

# **RSPO DISPUTE SETTLEMENT FACILITY (DSF)**

## **OPERATIONAL GUIDELINES**

**Draft v1: 1 October 2018**

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## **RSPO Dispute Settlement Facility: Operational Guidelines** **DRAFT v1: 1 October 2018**

### **1 DSFs MANDATE AND TERMS OF REFERENCE**

DSFs Framework, Principles and Terms of Reference, approved by the RSPO Board of Governors on xxxxxxxx 2019, constitute the foundation of the DSF and framework for these DSF Operational Guidelines. They complement the Complaints and Appeals Procedures (CAP) endorsed by the Board of Governors on 14 June 2017.

### **2 RSPO COMPLAINTS MECHANISM**

The Roundtable on Sustainable Palm Oil (RSPO) is founded on a set of environment and social criteria with which companies must comply in order to achieve RSPO Certification<sup>1</sup>. The goal is to minimise the negative impacts of palm oil cultivation on the environment and communities residing in the cultivation region.

In formulating a complaints mechanism, the RSPO acknowledges that the concerns and complaints of people affected by the activities of RSPO members should be addressed in a manner that is fair, objective and constructive.

The RSPO **Complaints System** is a recourse and accountability mechanism which provides a framework to address complaints against any RSPO member whose activities are alleged to contravene the RSPO Key Documents, and where efforts to find a solution have not succeeded. Complaints turn on allegations of negative social or environmental impacts, including those relating to human rights<sup>2</sup>.

The Complaints System comprises two distinct yet complementary arms:

- The **Complaints Panel (CP)** investigates whether an RSPO member is in breach of the RSPO Principles & Criteria (P&C) and determines if any action is to be taken to remedy the breach to bring the member back into compliance. The Panel operates under the Complaints and Appeals Procedures (CAP) endorsed by the RSPO Board of Governors in June 2017
- The **Dispute Settlement Facility (DSF)**. At the request of the parties, the DSF will facilitate a collaborative process seeking long-term and mutually agreeable solutions among the complainants, the RSPO member and any other stakeholders identified by the parties<sup>3</sup>. The outcome may relieve the member of the burden of Complaints Panel sanctions by remedying the alleged breach.

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<sup>1</sup> RSPO Principles and Criteria 2013 under review in 2018

<sup>2</sup> Id Criterion 2.1 The RSPO and its members recognize, support and commit to follow the United Nations Universal Declaration of Human Rights [<http://www.un.org/en/documents/udhr>] and the International Labour Organization's Declaration on Fundamental Principles and Rights at Work [<http://www.ilo.org/declaration/lang--en/index.htm>].

<sup>3</sup> In a DSF process 'the parties' refers to the complainant(s) and the RSPO member against which the complaint has been lodged.

Parties also have the option to try and resolve the issues directly, without any third party assistance, through **Bilateral Engagement**. They must report on the outcome to the RSPO Complaints Desk within one calendar month. If they are not successful they can ask for assistance through DSF Mediation or the Complaint will be handled by the Complaints Panel.

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## **LODGING a COMPLAINT with the RSPO**

### **Grounds for a complaint**

People who believe that an RSPO member is, or is likely to be, in breach of one or more of the provisions of the RSPO Principles & Criteria for Sustainable Oil Production or any of the RSPO Key Documents<sup>4</sup> may lodge a complaint with the RSPO Complaints Desk.

### **Lodging a complaint with the RSPO Complaints Desk**

*(Acknowledgement within 5 working days – one week)*

Complaints must be submitted to the RSPO Complaints Desk in writing and can be presented in any language. The Complaints Desk will make every effort to respond in the language of the complaint.

The Complaints Desk will not accept anonymous complaints but will respect a complainant's request for confidentiality. Supporting materials can be included on a confidential basis and, where the complainant has requested, will not be released without the complainant's express consent.

An Acknowledgement of receipt of the complaint shall be sent within five working days.

The process for handing the complaint will be explained to the complainants by the Complaints Desk. The Complaints Desk will usually inform the RSPO member, RSPO staff and Complaints Panel about the substance of the complaint. It is the responsibility of the complainant to inform the Complaints Desk from the outset if there is any matter, correspondence or information that the complainants do not wish to be disclosed.

### **Initial Diagnosis of a complaint by the Complaints Desk**

*(Acceptance or Rejection within 30 working days – six weeks)*

The Complaints Desk will determine whether the allegations of a breach or potential breach, if found to be true, would constitute a breach of one or more provisions of the RSPO Principles & Criteria or other RSPO Key Documents.

The complainant and the RSPO member will be notified of Acceptance of the complaint or rejection.

The RSPO member will be asked to respond to the allegations within 14 working days (3 weeks).

Acceptance of a Complaint is procedural only and not a determination of its merits or substance.

### **Parties decide how to proceed with the Complaint**

The **Complaints Desk** will engage directly with the parties to explain the options available within the RSPO Complaints System to address the complaint. The parties will then decide whether they want to seek a practical solution through a collaborative DSF Mediation process, or have the issues

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<sup>4</sup> RSPO Documents are listed in the RSPO Complaints and Appeals Procedures 2017 Clause 4.2

investigated by the Complaints Panel alone. Parties may decide to try resolving the issues themselves through **Bilateral Engagement**<sup>5</sup>.

The **RSPO Complaints Panel** will be informed of the parties' decision as to how they would like to address the complaint. If the parties decide to try DSF Mediation, the Complaints Panel may adjourn while they await the outcome of DSF Mediation or Bilateral Engagement. If there is no agreement between the parties to undertake DSF Mediation or Bilateral Engagement, the Complaints Panel will proceed with their investigation.

Within two calendar months of Acknowledgement, DSF will publish a Report on their webpage within the RSPO website which summarises the complaint and confirms the decision of the parties as to how they have agreed to proceed.

If parties decide to try and address the issues through **DSF Mediation**, DSF will immediately initiate a process designed expressly to address the issues raised in the complaint.

If parties prefer to try and resolve the complaint through **Bilateral Engagement**, they must report the outcome to the Complaints Desk within one calendar month. If their attempts to resolve the complaint are not successful within this period, they may request DSF Mediation.

Depending on the nature and complexity of the complaint, a decision to proceed with either Bilateral Engagement or DSF Mediation may adjourn, but will not preclude, the Complaints Panel from proceeding with an investigation if they so decide.

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<sup>5</sup> Bilateral Engagement entails parties trying to negotiate agreement directly, without any third party facilitation or RSPO Observer, using the resources of the company's own grievance mechanism. The outcome will be reported to the Senior Grievance Manager of the Complaints Desk within one calendar month of their decision to try BE being posted on the Case Register. Any settlement will be shared immediately with the Complaints Panel who will determine whether the alleged breach has been remedied. If the parties are unable to resolve the complaint within this fixed time frame, they may request dispute resolution, facilitated by the DSF.

## 4 THE DISPUTE SETTLEMENT FACILITY

### What is DSF Mediation?

The objective of DSF Mediation is to provide parties the opportunity of reaching a mutually satisfactory solution to the issues between them in a non-judicial, non-adversarial and neutral forum.

DSF recognises that local communities typically live with the impacts and benefits of a palm oil project and are likely to have a longterm relationship with the RSPO member. As such, DSF will seek to work directly with the affected community and the RSPO member, while engaging with key stakeholders as considered appropriate in the complaint, local or national context.

DSF Mediation is founded on three pillars:

i) Participation is **voluntary**

DSF respects the self-determination of the parties. Engaging in a DSF process requires the full agreement of the parties. They may withdraw at any time if they feel that they are not making progress. Parties will decide the outcome of the process and will make an informed decision before signing any agreement.

ii) The Process is **confidential**

Confidentiality lies at the heart of DSF Mediation. DSF will respect either party's request for confidentiality. DSF will not disclose information shared in confidence in the Mediation or in any other forum including public reports without the consent of the parties. DSF will keep confidential any information or discussions held with individual parties unless that party gives express permission to disclose.

iii) DSF Mediation is **independent and impartial**

DSFs interest is to provide complainants and RSPO members with an opportunity to find mutually satisfactory outcomes to their disagreement. DSF does not impose any judgement or decision on either party. The decision-making authority rests entirely with the parties. DSF takes an equitable approach to everyone participating in the process.

### How does DSF Mediation work?

DSF will appoint a professional DSF Mediator to facilitate the process. First of all, the Mediator will conduct a site visit to to develop a thorough understanding of the issues and concerns raised in the complaint. The Mediator will meet with the complainant and the RSPO member against whom the Complaint was lodged, identify the affected community and, where relevant, understand the representation. DSF will also meet any other key stakeholders<sup>6</sup> as may be considered appropriate in the Complaint, local or national context.

The goal of DSF Mediation is to address the issues raised in the Complaint, and any other significant issues relevant to the complaint which may be identified in the course of the process itself, in a way that is acceptable to the parties. A successful outcome will be documented in a DSF Settlement

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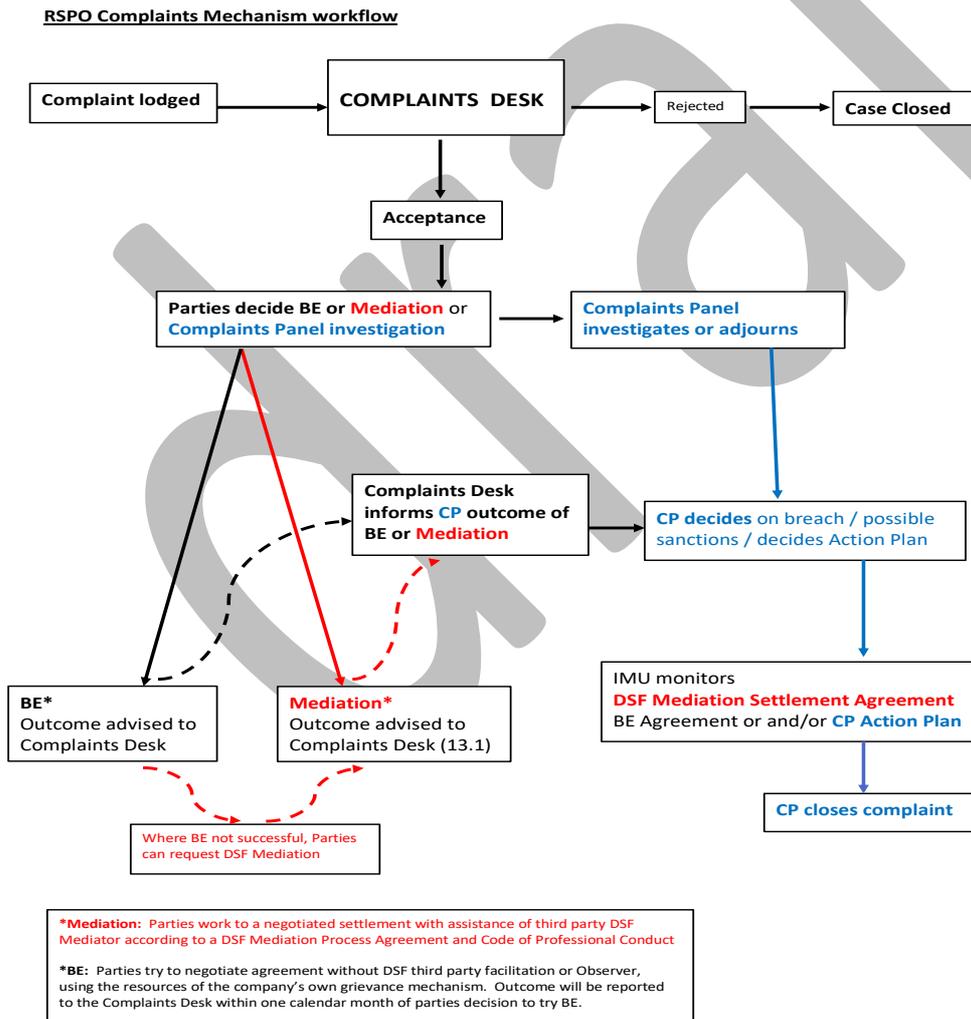
<sup>6</sup> In the DSF context, 'key stakeholders' refers to individuals or organisations who have an interest in the complaint, or who have influence over the project, or who may be affected by the outcome of the DSF Mediation process

Settlement Agreement, or series of Agreements, and signed by the parties. Until that time, nothing will be binding unless the parties so agree.

When working with a divergent groups and parties, DSF will employ a range of techniques which may include facilitation, information sharing, joint fact-finding, consensus building and capacity building as well as mediation. Either party may withdraw at any time, in which case the matter will be concluded with the Complaints Panel investigation only.

At the end of the DSF Mediation process, the DSF will publish a report that documents a summary of the Complaint, measures taken to resolve the issues and any agreements reached by the parties.

The Settlement Agreement will be specific as to actions and times and will be monitored by the RSPO Investigation & Monitoring Unit (IMU) to ensure it is implemented to the satisfaction of all the parties. DSF will remain available during Monitoring, at the request of the parties, should any further issues arise which may impede the successful implementation of the Settlement.



## **5 PRINCIPLES of DSF MEDIATION**

### **A Transparency and Disclosure**

1 Transparency and Disclosure are fundamental to DSFs independence and impartiality. In line with international good practice and principles<sup>7</sup>, DSF is committed to making every effort to ensure transparency and maximum disclosure of its reports and outcomes while respecting the parties' right to confidentiality, as agreed with them during the course of a DSF Process.

2 In maintaining its commitment to transparency, drafts of all DSF public reports will be made available to parties for a factual check prior to publication and posting on the RSPO website. Parties will be given a reasonable timetable in which to respond with comments.

3 The nature of dispute resolution through DSF Mediation is such that it demands an appropriate degree of confidentiality. For example, general descriptions of the process and settlement can be made public but substantive details about discussions will be kept confidential. The DSF will not disclose information shared by one party at any time with the other without the express permission of the party making disclosure.

4 The DSF recognises and respects a complainant's right to confidentiality, including confidentiality of identities and disclosure of information provided to the Complaints Desk and/or DSF. If it is considered necessary to disclose the name and identity of a complainant, for instance in order to provide redress agreed in the settlement, the DSF will only do so with the express consent of the individuals concerned.

5 DSF is required to treat information with discretion and not disclose it improperly. In a situation where the DSF has received confidential information during a DSF Mediation process, such information will not be shared with other RSPO entities and/or any other third party without the express consent of the provider of that information, unless the information is otherwise in the public domain or available through other non-confidential means. The purpose of this is to allow parties to participate freely and frankly during the independent DSF Process without compromising their position in any later investigation.

6 DSF recognises the importance of meeting public interest in the progress of a DSF Process. However, the DSF will make no press releases or media statements about an active complaint during the DSF Process, and will enjoin the parties to the same, unless agreed otherwise by the parties. DSF will indicate in its public reports or statements when restricted disclosure limits the information being imparted, in response to a request from one or both of the parties.

7 DSF Mediators are required to sign and abide by the DSF Mediator Code of Professional Conduct which binds them to strict Confidentiality provisions. All other DSF team members engaged in the DSF Mediation process will be required to sign a Statement of Confidentiality which is binding for all time.

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<sup>7</sup> UN Guiding Principles on Business and Human Rights Principle 31(e):  
[https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

## **B Respect for Human Rights and Diversity**

1 The DSF commits to and upholds the principle of non-discrimination as enshrined in international standards and principles as well as in RSPO key documents<sup>8</sup>. Diversity and inclusion are embedded in the DSF Mediation process which seeks to ensure representation of diverse sectors with regard to ethnic and/or national origin, caste, religion, persons with different ability, gender, gender identity, political affiliation, age, interests and other factors which may be revealed in the local or complaint context. Through awareness and capacity building, DSF will discuss with the parties the opportunities available to assist the broader community participate actively in the Process. Principles of equal opportunity are upheld in securing representation of women and families in DSF Mediation processes and/or public meetings.

2 The principle of Free Prior and Informed Consent is a central requirement of the RSPO Principles and Criteria<sup>9</sup> and thus underpins the work of the DSF when assisting parties work to resolve their differences.

## **C Self-determination of the parties**

1 DSF will ensure that parties understand:

- the voluntary nature of their participation in a DSF Mediation Process
- that any Settlement will be signed of their informed and free will
- that the Mediator will not impose a judgement on the parties, or coerce them into a decision
- the voice of their constituency is assured through a clear mandate granted to the chosen representatives participating in the DSF Mediation.

## **D Independence and Impartiality**

1 DSFs independence and impartiality encourages the trust and confidence of parties engaged in a DSF Mediation process as well as the key stakeholders. Trust and confidence are prerequisites for DSF to be able to operate according to its mandate.

2 DSF maintains its independence and impartiality by:

- not making any determination or judgement as to the merits or substance of any complaint
- ensuring the self-determination of the parties
- adhering strictly to its policy on confidentiality
- recruiting its own staff and consultants independent from RSPO core Secretariat and officers
- by ensuring that any DSF staff or consultants who has a conflict of interest with a particular case withdraws from that case
- DSF staff and consultants exercise caution and discretion in their involvement with RSPO internal processes which might compromise the neutrality of the DSF
- In line with its principle of Confidentiality, DSF will not impart any case-specific information to other units within RSPO without the request or consent of the parties. DSF may, however, report

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<sup>8</sup> UN Guiding Principles on Business and Human Rights Principle 31(e) at:

[https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

Principles and Manual for Project Practitioners at: UN FAO Free Prior and Informed Consent:

<http://www.fao.org/indigenous-peoples/our-pillars/fpic/en/>

RSPO Policy on Protection of Human Rights Defenders, Whistleblowers, Complainants and Community Spokespersons (2018)

<sup>9</sup> FPIC Guide for RSPO Members 2015 at:

<https://rspo.org/news-and-events/announcements/free-prior-and-informed-consent-guide-for-rspo-members-2015-endorsed>

on noticeable trends in the palm oil sector that have come to light through the various complaints facilitated by DSF

- being supported by a group of independent advisers, no members of which are employees, RSPO members or officers of the RSPO.

## **E Upholding protection of those at risk of Retaliation and Reprisal<sup>10</sup>**

1 The DSF takes the safety of complainants and others that engage in a DSF process seriously. RSPOs HR Defenders Policy (2018)<sup>11</sup> lays out in detail how RSPO regards and responds to any allegations of retaliation or reprisal. People who bring a complaint to RSPO are often vulnerable and may fear that submitting a complaint puts them at risk of reprisal. The DSF acknowledges that complainants, witnesses and other parties involved may face risks of retaliation associated with a matter in dispute resolution.

2 The DSF will not tolerate retaliation or reprisals against a complainant or any other person involved in a mediation process facilitated by the DSF. The DSF will work within its means to minimise such risks by protecting any individuals affected, but must be clear about the limitations of its capacity to respond<sup>12</sup>. Violence and threats have no place in a DSF Mediation process, but DSF is unable to safeguard people from possible consequences of their participation. DSF cannot replace national or international judicial bodies, protective services and law enforcement agencies whose functions include protecting the public.

3 DSFs will discuss its approach with the parties at the outset of a DSF Mediation. DSF will respect confidentiality for as long as a party chooses. Any perceived risk will be reassessed during the course of the DSF Mediation process. DSF will always seek the informed consent of the concerned person(s) before taking any action on their behalf in relation to threats or incidents. As a preventative measure, DSF may terminate the process and any subsequent measures may be guided by the Human Rights Principles .

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<sup>10</sup> Acknowledgement: Content borrowed largely from: CAO Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations <http://www.cao-ombudsman.org/documents/CAO-Reprisals-web.pdf>

<sup>11</sup> RSPO Policy on Protection of Human Rights Defenders, Whistleblowers, Complainants and Community Spokespersons (2018)

<sup>12</sup> UN Principles on Business and Human Rights (2011) enshrined in the RSPO Principles and Criteria, currently in draft (2018)