, which have yet to be verified or proven". After taking some time to study IOI's proposals, and after very critical comments by the NGOs, RSPO decided to keep the certifications on hold and make them dependent on a mediation process between local communities in Sarawak an IOI. The mediation process did not develop satisfactorily. Between 2011 and 2016, the grievance case did not result in any positive outcome.

In the meantime, similar problems developed at IOI's plantation in Ketapang (Kalimantan, Malaysia). The case here was filed by the NGO Aidenvironment in 2015, which accused IOI to violate against RSPO Principles and Criteria as well as RSPO Procedures, including clearing land without permission, giving fraudulent statements, operating without concession, etc. The Ketapang case did not take years such as the Sarawak case, but resulted in rapid recognition of the case by RSPO and not much later (March 2016) to suspending IOI as a member of RSPO and thereby losing all its certificates. IOI is no longer allowed to sell palm oil as CSPO – certified sustainable palm oil.

The IOI case shows that solving compliance issues through grievance mechanisms may sometimes take years (Sarawak), but can be very rapid in other cases (Ketapang). The speed of the Ketapang case may have been caused by the negative history in Sarawak. The case also shows that sustainability standards setting and certification systems are gradually learning to separate their legislative, executive and judiciary powers: powerful members, even founding members, have to obey the rules. If they don't, their membership can be suspended. That is good news for roundtable governance.

3.5 Summarising: the Effectiveness of Private Sector Sustainability Standards

Do private sector based standards contribute to sustainability of commodities from agriculture and forestry in general and the sustainability of raw materials for bio-energy in particular? On the basis of assessing the three components, the answer is that their present contribution is at best rather limited: First, market conversion, despite pressure from selected consumer markets and from public policy, is not likely to surpass the limit of 25% for any major commodity in the foreseeable future. Second, most standards, including those accepted under the EU RED scheme, probably with the exception of RSB, are still weak if not very weak on land-use related and food security human rights issues. Moreover, the issues addressed and not addressed reflect the governance structure of the schemes that tend to favour global players, both NGOs and industry, and neglect grassroots interests. Third, unfortunately certification appears to be the most difficult on those criteria that matter most: rights related issues that require effective public institutions and that cannot be left to private sector initiatives alone. As a result, a certification system often cannot guarantee compliance on the basis of its procedures and the information accessible. Fourth, although grievance mechanisms of the private sector based certification schemes certainly contain elements that enable corrective action when discovering non-compliance after certification, these mechanisms not only take years, but the schemes lack the capacity required to deal with all relevant non-compliance issues that come up.

4 Conclusions: The Way Forward

At present, many private sector based, so-called 'voluntary', schemes for certifying 'sustainable' commodities and 'sustainable' bio-energy' play a role. No doubt, they do contribute to improvements, but, as has been argued in this article, there are still many factors that limit their effectiveness. It would be wrong to dismiss the use of private schemes for that reason, so long as public policies in producing countries lack the power and the motivation to demand a higher level of

sustainability. It should be recognised that, apart from the weaknesses addressed in this article, the schemes show one important strength: they have been able to formulate sustainability criteria supported by a wide array of stakeholders in much shorter time than public institutions have ever managed to do. However, if this was the end of the development, the situation would look very bleak. It should be seen as the beginning of a development in which the priority now is to strengthen public policy and public institutions that will gradually not only implement the criteria developed by the private sector and NGOs but develop them further. The coming journey will include a strengthening of the standards, especially on rights-related issues, including more and other stakeholders into the process and transferring tasks from private certification towards public institutions.

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