

# *RSPO*

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Roundtable on Sustainable Palm Oil

**DRAFT**

## INTEGRATED COMPLAINTS SYSTEM PROCEDURES

5 OCTOBER 2015

IMPACTS DIVISION

RSPO Secretariat

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## List of Acronyms

ACOP	Annual Communication of Progress
ASI	Accreditation Services International
BHCVWG	Biodiversity and High Conservation Values Working Group
CB	Certification Body
DSF	Dispute Settlement Facility
FPIC	Free, Prior and Informed Consent
GA	General Assembly
GHG	Greenhouse Gases
HCS	High Carbon Stock
HCV	High Conservation Value
NI	National Interpretation
NPP	New Plantings Procedures
P&C	Principles and Criteria for the Production of Sustainable Palm Oil
RSPO	Roundtable on Sustainable Palm Oil
SOP	Standard Operating Procedure
ToR	Terms of Reference
UN	United Nations



## Key Terms and Definitions<sup>1</sup>

**Appeal:** Formal request by a party subject to a decision (without extending the scope of investigation) for reconsideration of that decision, with regard to the RSPO Complaints System (adapted from ISO 17011:2004). The request may be submitted by a complainant or by the responding RSPO member involved in the complaint.

**Complainant:** The person or organization or their representative filing a complaint.

**Complaint:** Expression of dissatisfaction (other than appeal) by any person or organization to RSPO, relating to the activities of RSPO or of its members, where a response is expected (adapted from ISO 17011:2004).

**Complaints Panel:** High-level body that handles alleged breaches of the RSPO Statutes and Codes of Conduct and alleged misconduct of the RSPO Secretariat, and serves as a last resort that issues final third-party decisions when other complaints mechanisms and procedures have failed.

**Complaint escalation:** complaint escalated from a prior decision-making body to a subsequent one, including the actions of the prior body within the scope of investigation (extended scope).

**Consensus:** Lack of sustained opposition.

**Complaints decision:** Final decision made by the RSPO Secretariat or Complaints Panel in relation to a complaint received under the RSPO Complaints System.

**Impartiality:** Actual and perceived presence of objectivity (ISO 17021:2006). Element made up of several components such as objectivity, independence and identification and management of conflict of interest (adapted from ISO 17001:2005)

**Respondent:** The RSPO member involved in the complaint.

**Recourse:** The right of a complainant to escalate their case to the Complaints Panel when the complainant remains dissatisfied with the outcome of their complaint in one of the other complaints mechanisms or related procedures.

**Subsidiary body:** A voluntary working group, task force, advisory group, technical committee, or standing committee.

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<sup>1</sup> These terms and definitions are largely drawn from the draft procedures for the Independent Appeals Mechanism to ensure alignment between the two procedures.

## **1. Introduction**

### **1.1. Background**

The Roundtable on Sustainable Palm Oil (RSPO) is a not-for-profit Association established with the vision of transforming markets to make sustainable palm oil the norm. The RSPO Secretariat is responsible for administration and management of RSPO's activities in pursuit of this vision.

Given the challenges of realizing this vision in practice, there is always the possibility of non-conformity or non-compliance with agreed standards and procedures and disputes about the same, which may lead to complaints in need of resolution.

The RSPO's credibility depends on, among other things, an accessible and effective grievance or complaints mechanism. Since its first iteration of a grievance mechanism in 2006, the RSPO Secretariat and other key stakeholders have made a number of changes, including introduction of procedures for mediation, remediation and compensation, concerns with certification, and third-party decisions, all of which laid the foundations for the current Integrated Complaints System. It has been and continues to be an ongoing process of monitoring, review and improvement.

The Complaints System has been the subject of a range of fundamental critiques over the past several years. These contributed to the adoption of Resolution 6f by RSPO's General Assembly (GA) in 2013, which requires a strict separation of powers in handling complaints and grievances, and alignment of the Complaints System with the United Nations (UN) Guiding Principles on Business and Human Rights, particularly Principle 31 on effectiveness of non-judicial grievance mechanisms. The present Integrated Complaints System Procedures are a significant step towards implementation of Resolution 6f.

### **1.2. Objectives and Scope of the Integrated Complaints System**

The objectives of RSPO's Integrated Complaints System are to:

- a) Provide a framework to address complaints against any RSPO Member or RSPO itself (including its standards and procedures and the Secretariat);
- b) Ensure that any alleged breaches of RSPO standards and procedures are handled and resolved in fair, impartial and transparent manner;
- c) Ensure that parties found to have breached RSPO standards and procedures commit to and prevent non-recurrence of such breaches; and
- d) Protect RSPO's integrity.

RSPO's standards mandate adherence to national, regional, international or intergovernmental legal requirements and judicial mechanisms. As such, the Complaints System is not meant as a replacement to such requirements and mechanisms but as a support and complement, including where more informal and less legalistic approaches may be more effective or appropriate.

### 1.3. Basis of the Integrated Complaints System

The Complaints System is based on and aims to fulfill the following, at minimum:

- a) The UN Guiding Principles on Business and Human Rights, particularly the eight (8) criteria for effectiveness of non-judicial grievance mechanisms (Principle 31);
- b) The ISEAL Alliance Code of Good Practice on Assurance; and
- c) GA Resolutions concerning complaints, including in particular Resolution 6f (2013).

### 1.4. Guiding Principles of the Integrated Complaints System

In addition to the UN Guiding Principles on Business and Human Rights, the following principles shall guide RSPO's Integrated Complaints System and all parties involved:

- a) **Prevention:** RSPO prioritizes prevention of non-compliance with its standards and procedures and prevention of disputes that may lead to complaints;
- b) **Collective responsibility:** It is the collective responsibility of all RSPO members, the Secretariat and other interested stakeholders to prevent and effectively address non-compliance and disputes and prevent non-recurrence through continual improvement of procedures and practices;
- c) **Subsidiarity:** RSPO and all stakeholders involved shall seek to resolve disputes and complaints at the lowest and least formal levels, escalating to higher and more formal levels when the former are unsuccessful, ineffective or otherwise inappropriate;
- d) **Respectful engagement in good faith:** The RSPO Secretariat, parties to complaints and all relevant subsidiary bodies and other stakeholders involved shall engage in good faith with each other and with the Complaints System, and shall conduct themselves in a respectful, proactive, constructive and timely manner, with sensitivity to local circumstances and cultural differences; and
- e) **Adaptation and innovation:** Given every complaint is a unique and dynamic process, with circumstances potentially changing over time, mechanisms and procedures intended to help resolve complaints shall be applied in an adaptive and innovative manner.

### 1.5. Basis of Complaints

A complaint may be raised in relation to and on the basis of any one or more of the following standards and procedures of which RSPO is comprised (including any of the bodies implicated in the respective documents such as Certification Bodies (CBs) as well as the Secretariat itself):

1. **Procedures for RSPO members:** Statutes, Codes of Conduct, Annual Communications of Progress (ACOPs), and GA Resolutions;
2. **Procedures for the standard-setting body, i.e. RSPO itself:** Standard Operating Procedure (SOP) for Standards Setting and Review, and ISEAL Codes of Good Practice;

3. **Certification standards:** Principles and Criteria for Sustainable Palm Oil Production (P&C), National Interpretations (NIs), Supply Chain Certification Standard, Group Certification Standard, and Market Rules on Communications and Claims;
4. **Certification procedures:** Certification Systems, New Plantings Procedure (NPP), Supply Chain Systems, Complaints System, and Remediation and Compensation; and
5. **Voluntary certification standards:** RSPO Renewable Energy Directive, RSPO Next, and Greenhouse Gases (GHG) and High Carbon Stocks (HCS).<sup>2</sup>

There are also certain emerging and future issues (including informal allegations arising in the media and reports, and jurisdictional certification) for which standards and procedures are currently being developed.

## 1.6. Standing

The Complaints System can be used by all stakeholders, both RSPO members as well as non-members, including affected indigenous peoples and local communities (and their nominated representatives), workers (and their nominated representatives), and other interested parties. A complaint can be submitted by one or more individuals, groups or organizations. If a complaint is submitted by multiple complainants, they are responsible for designating a lead complainant to act as the primary contact person for communication with the RSPO Secretariat.

The Complaints System cannot be used to address complaints about non-members of RSPO.

## 1.7. Accessibility

RSPO is seeking to ensure that aggrieved parties have reasonable access to the information, advice and expertise necessary to engage in a complaints process on fair, informed and respectful terms. Those who may face particular barriers to access due to language, unfamiliarity with procedures, and other reasons may seek assistance from the RSPO Secretariat and/or through the RSPO Dispute Settlement Facility (DSF) Support Fund.

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<sup>2</sup> Commentary: In the preparation of the present Procedures, there was disagreement in the Secretariat as to whether the GHG and HCS requirements are mandatory or considered voluntary 'add-ons' to the P&C. Another possibility is to consider this an emerging or future issue (see *Article 4.7* in the present Procedures).

## **2. Governance and Management of the Complaints System**

### **2.1. RSPO Secretariat**

The RSPO Secretariat is responsible for coordination, administration, and communications for all aspects of RSPO. Specifically regarding the Complaints System, the Impacts division shall perform two main functions:

- 1) Serve as a professional [service provider][secretariat] to facilitate the fair and effective handling of complaints and continual improvement of the overall Complaints System; and
- 2) Establish and maintain a clearinghouse to record and monitor complaints across all related RSPO components, procedures and mechanisms.

#### ***2.1.1. Code of Conduct for the RSPO Secretariat in the Complaints System***

In performing both of these functions, the RSPO Secretariat (specifically the Impacts division) shall:

- a) Conduct itself with the utmost professionalism and with due regard to the often sensitive nature of complaints for all parties involved;
- b) Conduct itself and ensure all parties involved in complaints conduct themselves in good faith in accordance with the Integrated Complaints System Procedures;
- c) Communicate with parties to complaints in a timely and respectful manner; and
- d) Commit to and encourage the continual improvement of the procedures and functioning of the Complaints System.

#### ***2.1.2. Terms of Reference for the Impacts Division as Complaints Secretariat***

In its capacity as secretariat for complaints processes and for the Complaints System overall, the Impacts division shall, among other things:

- a) Commission suitable internal or external expertise to support and inform the different mechanisms and procedures of the Complaints System, where deemed necessary by the Secretariat itself or instructed by the Complaints Panel or other relevant subsidiary body;
- b) Commission capacity building support for RSPO members and other stakeholders, particularly indigenous peoples and local communities, including through trainings, guidance and outreach materials, and information and communication technology, to enable them to participate in complaints processes on an informed, fair and equitable basis;
- c) Facilitate informal platforms for joint learning and experience-sharing between past, existing and potential parties to complaints, including through dialogues, informal meetings and workshops, to increase awareness and understanding of the Complaints System, practicalities of its mechanisms and procedures, and common challenges and opportunities for different parties to complaints;
- d) Assist the Complaints Panel to document and issue wider lessons and guidance in the form of 'general recommendations' to RSPO members on complaints-related matters;

- e) Engage with other commodity roundtables and international, intergovernmental and regional complaints mechanisms, where relevant, to share and mutually develop good practices and innovative approaches;
- f) Conduct annual reviews of the Complaints System as a whole (for example, involving stakeholder dialogue workshops, external reviews and events at the annual Roundtables) in order to provide updates, seek feedback and identify opportunities for further improvement; and
- g) Monitor and report on its own functionality, competence and effectiveness in undertaking the above, including to the Complaints Panel and Board of Governors (BoG) and in publicly available reports, pursuant to *Article 2.4* below.

### **2.1.3. Complaints Clearinghouse**

The Secretariat's Impacts division shall establish and maintain a central clearinghouse to record and monitor all complaints and standards and procedures through which they may arise throughout RSPO (see *Article 1.5*). The clearinghouse aims to help close the gaps between all of these complaints-related processes, to improve communication between the relevant Secretariat staff and subsidiary bodies for effective and efficient handling of complaints, and to facilitate effective monitoring and oversight by the Complaints Panel.

In managing the Complaints Clearinghouse, the Secretariat's role is to, among other things:

- a) Receive, acknowledge and record complaints in a timely manner;
- b) Provide information about the Complaints System and its procedures to the parties to a complaint immediately upon receipt of a complaint and as needed throughout the process;
- c) Conduct an initial check to determine whether the complaint contains sufficient information to proceed and to identify the relevant standards and procedures and one or more suitable mechanisms in the Complaints System to address the complaint, taking into account any already identified by the complainant(s) in the Complaints Form;
- d) Facilitate transmission of complaints to suitable mechanisms and procedures and provide all necessary information and supporting materials to the relevant subsidiary bodies (Advisory Groups, Panels, Task Forces, Working Groups, etc.);
- e) Monitor the process and handling of complaints throughout their 'life-cycle', including as they proceed through different mechanisms and procedures, and follow up with the relevant parties and subsidiary bodies to ensure procedures and decisions are being followed and any non-adherence is swiftly addressed;
- f) Provide regular updates to the Complaints Panel at its monthly meetings and at any other time upon request of the Complaints Panel;
- g) Back up all hard copy documents in soft copy and store in a secure information management system;
- h) Maintain and actively update both internal and publicly available databases of complaints and a user-friendly online repository of information and supporting materials concerning complaints; and

- i) Oversee and execute relevant communications and announcements, both to RSPO members and other parties concerned in a complaint as well as to the broader public, pursuant to *Article 2.3* below.

## **2.2. Board of Governors (BoG)**

The RSPO's BoG is responsible for overseeing the activities of the Secretariat and ensuring its functionality, competence and effectiveness in all aspects of RSPO. In this capacity, the Board may conduct or commission reviews of the Secretariat staff involved in the Complaints System and issue appropriate recommendations to the Secretariat's Human Resources department, particularly where there are concerns with the Secretariat's performance.

In fulfilment of GA Resolution 6f, the BoG does not have any decision-making powers in relation to the Complaints System itself, nor can any BoG members serve on the Complaints Panel. The Board shall receive and consider reports from the Secretariat on the Complaints System (pursuant to *Article 2.4* below) and provide comments and suggestions for improvement, as appropriate, for the Secretariat's consideration.

## **2.3. Communications and Public Announcements**

Transparency is the rule, and confidentiality the exception. One of the only exceptions is if a complainant faces potential retribution (such as harassment, intimidation or abuse) in the act of pursuing a complaint, in which case select information such as personal identity or exact location shall be kept confidential with the RSPO Secretariat upon request.

The Secretariat shall present all information objectively and prevent pre-judgement, bias or prejudice in favour of or against any of the parties in its communications with the following stakeholders, among others:

- a) Parties to a complaint;
- b) The Complaints Panel;
- c) Other subsidiary bodies involved in a given complaint;
- d) Other Secretariat staff members;
- e) The Board of Governors;
- f) The RSPO membership; and
- g) The general public.

The RSPO Complaints System and all information pertaining to its procedures shall be accessible and maintained on RSPO's website. The Secretariat shall utilize a simple labelling system for all RSPO documents pertaining to the Complaints System, including clear titles and filenames, dates, version numbers, and indication of whether each is in effect or has been replaced by a subsequent version or different document altogether. Older or outdated documents shall be listed in a separate section on the RSPO website to ensure transparency and to illustrate changes made over time to the Complaints System.



The Secretariat shall check and update on progress of each ongoing complaint on a weekly basis through the Case Tracker on the RSPO website.

The RSPO Secretariat's Communications division shall make public announcements related to the Complaints System on an ongoing basis via the RSPO website. Announcements shall be made within five (5) working days of a decision of the relevant Complaints System mechanism(s) and procedure(s). The Secretariat shall issue public announcements on the following specific developments, among others:

- i) Calls for information pursuant to a specific complaint or complaints;
- ii) Progress on complaints being handled by respective mechanisms and procedures in the Complaints System, including agreement and implementation of Actions Plans;
- iii) Authorized decisions of the Complaints Panel, Secretariat or other relevant bodies;
- iv) Changes in the status of an RSPO member as a result of a complaint;
- v) Changes in the status of a certification body as a result of a complaint; and
- vi) Appeals of complaint decisions.

## **2.4. Reporting**

The RSPO Secretariat's reporting obligations include, *inter alia*:

- a) A report to each regular meeting of the BoG, which shall include basic details about complaints (e.g. date received, key issues, RSPO's response, outcomes and/or decisions) as well as discussion of lessons learned since the last such report;
- b) A publicly available summary report of each closed complaint within one month of its closure, with due regard for confidentiality needs, which shall include key substantive issues raised in the complaint, the mechanism(s) and procedure(s) utilised, rationale for decisions taken, changes made by the respondent(s) in implementation of the agreed Action Plan, next steps or commitments of the parties to the complaint, and lessons learned. For complaints already closed before the present Procedures come into effect, a summary report shall be produced for each as soon as possible and no later than six (6) months after the Procedures come into effect; and
- c) A publicly available interim and/or annual report of the Complaints System, as part of the RSPO Impacts Report, which shall at minimum summarise the number, types and distribution of complaints (cumulative and over the previous year), describe changes and improvements made to the Complaints System, synthesize lessons learned, list any guidance and recommendations issued, and analyze emerging issues and/or the trajectory of the Complaints System.



### **3. Complaints System Mechanisms**

Outside of RSPO's Integrated Complaints System, complaints may be addressed through one or more of the following mechanisms, among others:

- a) Company-level complaints or grievance mechanism (in accordance with Principle 6 of the RSPO P&C);
- b) National-level judicial mechanism (e.g. court);
- c) National-level non-judicial mechanism (e.g. human rights commission);
- d) International-level non-judicial mechanism (e.g. UN Special Rapporteur);
- e) International-level judicial mechanism (e.g. UN human rights treaty body, regional court);
- f) Financial institution's mechanism (e.g. International Finance Corporation's Compliance Advisor Ombudsman); and
- g) Second-party process in the trade chain (e.g. supply chain audit).

Within RSPO, a complaint submitted to the Integrated Complaints System may be addressed through one or more of the following mechanisms, among others:

- i) Facilitate bilateral engagement;
- ii) Interim measures;
- iii) Independent fact-finding and inquiries;
- iv) Mediation;
- v) Sanctions; and
- vi) Third-party decisions by a Complaints Panel.

Each of these mechanisms may be utilized in any given complaint and more than one may come into play at different stages of a complaint's 'life-cycle', depending on the situation and wishes of the parties to the complaint. In general, these mechanisms range from relatively informal to a high-level body with the mandate to make third-party decisions, though they are not necessarily used sequentially. Overall, they are intended to be used in an adaptive and innovative manner to seek the best approach for each unique complaint process.

#### **3.1. Facilitated Bilateral Engagement**

In line with the spirit of RSPO and principle of subsidiarity, parties to a complaint should first attempt to address it through bilateral engagement and use of the company-level complaints or grievance mechanism. If the parties are not able to do so independently for whatever reason but still wish to engage directly before submitting or escalating the complaint to RSPO, the complainant(s) and/or respondent(s) may request the RSPO Secretariat to provide basic facilitation of such engagement. Facilitation may include, *inter alia*, separate discussions with each party to identify their concerns and desired outcomes, and electronic and/or in-person meetings between the parties, chaired by the RSPO Secretariat.

This mechanism is likely most appropriate where there is a basic misunderstanding or miscommunication that can be fairly easily addressed through direct engagement and that may be unnecessarily complicated by submission of a formal complaint or escalation of a submitted complaint to the Complaints Panel. It may be proposed by only one of the parties but should have agreement of all parties before proceeding. It should not be utilised to 'require' dialogue and negotiation when there is a clear and serious alleged violation and a third-party decision or other mechanism is called for.

### **3.2. Interim Measures**

When the RSPO Secretariat receives an alert or complaint of an alleged violation of one or more of the standards or procedures that requires an urgent response (for example, threats or acts of violence against community members; clearance of High Conservation Value (HCV) areas or peatlands), it may impose interim measures which must be followed immediately by the respondent. Interim measures may include, *inter alia*, holding statements issued to the public and stop-work orders imposed on respondents.

The RSPO Secretariat must communicate such interim measure(s) swiftly to the respondent, with a clear indication of the alleged violation and timeframe imposed for the measure(s). The Complaints Panel itself may also impose interim measures where an urgent response is needed during the course of its deliberations on a complaint (for example, escalation of tensions to riots or police brutality). Such a decision shall be communicated by the RSPO Secretariat to the respondent and relevant systems (e.g. certification, participation in working groups) shall be put on hold for that member.

The respondent shall immediately confirm receipt of the communication and impose the required interim measure(s). If the respondent fails to impose and report upon the interim measures within one week, the RSPO Secretary General shall suspend the respondent's certificate (if applicable) and/or membership, pending further notice. If the respondent fails to respond or act within four (4) weeks, the Secretary General shall commence termination of their membership.

### **3.3. Independent Fact-Finding and Inquiries**

The RSPO Secretariat and/or Complaints Panel may commission independent experts to undertake fact-finding missions and/or inquiries where a complaint has occurred in situations in which a detailed independent investigation would help clarify key facts at the heart of conflicting opinions or disagreements between the complaint parties. Such investigations shall be undertaken in accordance with procedures to be developed, which shall include details such as financing, impartiality, freedom from conflict of interest, investigation procedures and methods, and reporting format. The expert findings and advice shall be communicated to the complaint parties and taken into account by the Secretariat and/or Complaints Panel in their further deliberations.

Towards this end, the RSPO Secretariat shall build a roster of in-country and region-based experts around the world with relevant expertise (for example, human rights, environmental and natural

resource law, social sciences, community organizing, mediation), based on clear Terms of Reference and selection criteria.

This mechanism is particularly needed when complaint parties have conflicting opinions, perspectives and/or accounts of the facts of the complaint which are inhibiting resolution of the complaint. It is neither appropriate nor within the capacity and expertise of the Secretariat to undertake such investigations itself.

### **3.4. Mediation**

#### **3.4.1. Introduction**

The highly complex nature of certain kinds of complaints may necessitate a more formal resolution process with professional mediation. RSPO's Dispute Settlement Facility (DSF, described in detail in *Annex 8*)<sup>3</sup> primarily aims to address land-related complaints, though it may be used to resolve other types of complaints as well. In particular, a complaint may be suitable for mediation under the DSF if it has not yet been effectively addressed through other more informal mechanisms (including direct bilateral engagement) and if it concerns one of more of the following issues:

- 1) A lack of free, prior and informed consent, recognition of the community voice and/or respect for customary rights (Criteria 2.2, 2.3, 6.4, 7.3, 7.5 and/or 7.6);
- 2) A dispute over HCV areas (Criterion 7.3); or
- 3) Another complex matter recommended by the RSPO Secretariat, Complaints Panel or DSF Advisory Group for consideration by the DSF.

The DSF aims to support parties to such complaints (often indigenous peoples and local communities and growers) to access information, technical know-how and practical experience to effectively use mediation. Mediation should be used to resolve such complaints before an RSPO member pursues certification, but experience has shown that disputes requiring a mediated settlement may only come to light after certification has already been granted. Notwithstanding corrective actions through RSPO's Certification Systems, mediation through the DSF may still be a suitable mechanism.

#### **3.4.2. Mediation Process**

A mediation process conducted under the auspices of RSPO's Integrated Complaints System shall include the following, at minimum:

- a) **Due diligence:**

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<sup>3</sup> Commentary: The preparation of the Integrated Complaints Procedures did not include a revision of the DSF framework, terms of reference and protocol included in *Annex 8*. Significant revisions are needed, however, and are expected to be undertaken by the DSF manager and Advisory Group. See the 2015 technical review for recommendations concerning DSF. Certain revisions to the previous Complaints System's provisions on DSF have been included here in *Article 3.4*.

If one or more of the complaint parties or the Secretariat identifies mediation as a possible mechanism for resolution, the Secretariat shall seek additional information from the complaint parties to better understand their perspectives and desired outcomes and assess their willingness to engage in mediation;

**b) Provision of information:**

The Secretariat shall provide the parties with information about mediation in general and the DSF in particular, including in suitable national or local languages and in locally accessible formats (for example, printed handouts, videos).

**c) Capacity building:**

The Secretariat shall assist with capacity building activities for complaint parties as appropriate, for example, workshops, trainings and experience-sharing with other parties who have engaged in mediation in the past. Complainants may also apply for financial support through the DSF Support Fund, particularly if they wish to seek external legal or technical advice.

**d) Consent:**

Mediation is a complex and highly nuanced process and may only be undertaken with the mutual and free, prior informed consent of the parties involved in the complaint. Communities in particular may need a significant amount of time to reach a decision in accordance with customary or local decision-making practices. Each party's decision to provide or withhold consent to mediation shall be respected by the other parties and by the Secretariat.

**e) Identification of mediator:**

If the parties mutually consent to mediation, they shall have up to four (4) weeks to agree upon and engage a mediator, in accordance with the criteria and qualifications identified in the DSF ToR. The Secretariat shall assist with identification and selection of possible mediators as appropriate. The parties also have the discretion to engage other mediators outside of RSPO's list, provided they otherwise adhere to the DSF procedures.

**f) Reporting:**

The selected mediator(s) shall report progress to the DSF Advisory Group and RSPO Secretariat in line with the DSF Protocol. The mediation itself is not bound by a set timeline unless the parties agree to their own time-bound plan.

**g) Use of other mechanisms:**

Once a mediation is underway, complaint parties are encouraged to refrain from initiating other grievance mechanisms outside of RSPO at the same time. However, if another mechanism (such as litigation) is already underway once the parties agree to mediation under RSPO, the outcome of the mediation process shall not prejudice the former.

If the mediation process is rejected by one or more of the complaint parties or otherwise fails to suitably address the complaint, mediation shall not be further pursued and the complaint may be escalated to the Complaints Panel for a third-party decision.

### **3.4.3. DSF Advisory Group**

The DSF Advisory Group is a voluntary subsidiary body that plays a supportive role to the RSPO Secretariat's Impacts division and DSF staff, primarily by monitoring and providing guidance and advice on mediation processes under the DSF. The DSF Advisory Group has no decision-making powers with regard to specific mediation processes. It has the mandate to (among other things):

- a) Assess the effectiveness and impact of DSF protocols and procedures and implementation thereof;
- b) Provide strategic guidance, recommendations and proposed adjustments to DSF protocols and procedures and their implementation;
- c) Support DSF-related capacity building and outreach;
- d) Assist the RSPO Secretariat to monitor mediation processes under the DSF;
- e) Provide advice and guidance to the RSPO Secretariat on individual mediation processes;
- f) Report to the RSPO Secretariat on activities and lessons learned; and
- g) Provide information and technical advice to the Complaints Panel in the case of a failed mediation being escalated to the Panel.

### **3.5. Sanctions**

The RSPO Secretary General may, at his/her own discretion or at the instruction of the Complaints Panel, impose sanctions such as suspension or termination of certificates or of RSPO membership in the following situations, among others:

- 1) If the respondent fails to respond or take action within one week of receiving notification of imposed interim measures, the Secretary General shall suspend their certificate (if applicable) and/or membership;
- 2) If the respondent fails to respond or take action within four weeks of receiving notification of imposed interim measures, the Secretary General shall commence termination of their membership;
- 3) If the respondent fails to respond or take action within four weeks of receiving notification of a complaint, the Secretary General shall suspend their certificate (if applicable) and/or membership;
- 4) If the parties fail to cooperate in good faith after a Complaints Panel decision is rejected or disputed, following concerted attempts to address their concerns, the Secretary General may suspend their membership on the basis of the Code of Conduct for RSPO members;
- 5) If the respondent fails to take action to comply with the agreed action plan within four weeks of the mutual consent to the plan, the Secretary General may suspend their certificate (if applicable) and/or membership;

- 6) If the respondent fails to demonstrate a genuine commitment to improvement;
- 7) If a dispute comes to light or newly arises after certification has been granted, the Secretary General shall suspend their certificate in accordance with the Certification Systems document on partial certification requirements; and
- 8) Non-compliances with the Remediation and Compensation Procedures' requirement to disclose non-compliant land clearance (as identified by CB audits or other stakeholders at a later stage) shall be reported to the Complaints Panel and may lead to suspension or withdrawal of certificates and/or termination of RSPO membership.

Emphasis is generally placed on suspension before termination. The Secretary General shall inform the BoG of sanctions imposed in accordance with the Statutes (*Statutes: Article 8*).

### **3.6. Third-Party Decisions by Complaints Panel**

#### **3.6.1. Purpose and Mandate**

The Complaints Panel is a high-level body that:

- 1) Monitors and endorses Action Plans for resolving complaints;
- 2) Handles the following specific complaints:
  - i) Alleged breaches of the RSPO Statutes and Codes of Conduct;
  - ii) Alleged misconduct of the RSPO Secretariat; and
- 3) Serves as a last resort that issues final third-party decisions for all other types of complaints when other complaints mechanisms (*Section 3*) and procedures (*Section 4*) have failed or are otherwise inappropriate.

The Complaints Panel has the mandate to, among other things:

- a) Receive and consider regular reports from the RSPO Secretariat's Impacts division and from other subsidiary bodies involved in complaints (e.g. DSF Advisory Group, Compensation Panel) about the handling of complaints throughout their 'life-cycles', including as complaints proceed through different mechanisms and procedures;
- b) Provide guidance to the RSPO Secretariat's Impacts division and to other subsidiary bodies involved in complaints to further facilitate complaints resolution;
- c) Impose interim measures (such as stop-work orders) and sanctions (such as suspension or termination of certificates or membership) to catalyze complaint resolution and put an immediate halt to serious breaches;
- d) Instruct the RSPO Secretariat to commission independent fact-finding missions or inquiries, as needed;
- e) Endorse and monitor implementation of agreed action plans for complaints resolution, as appropriate;
- f) Where other complaints mechanisms and procedures have failed to address a complaint, issue third-party decisions in light of all information available, including previous efforts to resolve the complaint;

- g) Declare complaints as closed, following monitoring and positive evaluation of the implementation of endorsed action plans;
- h) Document and issue wider lessons and guidance in the form of 'general recommendations' to the RSPO membership on at least one particular aspect of the Complaints System at least once a year. These general recommendations shall provide authoritative interpretation of issues affecting the Complaints System's effectiveness (e.g. long-standing complaints), emerging issues (e.g. complaints with ongoing litigation or conflicts with domestic legislation) and use of innovative procedures (e.g. interim measures); and
- i) Make recommendations to the RSPO Secretary General and BoG on any systemic improvements that could be made to the Complaints System.

The Complaints Panel shall report directly to the RSPO Secretary General, who shall in turn inform the BoG of any imposed sanctions and of reports of the Complaints Panel.

### **3.6.2. Composition of Complaints Panel**

For each individual complaint, a Complaints Panel of five (5) members shall be selected from the overall pool of Panel members with a view to balancing related expertise and perspectives (including women, individuals from the Global South, and those from or with experience in the country or region in question) and in light of any potential conflict of interest (see *Code of Conduct for Complaints Panel Members: Annex 6*).

The standard composition of each Complaints Panel broadly represents the seven membership categories of RSPO and shall include one (1) representative for each of the following:

- a) Environmental NGOs;
- b) Social / Development NGOs;
- c) Oil Palm Growers;
- d) Palm Oil Processors / Traders, Consumer Goods Manufacturers, Retailers, or Banks / Investors; and
- e) Affiliate member.

If a Panel member declares an existing or potential conflict of interest in a given complaint, s/he shall be replaced in that Panel. If a complaint is raised against one of the membership categories in (d) above, then a Panel member from one of the other categories shall be selected. If a complaint is raised against a Malaysian grower, then an Indonesian or Rest-of-the-World grower shall be called upon and vice versa.

In addition, the Complaints Panel appoints a chair from among its members. Any given Complaints Panel has the discretion to call upon additional RSPO members, external experts or third-party observers to advise or assist the Panel as needed on individual complaint processes; such additional persons shall not have voting rights.

### **3.6.3. Appointment, Orientation and Tenure of Complaints Panel Members**



**a) Appointment:**

The pool of Complaints Panel members is comprised solely of members of RSPO. The RSPO Secretariat ensures the pool has a sufficient number of members by periodically issues calls for new members and inviting the relevant membership categories to identify potential candidates. The Secretary General appoints candidate members on the basis of their good standing as RSPO members and their individual capacities to fulfil the purpose and tasks at hand. The Secretariat shall maintain an up-to-date list of all members in the pool on the RSPO website.

Each appointed Panel member shall sign a Code of Conduct for Complaints Panel Members (*Annex 6*) and Complaints Panel Appointment Letter (*Annex 7*), which stipulate details and procedural requirements concerning tenure, meetings and attendance, communications, confidentiality, conflict of interest, remuneration, and termination, among other things. The RSPO Secretariat's Impacts division shall retain a soft copy of each signed appointment letter for at least ten (10) years.

**b) Orientation:**

The RSPO Secretariat shall provide an orientation for all newly appointed Panel members prior to their first Panel meeting and as needed thereafter, which shall include details about the Complaints System Procedures, practical workings of the Complaints Panel, expectations of Panel members, and lessons learned from past complaint processes. New Panel members shall serve as observers in their first Panel meeting to familiarize themselves with its workings.

**c) Tenure:**

The tenure of Panel member is a period of twenty-four (24) months. Extension, renewal or termination is at the sole discretion of the Secretary General in consultation with the Secretariat's Impacts division and Complaints Panel Chairperson.

**3.6.4. Decision-making**

The Complaints Panel strives to make decisions by consensus, which is defined as the lack of sustained opposition. It is incumbent upon the Complaints Panel members who object to proposed decisions to explain their reasons and propose alternative solutions. When consensus cannot be reached, the Complaints Panel may call upon one or more external expert(s), observer(s) and/or facilitator(s) to provide advice and guide the reconsideration of proposed decisions until consensus is reached. The Complaints Panel shall endeavour at all times to reach the best possible agreement and refrain from resorting to the 'lowest common denominator'.

**3.6.5. Meetings, Records and Communications**

The Complaints Panel shall meet at least once a month by teleconference. The Chairperson of the Complaints Panel may call additional meetings at any time, pending availability of Panel members, to discuss urgent matters pertaining to complaints (for example, the need to impose interim measures). The RSPO Secretariat shall facilitate all meetings and provide administrative support for



all Panel members, including preparing the meeting agenda and minutes in close collaboration with the Chairperson of the Complaints Panel.

The RSPO Secretariat's Impacts division is responsible for keeping and maintaining the records of the Complaints Panel's activities and communicating its decisions to affected parties, in accordance with *Section 2* of the present Procedures.

The full minutes of the monthly Complaints Panel meetings shall be retained internally on a confidential basis. Summary versions of the minutes shall be published on the RSPO website, including at minimum a description of the complaint, the decision(s) taken and justification for the decision(s) and excluding sensitive and confidential details such as identities of Panel members.

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## **4. Procedures for Complaints Arising Throughout RSPO**

### **4.1. Overview**

A complaint may be raised in relation to any of RSPO's standards and procedures listed in *Article 1.5*. Some of the standards and procedures provide for their own mechanisms for handling complaints. As of 2015, there were numerous loopholes and gaps between complaints mechanisms under the Complaints System and those provided in other components of RSPO outside of the Complaints System. This section aims to identify all of the ways in which a complaint may be raised in RSPO and to clarify how they should be handled in an integrated and coordinated manner. All complaints arising throughout RSPO – regardless of which standard(s) or procedure(s) on which they are based – shall first be recorded in the Complaints Clearinghouse and monitored on an ongoing basis by the RSPO Secretariat. In the event of disputes related to the content or interpretation of any of these procedures, the ultimate decision rests with the RSPO Complaints Panel.

### **4.2. Complaints Concerning Procedures for RSPO Members**

#### **4.2.1. Statutes**

The Statutes set out RSPO's objectives and rules for membership, meetings of the General Assembly, and the Secretariat and BoG, among other things. A complaint may be raised if any aspect of the Statutes is allegedly breached by an RSPO member (any of the four categories of members), the Secretariat or BoG, or a Working Group.

Prior to taking public action in cases of unresolved allegations of breaches of the Statutes, RSPO members shall report the alleged breaches to the Secretariat, which shall be handled in accordance with the RSPO Complaints System Procedures (drawn from *Statutes: Article 5.3*, with revision).

Complaints concerning the Statutes shall be handled by the Complaints Panel.

#### **4.2.2. Codes of Conduct**

The Code of Conduct for Members of RSPO and the Code of Conduct for Supply Chain Associates of RSPO set out mutual responsibilities and expectations of RSPO members and supply chain associates, respectively. Members and supply chain associates shall seek to resolve grievances directly with others members and associates (respectively) in a timely fashion and shall not make unsubstantiated allegations of breaches against others (as per *Article 5.1* of both Codes). Prior to taking public action in cases of unresolved allegations of breaches of either Code, members / associates shall report the alleged breaches to the RSPO Secretariat, which shall be handled in accordance with the RSPO Complaints System Procedures (drawn from *Article 5.3* of both Codes, with revision).

A complaint may be raised if an RSPO member (including non-certified members) or supply chain associate allegedly breaches any aspect of their respective Codes of Conduct. Such complaints shall

be handled by the Complaints Panel. The Secretary General may, at the instruction of the Complaints Panel, suspend or terminate membership for breaches of the Code after due inquiry and in accordance with the Board's procedures (as per *Code of Conduct for Members: Article 5.5*).

In cases where disputes come to light or newly arise after certification has been granted, the member may face suspension of their certification (as per *RSPO Certification Systems document (revised 2011): Article 4.2.4* on partial certification requirements).

#### **4.2.3. ACOPs**

ACOPs are based on self-reporting. A complaint may be raised if an RSPO member allegedly misrepresents or fails to include certain information in their ACOP, including about complaints and complaints-related procedures such as NPP. ACOP-related complaints shall be handled by the Secretariat's Communications division in close collaboration with the Impacts division.

#### **4.2.4. GA Resolutions**

RSPO's GA adopts Resolutions on a range of topics at its annual meeting. A complaint may be raised if an RSPO member, the Secretariat or RSPO as a whole allegedly breaches or fails to implement a GA Resolution. Complaints concerning GA Resolutions shall be handled by the following:

- a) The [Secretariat's Technical division] [Secretary General] in close collaboration with the Impacts division, if concerning an RSPO member or RSPO as a whole; and
- b) The BoG, if concerning the Secretariat.

### **4.3. Complaints Concerning Procedures for the Standard-Setting Body**

#### **4.3.1. SOP for Standards Setting and Review**

RSPO's SOP for Standards Setting and Review provides for both procedural and substantive complaints concerning RSPO's standards (*SOP: Articles 8.2 and 8.3*, respectively).<sup>4</sup> Procedural complaints concern alleged breaches of the SOP in the development and review of RSPO's standards. Substantive complaints concern alleged breaches of the standards themselves, including any identified shortcomings (i.e. P&C, National Interpretations, Supply Chain Certification Standard, Group Certification Standard, and Market Rules on Communications and Claims). RSPO periodically reviews the P&C and other standards and shall take into account all complaints as well as comments and requests for clarification concerning the standards received by the Standards and Certification Standing Committee.

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<sup>4</sup> Commentary: This provision is intended to align with the complaints-related provisions in the SOP but also improve upon them where relevant. Option A is preferred (in order to avoid having two parallel processes for standard-related complaints) though it would require corresponding revisions to Articles 8.2 and 8.3 of the SOP. Option B aligns with the current SOP.

[*OPTION A*: Procedural and substantive complaints concerning RSPO's standards shall be handled by the RSPO Secretariat's Impacts division, in close collaboration with the Standards and Certification Standing Committee.]

[*OPTION B*: Procedural complaints concerning the standards shall be handled by the RSPO Secretariat's Impacts division, in close collaboration with the Standards and Certification Standing Committee. The Standards and Certification Standing Committee shall establish and maintain a documented process to receive complaints, comments and requests for clarification about substantive aspects of the standards.]

#### **4.3.2. ISEAL Codes of Good Practice**

The ISEAL Alliance has a Complaints Procedure<sup>5</sup> (Version 3, 2013) for complaints from ISEAL members, subscribers and external stakeholders concerning members' compliance with ISEAL member requirements or the operation or decisions of the ISEAL Board, Secretariat or committees (*ISEAL Complaints Procedure: Scope*). As of 2015, RSPO is a full member of the ISEAL Alliance and is thus subject to this Complaints Procedure. Complaints may be raised by:

- a) RSPO about ISEAL; and
- b) External stakeholders about RSPO as an ISEAL member.

A complaint against RSPO as an ISEAL Member must first be raised directly with RSPO in accordance with its Complaints System Procedures; if the complainant is not satisfied with the response, they may raise a complaint with ISEAL regarding RSPO (drawn from ISEAL Complaints Procedure: Pre-condition of a complaint against an ISEAL member). All complaints raised with ISEAL concerning RSPO shall be documented in the RSPO Complaints Clearinghouse and monitored by the RSPO Secretariat's Impacts division in close collaboration with the ISEAL Secretariat. The RSPO Secretariat shall cooperate fully and respond promptly to any complaints raised with ISEAL about RSPO, including by providing clarifications or additional information, as needed.

Complainants using ISEAL's Complaints Procedure retain the right to submit a complaint against the complaint resolution process (*ISEAL Complaints Procedure: Disagreement with the findings*).

### **4.4. Complaints Concerning Certification Standards**

#### **4.4.1. Principles & Criteria**

The P&C set out eight (8) Principles for growers to become RSPO-certified. Complaints concerning the P&C (i.e. substantive complaints about RSPO's standards) shall be handled in accordance with *Article 1.5* and *Article 4.3.1* above.

#### **4.4.2. National Interpretations (NIs)**

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<sup>5</sup> See: ISEAL Complaints Procedure (Version 3, December 2013). Available online at: <http://www.isealalliance.org/our-members/complaints>.

NIs adapt international P&C to national cultural, political and legal contexts through a multi-stakeholder process. Complaints concerning NIs (i.e. substantive complaints about RSPO's standards) shall be handled in accordance with *Article 1.5* and *Article 4.3.1* above.

#### **4.4.3. Supply Chain Certification Standard**

The Supply Chain Certification Standard sets out requirements for organisations in the palm value chain to demonstrate implemented systems for control of RSPO-certified oil palm products. Complaints concerning the Supply Chain Certification Standard (i.e. substantive complaints about RSPO's standards) shall be handled in accordance with *Article 1.5* and *Article 4.3.1* above.

#### **4.4.4. Group Certification Standard**

The Group Certification Standard sets out requirements for smallholders in order to become RSPO-certified. It is complemented by the Guidance on Scheme Smallholders and Guidance for Independent Smallholders and supported by the RSPO Smallholders Support Fund Governing Policy. Complaints concerning the Group Certification Standard (i.e. substantive complaints about RSPO's standards) shall be handled in accordance with *Article 1.5* and *Article 4.3.1* above.

#### **4.4.5. Market Rules on Communications and Claims**

The Rules on Communications and Claims are intended to inform the accurate and clear use of RSPO-certified sustainable palm oil products. The Rules are supplementary to the RSPO Supply Chain Certification Standard. Complaints concerning the Rules (i.e. substantive complaints about RSPO's standards) shall be handled in accordance with *Article 1.5* and *Article 4.3.1* above.

### **4.5. Complaints Concerning Certification Procedures**

#### **4.5.1. Certification Systems**

RSPO's Certification System is responsible for assuring the good performance of auditors and CBs. As the scheme owner, RSPO is responsible for setting 'the rules of the game' under which CBs operate, which are overseen and enforced by its Accreditation Body (ASI, at present). The Certification Systems document provides an overview of the certification standard and requirements and related procedures, including approval and monitoring of CBs (*Section 3*) and a procedure for complaints and grievances relating to CBs (*Annex 5*).

Complaints based mainly on the performance or decision of a CB and/or its auditor(s) shall first be addressed through their respective procedures for complaints and grievances, where available, and/or through the Accreditation Body. The Complaints System shall be used in due course if the complaint cannot be resolved by the Certification System alone. The RSPO Secretariat, through its Complaints Clearinghouse, shall document and monitor all complaints concerning certification received by RSPO or by the Accreditation Body.

The following types of complaints, among others, may be raised in relation to the performance and accreditation of CBs, non-compliance of RSPO members' certified operations with RSPO standards, and other certification matters:

**a) A complaint against a CB alleging that the certification process has been ineffective in appropriately enforcing a member's practices in line with the P&C and other standards, or questions the validity of the CB's practices and/or decisions:**

Such a complaint may be raised by an RSPO member being audited by the CB, another RSPO member not being audited by the CB, the RSPO Secretariat, or a non-member of RSPO. It shall first be handled by the CB's own internal complaints mechanism. If unresolved, the member can escalate it to RSPO's Complaints System where the Secretariat's Technical division shall handle it in close collaboration with the Impacts division. The Technical division shall send the complaint to ASI (along with all necessary documentation) for its review and recommendation as an 'external expert', which is then returned to the Secretariat for its endorsement. If the Secretariat does not agree with ASI's recommendation, the complaint shall be escalated to the Complaints Panel for a third-party decision;

**b) A complaint against the Accreditation Body (ASI) about its decision on a CB's accreditation:**

Such a complaint may be raised by a CB or by an RSPO member, non-member or the RSPO Secretariat. It shall first be handled by ASI's Complaints Procedure.<sup>6</sup> The Accreditation Body (ASI) must notify RSPO if a complaint is received by any RSPO stakeholders concerning its competency or process or the outcome of an accreditation assessment or implementation, and must handle complaints within 60 days; if it fails to resolve a complaint within that timeframe, it shall inform the RSPO Secretariat immediately (*RSPO Certification Systems document: Article 3.5*). The complaint shall then be transmitted to RSPO for handling by RSPO's Technical division in close collaboration with the Impacts division, in accordance with its Integrated Complaints Procedures.

If the Accreditation Body successfully resolves the complaint, it shall submit a report to the RSPO Complaints Clearinghouse detailing the following at minimum:

- i) Any follow-up actions to be undertaken by the CB with respect to its decision on the certified operation in question;
- ii) Any corrective actions imposed by the Accreditation Body on the CB;
- iii) An indication of how long it will take for improvements in the certified operation to come into effect and milestones for monitoring.

**c) If a dispute comes to light or newly arises after certification has been granted:**

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<sup>6</sup> ASI's Complaints Procedure provides for complaints about ASI and ASI-accredited Conformity Assessment Bodies (i.e. CBs) or certificate holders. See: ASI's Complaints Procedure (ASI-PRO-20-104-Complaints-V4.0, approved 2013). Available online at: <http://www.accreditation-services.com/dispute-management/complaints>.

RSPO's Secretary General may suspend the certificate concerned in accordance with the Certification System's requirements on partial certification (*RSPO Certification Systems document: Article 4.2.4*). Alternatively, the Secretariat's Impacts division or the Complaints Panel (as appropriate) may impose an interim measure within ten (10) business days. (For operations that are already moving certified product or have forward contracts, the Secretariat's Technical division shall notify the provider of RSPO's IT platform of any changes in member status.)

#### **4.5.2. New Plantings Procedure (NPP)**

The documents currently comprising the NPP set out the steps required (independent social and environmental impact assessments, including of HCVs; implementation plan; CB verification of assessments and plan; and 30-day public notification or consultation) for new plantations from 1 January 2010 in order to fulfill Principle 7 of the P&C.

There are several ways in which a complaint may arise in connection with the NPP, including:

- a) If a comment (e.g. on assessments or CB's verification) is submitted within the 30-day notification or consultation period and disputed by the RSPO member concerned, it shall proceed through the Integrated Complaints Procedures without having to wait for the expiry of the 30-day period;
- b) If a comment remains unresolved and resolution through any of the complaints mechanisms is not within sight during the 30-day notification or consultation period, the comment may be escalated directly to the Complaints Panel for a third-party decision;
- c) If a serious issue (e.g. clear intimidation, use of armed forces) is raised during the 30-day notification period, it is within the discretion of the Technical Director to transmit it to the Integrated Complaints System, following a check with the relevant CB, to be handled as a complaint. The RSPO Secretariat and/or Complaints Panel may impose an interim measure such as a stop-work order until further information can be gathered;
- d) If a party is aggrieved by the assessment or plan or wishes to dispute the CB's verification statement after expiry of the 30-day notification, this shall be pursued through the Integrated Complaints Procedures; and
- e) If an RSPO member allegedly clears land without adhering to the NPP, they must declare the extent of the land area and proceed to RSPO's Compensation Procedure for land clearing between 1 November 2005 and 1 January 2010.

Growers shall not commence any land preparation, new planting or infrastructure development prior to the expiry of the minimum 30-day period or prior to the resolution of all comments and complaints.

In addition, the HCV-Resource Network has its own Dispute Resolution Process for complaints concerning its Assessor Licensing Scheme.<sup>7</sup> The Secretariat of the HCV-Resource Network is responsible for addressing complaints that relate to (among other things): an assessor's licensed status or performance carrying out an HCV assessment as a Licensed Assessor; compliance of an HCV

<sup>7</sup> See: HCV-Resource Network's Dispute Resolution Process (ALS\_01\_B, October 2014). Available online at: <https://www.hcvnetwork.org/als/documents-and-guidance>.



assessment with normative documents; performance of managing staff or Quality Panel member; and the Assessor Licensing Scheme or its implementation. Any complaints raised concerning HCV assessments or assessors related in any way to RSPO – including those directed to or handled by the HCV-Resource Network – shall be recorded and monitored by the RSPO Secretariat in the Complaints Clearinghouse.

#### **4.5.3. Supply Chain Certification Systems**

The RSPO Supply Chain Certification Systems document sets out minimum requirements for enabling certification against the Supply Chain Certification Standards. All complaints concerning supply chain certification and/or received by the Accreditation Body (ASI) shall be documented and monitored by the RSPO Secretariat through the Complaints Clearinghouse.

ASI has its own Complaints Procedure that provides for complaints about ASI and ASI-accredited Conformity Assessment Bodies (i.e. CBs) or certificate holders.<sup>8</sup> RSPO requires ASI to notify RSPO if a complaint about a CB is received from any RSPO stakeholder concerning the CB's competency or process or the outcome of an accreditation audit or implementation; the accreditation body (ASI) shall handle complaints within 60 days and inform the RSPO Secretariat if still unresolved (*Supply Chain Certification Systems: Article 4.5*).

If a complaint handled by ASI in accordance with its own Complaints Procedure is still unresolved after sixty (60) days, the complaint shall be transmitted to RSPO for handling under its Integrated Complaints Procedures by RSPO's Technical division in close collaboration with the Impacts division.

#### **4.5.4. Remediation and Compensation<sup>9</sup>**

In accordance with the P&C, RSPO palm oil producer members are required to have completed HCV assessments of all of their land holdings (managed and/or linked by majority holding) for new plantings from November 2005 in accordance with specific provisions of the Criterion 7.3 and/or the NPP. The objective of this requirement is to ensure members develop new plantings responsibly.

RSPO's Certification Systems require proof of compliance with this requirement across all land holdings that a member manages and/or is linked to by a majority holding (*Certification Systems document: Article 4.2.4*). Failure to have conducted a HCV assessment prior to land clearing on any such land is potentially a barrier to certification and ultimately to continuing RSPO membership.

The RSPO Remediation and Compensation Procedures Related to Land Clearance without Prior HCV Assessment (Remediation and Compensation Procedures) were developed to address a very specific problem, namely, the failure to conduct HCV assessments prior to land clearance. From 6 March

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<sup>8</sup> See: ASI's Complaints Procedure (ASI-PRO-20-104-Complaints-V4.0, approved 2013). Available online at: <http://www.accreditation-services.com/dispute-management/complaints>.

<sup>9</sup> Commentary: Revised Remediation and Compensation Procedures are currently under public consultation. The present Complaints System Procedures should integrate the latest provisions pertaining to complaints from the Remediation and Compensation Procedures once the latter are endorsed.



2014, under the staged implementation accepted by the BoG, all members that own and/or manage land for oil palm production are required to comply with all sections of the Remediation and Compensation Procedures up to and including Section 7 (*Calculating conservation liability*); compliance with the remainder of the Procedures is also encouraged.

The Remediation and Compensation Procedures provide for a Compensation Panel, which shall be subsidiary to the Complaints Panel under the present Complaints System Procedures.

There are several ways in which complaints may arise from or otherwise relate to the Remediation and Compensation Procedures,<sup>10</sup> including (among others):

**a) Referral of a complaint from the Complaints System to the Compensation Panel:**

A complaint received by the RSPO Secretariat or reviewed by the Complaints Panel related to HCV non-compliance of Criterion 7.3 and/or NPP can be referred to the Compensation Panel for its expert advice to aid any decision to be made by the Secretariat and/or Complaints Panel (*Complaints System Components and ToR: Article 2.4*);

**b) Disclosure of non-compliant land clearance:**

Non-compliances with the requirement to disclose non-compliant land clearance (as identified by CB audits or other stakeholders at a later stage) shall be reported to the Complaints Panel and may lead to suspension or withdrawal of certificates and/or termination of RSPO membership (*Remediation and Compensation Procedures: Article 4*). The complaint shall be substantiated by evidence from the CB of non-compliance with P&C, evidence from the complainant of land clearance after November 2005 without HCV assessment, or evidence from the complainant of violations of other P&C and Code of Conduct. If the complaint is 'potentially compensatable', it shall be passed to the Compensation Panel. If the complaint is not compensatable and/or the company fails to produce the requested documentation, it shall be passed to the Complaints Panel for handling under the Complaints Procedure (*Flow Chart of Remediation and Compensation Procedures: Step 1b*);

**c) Validation of compensation case by Compensation Panel:**

If the company was reported through a complaint, the Compensation Panel shall assess the evidence and determine whether resolution through the Remediation and Compensation Procedures is appropriate against several conditions, including willingness of the company to address the complaint. If the stated conditions are not met, the case shall be passed to the Complaints Panel instead (*Flow Chart of Remediation and Compensation Procedures: Step 2*);

**d) Remediation and compensation for the social impacts of the loss of HCVs 4-6:**

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<sup>10</sup> Commentary: These provisions reflect the Remediation and Compensation Procedures in effect at the time of writing. Draft revised Remediation and Compensation Procedures are currently undergoing public consultation (September-October 2015). Further review of the revised Procedures will be necessary to ensure alignment with the present Complaints System Procedures.

Assessment of the social impacts related to the loss of HCVs 4-6 shall be based on a new process or existing evidence such as from formal documentation of past compensation processes or any information presented within a complaint to RSPO (*Remediation and Compensation Procedures: Article 9*);

**e) Development of Remediation and Compensation Plan:**

The Compensation Panel shall file a complaint with Complaints Panel if it does not receive a Remediation & Compensation Plan with required supporting documentation within 60 working days (which may be extended with a of two times 30 working days) (*Flow Chart of Remediation and Compensation Procedures: Step 5*);

**f) Approval of Remediation and Compensation Plan:**

Once the Compensation Panel has approved of a compensation plan, the Complaints Panel shall lift any related temporary suspensions; if the compensation case has been initiated through the Complaints Procedure, a summary of the compensation plan shall be made publicly available on the RSPO website (*Remediation and Compensation Procedures: Article 12*); and

**g) Monitoring of implementation:**

Failure to implement compensation measures as approved by the Compensation Panel shall be considered a grievance and reported to the Complaints Panel for handling under the Complaints Procedures (*Remediation and Compensation Procedures: Article 13*).

## **4.6. Complaints Concerning Voluntary Certification Standards**

### **4.6.1. RSPO Renewable Energy Directive**

The RSPO Renewable Energy Directive (RED) scheme includes certain additional commitments beyond RSPO's 'regular' standards and procedures, including a clear threshold for GHG emissions. Any complaint concerning the RED scheme shall be submitted and handled in accordance with RSPO's Integrated Complaint System Procedures, with the exception that the complaint may specifically concern alleged breaches of the additional commitments and guidance under this scheme.

### **4.6.2. RSPO Next<sup>11</sup>**

RSPO Next is a new voluntary addendum to the P&C, with guidance on no deforestation, no fire, no planting on peat, reduction of GHGs, respect for human rights, and transparency. Any complaint concerning RSPO Next shall be submitted and handled in accordance with RSPO's Integrated

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<sup>11</sup> Commentary: As of October 2015, the RSPO Next initiative is undergoing public consultation and does not yet have any agreed procedures. This complaints-related provision may need to be revised in light of any future adopted procedures and guidance for RSPO Next.

Complaint System Procedures, with the exception that the complaint may specifically concern alleged breaches of the additional commitments and guidance under this scheme.

#### **4.6.3. GHG and High Carbon Stock (HCS)<sup>12</sup>**

The P&C provide for a trial implementation period (until 31 December 2016) for reporting to RSPO on operational GHG (Criterion 5.6) and projected GHG emissions from new developments (Criterion 7.8) and for mandatory public reporting from 1 January 2017. It is not likely that many (if any) complaints will arise until the mandatory public reporting comes into effect. Any complaint concerning GHG and HCS shall be submitted and handled in accordance with RSPO's Integrated Complaint System Procedures, in close collaboration with the Emission Reduction Working Group, with the exception that the complaint may specifically concern alleged breaches of the additional commitments and guidance under this scheme.

### **4.7. Emerging and Future Issues**

#### **4.7.1. Informal Allegations Raised in the Media and External Reports**

RSPO and its members are increasingly the subject of media and external reports concerning alleged non-compliance. From 2014-2015, the RSPO Secretariat has developed and tested an informal procedure for responding to such allegations with relative success. Responsibility is shared between the Communications and Impacts divisions. The procedure is included below for the first time in the Complaints System Procedures.

Any allegations concerning RSPO or one or more of its members in the media, social media, emails, or external reports shall be forwarded to and recorded and analyzed by the heads of RSPO's Communications and Impacts divisions. The head of Communications shall seek clarifications from the source / author and inform them about the possibility of submitting a complaint through RSPO's Complaints System. The head of Impacts or Complaints Coordinator shall inform and seek clarifications or further information from the named RSPO member(s).

The Secretariat shall collate information gathered and consider possible next steps in light of the responses of the author(s) and RSPO member(s). This may include the following scenarios:

- a) If the author does not wish to pursue a formal complaint and the allegation is found to be unsubstantiated, the allegation is recorded in the Complaints Clearinghouse as a closed 'incident', not a formal complaint;
- b) If the author wishes to submit a formal complaint, s/he shall follow the regular procedure;

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<sup>12</sup> Commentary: It has been recommended that – in time for the mandatory public reporting deadline of 1 January 2017 – a procedure be developed for complaints and sanctions for select cases of clearance of (potential) HCS with or without HCS assessment, and that an external network and licensing scheme be developed for HCS assessors, drawing from experience with the HCV-Resource Network. The provisions on complaints should be revised over time to reflect such developments. See: Holly C. Jonas, 2015. *Building an Integrated Complaints System for the Roundtable on Sustainable Palm Oil (RSPO): A technical review of links and loopholes between complaints-related components of RSPO. Final Report*, Section 7.2.

- c) If the author does not wish to pursue a formal complaint for whatever reason but has raised a legitimate concern and likely breach or non-compliance, the Secretariat may, at the advice or request of the Secretary General, decide to take up the complaint itself. In such a situation, the Secretariat would function as the 'complainant' with the aim of bringing the RSPO member into compliance. The division or individual staff member with a mandate closest to the subject of the complaint (except for the Impacts division) shall serve as the lead complainant. The Impacts division shall remain in its role as 'complaints secretariat' (see *Article 2.1.2*).

Once it decides how to proceed, the Secretariat shall issue a public holding statement (e.g. press release and website update) to provide an update on the events up to that point. It shall issue a full response and summary of the proceedings and outcome of the complaint, as soon as it is appropriate to do so. The Secretariat shall document and monitor the complaint through the complaints clearinghouse, as with all other complaints.

#### **4.7.2. Jurisdictional Certification**

A select number of states are considering jurisdictional (i.e. state-level) approaches to certification of sustainable palm oil. Although this is not yet provided in RSPO's current standards and procedures, it is likely to be an emerging trend and present particular issues for complaints. Development of specific standards and procedures for jurisdictional approaches to certification should also include special consideration of complaints.

## **5. Process Flow**

This section describes the process flow of a complaint from submission to closure. It is also illustrated in summary in the Complaints Process Flowchart (*Annex 2*). All mentions of the RSPO Secretariat specifically refer to the Impacts division, unless specified otherwise.

### **5.1. Submission of Complaint**

Prior to submitting a complaint, prospective complainants are encouraged to read the Integrated Complaints System Procedures and the Code of Conduct for Parties to Complaints. They may seek clarification from the RSPO Secretariat if they have any questions or concerns.

In order to be considered by Integrated Complaints System, a complaint must include the following three documents when submitted to the RSPO Secretariat:

- 1) Completed Complaint Form (*Annex 3*), which includes the following four parts:
  - a) Details of complainant(s);
  - b) Details of the RSPO member(s) against whom the complaint is submitted;
  - c) Complaint details; and
  - d) Statement of good faith;
- 2) Completed Complaint Submission Checklist (*Annex 4*); and
- 3) Signed Code of Conduct for Parties to Complaints (*Annex 5*).

At the submission stage, the burden of proof rests with the complainant(s), who shall fill out the Complaint Form to the best of their ability. However, the RSPO Secretariat may provide assistance upon request if complainants are unable to provide all details due to capacity, technological or other constraints.

### **5.2. Receipt and Initial Checks of Complaint**

#### **5.2.1. Acknowledgement of Receipt**

The RSPO Secretariat's Impacts division is the point of entry for all complaints to be addressed through the RSPO Complaints System. Complaints entering via other points shall be forwarded immediately to the Secretariat. The Secretariat shall acknowledge its receipt of the complaint in writing to the complainant within ten (10) days and record it in the Complaints Clearinghouse.

#### **5.2.2. Initial Checks and Interim Measures**

The RSPO Secretariat conduct an initial check, including of the following at minimum:

- a) Whether the complaint is complete and contains a sufficient level of detail to determine the next course of action;
- b) Whether the party against whom the complaint is submitted is an RSPO member;
- c) Whether the member and location concerned are or ever have been certified;

- d) Whether the member concerned has submitted an ACOP in the past year (if so, check for any mention of relevant details); and
- e) When the member's next audit or annual surveillance assessment will take place.

The RSPO Secretariat shall also determine the need for any interim measures such as stop-work orders (see *Article 3.2*) or urgent communications such as a holding statement to publicly state that RSPO has received a complaint and is taking the issue seriously and reviewing it as a matter of urgency in accordance with the Complaints System Procedures. Such urgent actions may be especially needed in case of reported violence or human rights abuses, or destruction of HCV areas or immediate threats to rare, threatened and endangered species.

### **5.2.3. Resubmission of Incomplete Complaint**

If one or more of the three documents listed in *Article 5.1* is not included in the complaint submission or has not been filled out correctly or completely, the RSPO Secretariat shall notify the complainant(s) and invite them to submit the outstanding documents at their discretion. The Secretariat shall provide the complainant(s) with assistance where necessary and within reason to complete the complaint documentation.

The Secretariat shall acknowledge receipt and begin to process a complaint within ten (10) days of receiving the complete complaint (barring extenuating circumstances such as where further capacity building or urgent action and interim measures are required).

## **5.3. Determination of the Legitimacy of a Complaint**

Within ten (10) days of acknowledging receipt of a complete complaint, the Secretariat shall determine the legitimacy of a complaint (and inform the complaint parties accordingly) based on the following:

- a) Submission of complete complaint;
- b) Confirmation that the complaint concerns one or more RSPO members;
- c) Allegations of breaches of one or more of RSPO's standards and procedures (the specifics of which may be identified by the Secretariat based on the complainants' description of the issues at hand);
- d) Provision of a reasonable amount of evidence and supporting materials in light of the capacity of the complainant(s) which is sufficient enough to proceed with the complaint;
- e) Confirmation of the complainants' willingness to engage in the complaint process in good faith.

If the complaint is determined to be illegitimate, the Secretariat shall inform the complainant(s) accordingly (including reasons why) and grant them one (1) more attempt to submit a revised complaint at their discretion.

If the complaint is determined to be legitimate, the burden of proof shifts to the respondent(s). The Secretariat shall inform the complainant(s) and request any further information needed. The Secretariat shall contact the named RSPO member(s) for their initial responses and to seek clarifications, background documents (e.g. time-bound plan for certification) and/or further information about key aspects of the complaint (e.g. past efforts made to resolve the issue bilaterally). The complaint parties shall provide all requested information within four (4) weeks of receipt of the request from the Secretariat, unless there are extenuating circumstances requiring more time. Such requests shall be considered on a case-by-case basis by the Secretariat.

The Secretariat may also commission independent fact-finding and/or inquiries where more detailed investigations are needed to complement evidence and supporting materials provided by the complainant(s) and respondent(s).

#### **5.4. Identification of Possible Means to Address Complaint and Notification of Complaints Panel**

After receiving initial responses and further information from the parties to the complaint, and findings of any independent investigations commissioned, the Secretariat shall assess the overall situation and the complaint parties' readiness, and identify specific mechanism(s) and procedure(s) that may be suitable to address the complaint, including any further interim measures which may be urgently needed. The Secretariat shall submit a summary report to the Complaints Panel to inform it of actions taken up to that point.

#### **5.5. Development of and Mutual Consent to Action Plan**

##### ***5.5.1. Development of Action Plan***

The Secretariat shall then facilitate the development of an Action Plan with the complainant(s) and respondent(s). The Action Plan shall outline the proposed resolution process and include, at minimum:

- 1) Identification of the specific mechanisms (see *Section 3*) and procedure(s) (see *Section 4*) that will be utilised, drawing on but not limited to suggestions from the Secretariat; and
- 2) Time-bound milestones to monitor its implementation and revise where necessary.

##### ***5.5.2. Mutual Consent to Action Plan***

The parties to the complaint must expressly consent to the Action Plan before it moves ahead. Once the Action Plan is agreed and consented to by the parties, the Secretariat shall submit it to the Complaints Panel for endorsement within two (2) weeks of its receipt by the Panel. The status of the complaint shall then be changed in the Case Tracker to "Monitoring implementation of agreed Action Plan".

##### ***5.5.3. Revision of Action Plan Due to Lack of Mutual Consent***



If the parties do not mutually consent to the Action Plan, they are obliged to make a concerted effort to propose alternative solutions in order to reach agreement within four to six (4-6) weeks, unless there are extenuating circumstances requiring more time. If they fail to reach agreement due to refusal to cooperate in good faith, the RSPO Secretariat shall impose sanctions and/or transmit the complaint to the Complaints Panel for a final third-party decision (see *Article 3.6*). If the parties fail to reach agreement due to conflicting accounts of the facts or disagreement about technical aspects or suitability of proposed actions, an additional four to six (4-6) weeks may be granted to reach agreement.

If they still cannot reach agreement after these eight to twelve (8-12) weeks but are still committed to finding a resolution, the Complaints Panel may recommend the parties to engage in a formal mediation process under DSF, provided that mechanism has not yet been exhausted. Only after other mechanisms and procedures have failed shall the Complaints Panel issue a third-party decision.

## **5.6. Transmission of Complaint to Relevant Mechanism(s) and Procedure(s)**

The RSPO Secretariat shall transmit the complaint to the mechanism(s) and procedure(s) identified in the agreed Action Plan for handling in accordance with the agreed Action Plan and their respective provisions in the Complaints System Procedures. If the complaint involves procedures of bodies outside of RSPO (e.g. HCV-Resource Network), the Secretariat shall inform them of the Integrated Complaints Procedures and related monitoring and reporting requirements.

## **5.7. Monitoring Implementation and Revision of Agreed Action Plan**

### ***5.7.1. Monitoring Implementation of Agreed Action Plan***

The Secretariat shall monitor implementation of the agreed Action Plan through direct communication with the respondent(s) and complainant(s) and any subsidiary bodies handling the complaint under other mechanisms and procedures. The respondent(s) and relevant subsidiary bodies shall provide the Secretariat with bi-weekly progress reports, unless otherwise agreed in the Action Plan. The Secretariat shall log these updates in the Complaints Clearinghouse, collate the bi-weekly updates and provide a progress report on the complaint to each monthly Complaints Panel meeting for their consideration and any feedback, as appropriate.

### ***5.7.2. Revision of Agreed Action Plan***

Given complaints are dynamic processes and circumstances may change over time, the complaint parties shall revisit and revise the agreed Action Plan as necessary and in light of new developments, with the support of the RSPO Secretariat. This may include, for example, changing which mechanism(s) or procedure(s) they wish to use or changing timeframes for resolution. All revisions require the mutual consent of all complaint parties.



Once the revised Action Plan is agreed, the Secretariat shall submit it to the Complaints Panel for its endorsement within two (2) weeks of receipt of the Plan. The complaint parties shall proceed with implementation of the agreed revised Action Plan, including transmission to the relevant mechanism(s) and procedure(s). The Secretariat shall continue to monitor implementation in accordance with *Article 5.7.1*.

## **5.8. Escalation of Complaint to Complaints Panel**

In the event that other complaints mechanisms and procedures fail or are otherwise found to be inappropriate to resolve the complaint, the RSPO Secretariat shall transmit the complaint to the Complaints Panel, which shall serve as a last resort high-level body with the mandate to issue third-party decisions.

The Complaints Panel shall review all information available, including about previous efforts to resolve the complaint and reasons why they failed. Within one (1) month of receipt of the complaint, the Panel shall issue a decision by consensus about actions that shall be taken by the responding RSPO member(s) and, where relevant, by the complainant(s) within specified timeframes. This decision is final and is not subject to mutual consent of the complaint parties.

If one or more of the complaint parties fails to implement the Panel's decision within the specific timeframes, the Panel shall impose sanctions such as suspension or termination of certificates and/or membership in RSPO.

## **5.9. Closure of Complaint**

With the support of the RSPO Secretariat, the Complaints Panel shall conduct a final review of all progress reports on the implementation of the agreed Action Plan. Pending a positive evaluation of both the process and outcome(s) of the complaint, the Complaints Panel shall declare the complaint as closed.

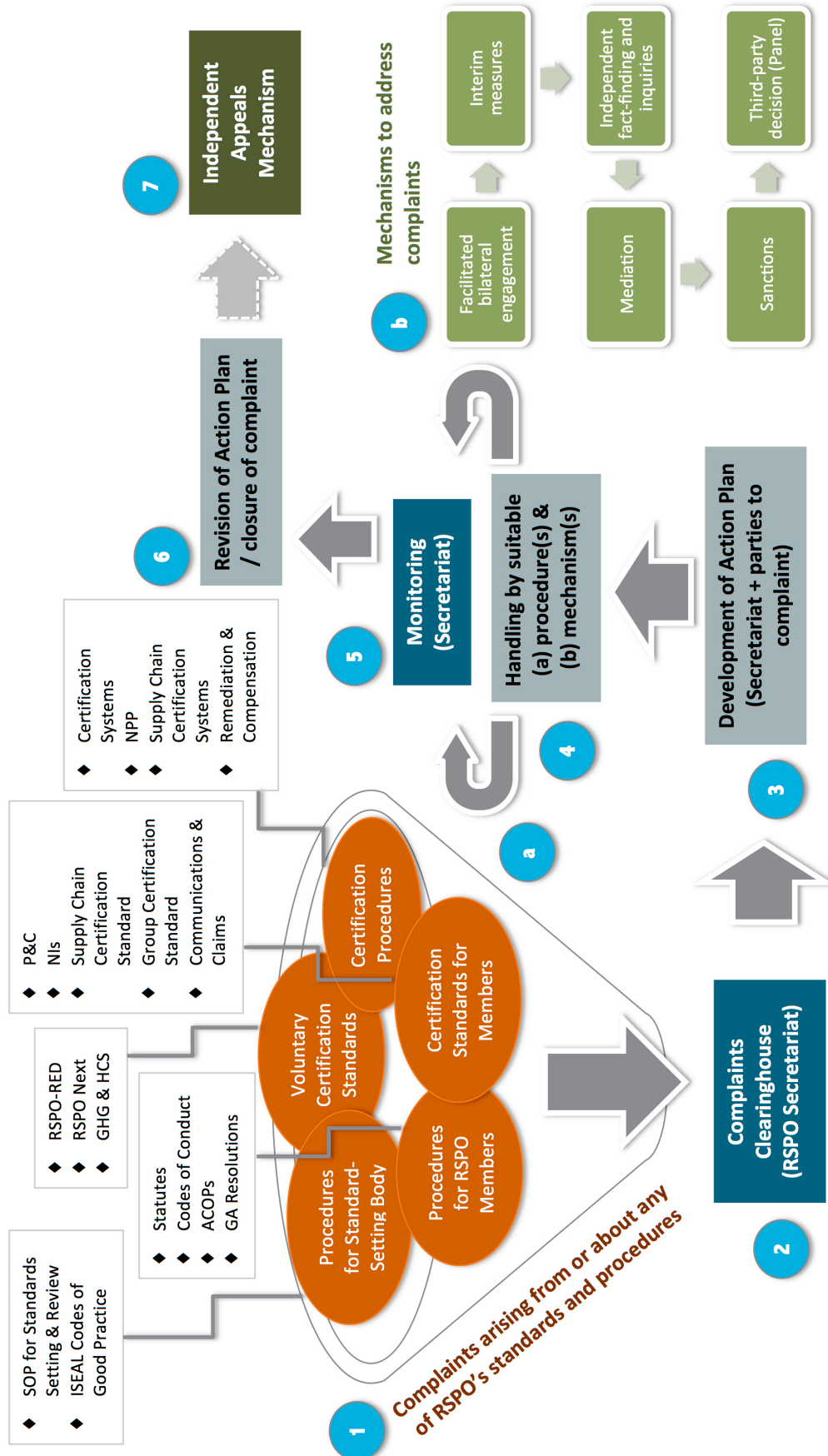
## **5.10. Appeal<sup>13</sup>**

If one or more parties to a complaint feels the complaint has not been resolved to their satisfaction or according to the Complaints System Procedures, they may file an appeal with the Independent Appeal Mechanism in accordance with the latter's procedures [currently being developed]. The decision of the Independent Appeal Mechanism shall be final. A report of the decision shall be conveyed in accordance with *Article 2.3* on communications and announcements.

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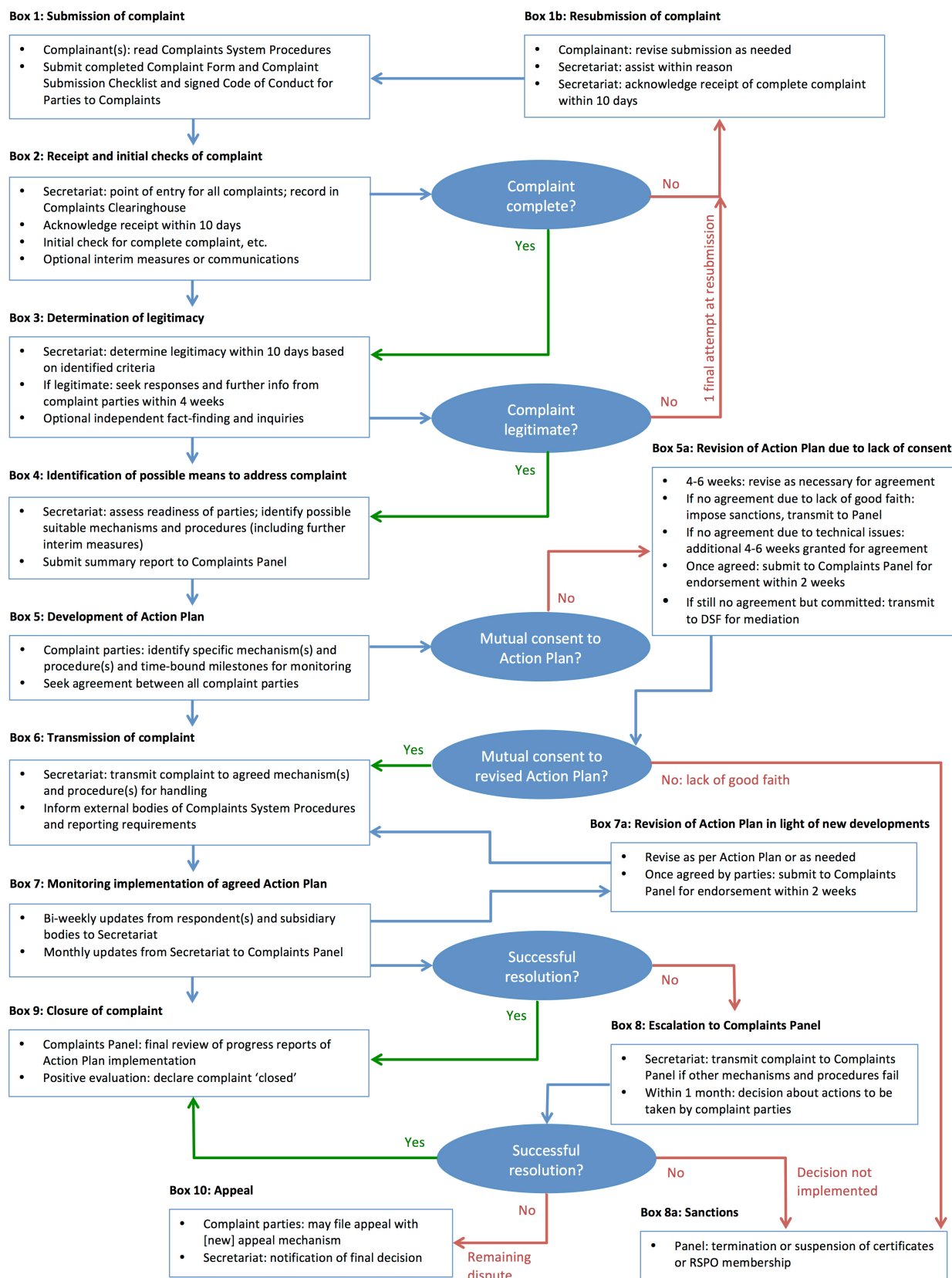
<sup>13</sup> Commentary: An Independent Appeal Mechanism is currently being developed by ASI and will be undergoing public consultation at the same time as the present Complaints System Procedures. The two documents should be aligned where relevant before they are submitted for final endorsement.

## Annex 1. Broad Framework for Integrated Complaints System



## Annex 2. Complaints Process Flowchart

*This diagram illustrates Section 5 (Process Flow) of the Integrated Complaints System Procedures and shall be used in conjunction with the Procedures in full.*



## Annex 3. Complaint Form

### RSPO COMPLAINT FORM

*You are encouraged to review the RSPO's Integrated Complaints System Procedures and Code of Conduct for Parties to a Complaint before filling out this form. If you have any questions about the procedures or form, please contact the RSPO Secretariat for assistance.*

*This form should be filled out by the lead complainant, i.e. whoever will be the complaint's primary contact person for communication with the RSPO Secretariat. The form is intended to elicit enough detail for your complaint to be handled promptly and efficiently, so please include as much information as possible in the right-hand column and in supplementary documents. Nonetheless, it is not necessary to fill out all of the sections and your complaint will not be rejected if it is incomplete. If you do not have access to some of the details requested or if some do not apply to your complaint, leave the section(s) blank and the RSPO Secretariat will assist you where possible.*

#### PART A: DETAILS OF COMPLAINANT(S)

1. Name of individual or organization	
2. Name of organization's contact person	
3. Occupation / position of contact person	
CONTACT DETAILS (where available)	
4. Postal address	
5. Email address and Skype ID	Email: Skype ID:
6. Phone number (including country code)	Business / landline: Mobile:
7. Fax number (including country code)	
8. Website	http://
9. Preferred language (please tick <b>✓</b> on your option)	<input type="checkbox"/> English <input type="checkbox"/> Bahasa Indonesia <input type="checkbox"/> Bahasa Malaysia <input type="checkbox"/> French <input type="checkbox"/> Spanish <input type="checkbox"/> Chinese <input type="checkbox"/> Other, please specify: .....
10. Are you a member of RSPO or any of its subsidiary bodies (e.g. Complaints Panel, Working Groups, Task Forces)? (please tick <b>✓</b> on your option)	<input type="checkbox"/> Yes, please specify: ..... <input type="checkbox"/> No .....
11. Are you submitting this complaint on behalf of another person, community and/or organization? (please tick <b>✓</b> on your option)	<input type="checkbox"/> Yes, on behalf of: ..... <input type="checkbox"/> No Name: ..... Postal address: .....

	<p>.....</p> <p>Email address: .....</p> <p>Phone number: .....</p>
<p>12. Are you submitting this complaint jointly with other individuals, communities and/or organizations? <i>(please tick ✓ on your option)</i></p>	<p><input type="checkbox"/> Yes <span style="float: right;"><input type="checkbox"/> No</span></p> <p>Please specify your expected role in the complaint process (e.g. liaising with communities, technical assistance, etc.):</p> <p>.....</p> <p>.....</p> <p><b>Details of others submitting this complaint jointly with you</b> (if there is more than one, please add relevant details for each):</p> <p>Name of organization: .....</p> <p>Contact person: .....</p> <p>Postal address: .....</p> <p>.....</p> <p>Email address: .....</p> <p>Phone number: .....</p> <p>Expected role in the complaint process: .....</p> <p>.....</p>
<p>13. Aside from co-complainants listed above, is anyone else (e.g. legal representative, non-governmental organization, community development organization) assisting you with the complaint? <i>(please tick ✓ on your option)</i></p>	<p><input type="checkbox"/> Yes, please specify: <span style="float: right;"><input type="checkbox"/> No</span></p> <p>Name of organization: .....</p> <p>Contact person: .....</p> <p>Postal address: .....</p> <p>.....</p> <p>Email address: .....</p> <p>Phone number: .....</p> <p>Expected role in the complaint process: .....</p> <p>.....</p>
<p>14. Do you need any particular forms of support in the complaint process? <i>(please tick ✓ on your option)</i></p>	<p><input type="checkbox"/> Translation and interpretation</p> <p><input type="checkbox"/> Communication with female staff (in case of cultural or gender-related sensitivities)</p> <p><input type="checkbox"/> Protection of identity from RSPO member (in case of safety concerns)</p> <p><input type="checkbox"/> Assistance with provision or verification of evidence / supporting documentation</p> <p><input type="checkbox"/> Explanation of the procedures</p> <p><input type="checkbox"/> Other, please specify: .....</p> <p>Remarks: .....</p> <p>.....</p>

**PART B: DETAILS OF RSPO MEMBER(S) AGAINST WHOM THE COMPLAINT IS SUBMITTED**

15. Name of RSPO Member / parent company	
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16. Name of Member's / company's contact person	
17. Occupation / position of contact person	
CONTACT DETAILS (where available)	
18. Postal address	
19. Email address & Skype ID	Email: Skype ID:
20. Phone number (including country code)	Business / landline: Mobile:
21. Fax number (including country code)	
22. Date of certification (if any)	

**PART C: COMPLAINT DETAILS**

23. Date of submission (DD/MM/YYYY)	
24. Address and location of complaint ( <i>provide a map and/or GPS coordinates, if possible</i> )	
25. Provide a summary of the complaint with key facts and issues in chronological order	
26. Specify which standards and/or procedures you feel have been breached ( <i>see Integrated Complaints System Procedures: Article 1.5</i> ), if known at this stage	
27. Describe any actions taken by you or the other complainants to settle the issues, including a chronology of events and identification of any other complaints or dispute resolution mechanisms you have attempted to use	
28. List the person(s), organization(s) or RSPO member(s) you or your organization has contacted (if any) in an attempt to settle the issues, and append any relevant documents (e.g. minutes of meetings, non-confidential emails)	
29. List any supporting materials you plan to submit in addition to this form (e.g. maps, photographs, videos, audio recordings, reports, press clippings, copies of land titles or permits, etc.) and indicate if you need more time to prepare any of them	
30. Please explain the desired outcome(s) of the complaint(s) from your perspective	
31. Please identify which mechanisms and/or procedures you may wish to use to address the complaint ( <i>see Integrated Complaints System Procedures: Sections 3-4</i> ), if known at this stage	

#### PART D – STATEMENT OF GOOD FAITH

In submitting this complaint, I / we:

1. Fully understand and agree that the RSPO Secretariat will handle this complaint in accordance with the Integrated Complaints System Procedures and Process Flowchart.
2. Agree to have the RSPO Secretariat share the complaint with the RSPO member(s) concerned, subject to the request for confidentiality of certain details such as identity; and
3. Agree to engage in the complaints process in good faith and to abide by the RSPO Code of Conduct for Parties to a Complaint (*Complaints System Procedures: Annex 5*)

Thank you.

Yours sincerely,

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Signature or thumbprint]

\_\_\_\_\_  
[Date]

Please submit your complaint to: [complaints@rspo.org](mailto:complaints@rspo.org)

**RSPO Secretariat Sdn Bhd**

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## Annex 4. Complaint Submission Checklist

### RSPO COMPLAINT SUBMISSION CHECKLIST

Please complete this checklist prior to submitting your complaint by ticking **✓** where applicable. It is not necessary to fill out all of the sections and your complaint will not be rejected if it is incomplete. If you do not have access to some of the details requested in the form or if some do not apply to your complaint, leave the section(s) blank and the RSPO Secretariat will assist you where possible.

1. Details of complainant(s)	<input type="checkbox"/> Name and contact details of each (co-)complainant <input type="checkbox"/> Name and contact details of other supporting individuals or organizations
2. Details of responding RSPO member(s)	<input type="checkbox"/> Name and contact details of each respondent
3. Mandatory information	<input type="checkbox"/> Complaint form (completed to the best of your ability)
4. Optional evidence appended to complaint form (please tick <b>✓</b> where applicable)	<input type="checkbox"/> Summary and chronology of events <input type="checkbox"/> Maps and location coordinates <input type="checkbox"/> Photographs, videos and/or oral recordings <input type="checkbox"/> Permits and/or land titles <input type="checkbox"/> Concession agreement <input type="checkbox"/> Police reports and/or complaint letters to government departments and company <input type="checkbox"/> HCV reports and/or other relevant studies <input type="checkbox"/> Press clippings and/or links to online news coverage <input type="checkbox"/> Other supporting documents
5. Assistance needed (please tick <b>✓</b> where applicable)	<input type="checkbox"/> Translation and interpretation <input type="checkbox"/> Communication with female staff (in case of cultural or gender-related sensitivities) <input type="checkbox"/> Protection of identity from RSPO member (in case of safety concerns) <input type="checkbox"/> Assistance with provision or verification of evidence / supporting documentation <input type="checkbox"/> Explanation of the procedures <input type="checkbox"/> Other, please specify: .....
6. Undertaking (please tick <b>✓</b> where applicable)	<input type="checkbox"/> Code of Conduct for Parties to a Complaint understood and signed

## **Annex 5. Code of Conduct for Parties to a Complaint**

*This Annex sets out the Code of Conduct for the complainant(s) and responding RSPO member(s). It should be read and signed by each party to a complaint. If you (as a complainant or responding RSPO member) are concerned or unsure about any of the provisions, require translation, or feel you cannot commit to the Code for whatever reason, please contact the RSPO Secretariat to discuss further.*

### **Introduction**

The Roundtable on Sustainable Palm Oil (hereafter RSPO) is committed to ensure that all complaints are treated fairly and in a transparent manner to ensure that the process and outcomes alike are acceptable to all parties involved. As their contributions to this effort, all parties to a complaint are expected to read, understand and apply at all times the Code of Conduct outlined herein. The Secretariat and/or Complaints Panel may impose sanctions if a party is found to be in breach of the RSPO Statutes or Codes of Conduct.

### **Good Faith and Timeliness**

All parties to a complaint shall engage in good faith and conduct themselves in a respectful, proactive and constructive manner. All parties to a complaint shall communicate and respond fully to requests for information or views in a timely manner and endeavour to inform the RSPO Secretariat if they foresee any delays in doing so (e.g. due to travel in remote areas).

### **Monetary Gain**

All parties to a complaint shall refrain from offering, soliciting or accepting any sort of business or economic opportunities from the responding RSPO member(s) or others in the course of the complaint process. If one party to a complaint is approached by any of the other parties in such a manner, they shall immediately inform the RSPO Secretariat, which shall hold all details in confidence.

### **Public Statements**

All parties to a complaint are strongly encouraged to refrain from making public statements that are likely to negatively affect the complaint proceedings, particularly concerning ongoing investigations and sensitive deliberations, until the RSPO Secretariat issues public announcements of updates or decisions taken.

### **Cooperation**

Upon official notification from the RSPO Secretariat on the legitimacy of a complaint, all parties to a complaint shall cooperate and abide by RSPO's standards and procedures and the decisions of the Secretariat and/or Complaints Panel. If a party refuses to cooperate in good faith with efforts to resolve the complaint, the RSPO Secretariat and Complaints Panel reserve the right to suspend or close the complaint, pending further notice. The responding RSPO member(s) shall implement the

decisions of the Secretariat and Complaints Panel to the satisfaction of the Complaints Panel until the complaint is closed.

### **Intimidation**

All parties to a complaint must refrain from intimidating any other parties and others involved in a complaint (including witnesses or community members). No party shall use the threat of violence or economic or other losses as a means to coerce a party to not submit a complaint, to withdraw a complaint or to prevent them from communicating freely and contributing evidence or other information to the complaint process.

### **Code of Conduct Declaration**

I, ....., acknowledge that I have received and read a copy of this Code of Conduct for Parties to a Complaint, understand all of its terms, and agree to abide by the provisions contained therein as a party to the complaint by ..... against .....

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Signature or thumbprint]

\_\_\_\_\_  
[Date]

## **Annex 6. Code of Conduct for Complaints Panel Members**

*This Code of Conduct should be read and applied together with the Complaints Panel Appointment Letter (Complaints System Procedures: Annex 7).*

### **1. Introduction**

The Roundtable on Sustainable Palm Oil (hereafter RSPO) is committed to ensuring that stakeholder consultations and relevant processes are conducted with the utmost professionalism within a supportive, constructive, objective, ethical and responsive framework. To this end, the RSPO Secretariat wishes to ensure that it and all members of the RSPO convened as the Complaints Panel abide by the rules of participation as prescribed in this Code of Conduct. This Code of Conduct also applies to all observers, technical advisors, external experts and consultants invited to the Complaints Panel discussions, meetings and other fora through which the Complaints Panel conducts itself.

### **2. Expectations of Complaints Panel Members**

#### **2.1. Participation**

Complaints Panel members are urged to participate in all Complaints Panel meetings, discussions and deliberations with confidence and to express their views unreservedly and openly whilst observing the proper decorum and respecting the views and opinions of fellow Panel members.

#### **2.2. Conflict of Interest**

The RSPO Secretariat expects all members of the Complaints Panel to perform their duties as outlined in the RSPO Complaints System Procedures and this Code of Conduct with the utmost professionalism, integrity, objectivity and independence.

Members of the Complaints Panel shall serve in their own individual capacity and shall not purport to represent their respective membership categories as a whole.

Members of the Complaints Panel shall ensure their actions do not conflict with the purpose and mandate of the Complaints Panel (see *Complaints System Procedures: Article 3.6*). If, under any circumstance and in either their individual or professional capacity, a member of the Complaints Panel senses that a course of action that they have pursued or are presently pursuing or contemplating pursuing may place them in a situation of conflict with the objectives of the Complaints Panel, that member shall immediately inform the RSPO Secretariat and Complaints Panel Chairperson and take steps to immediately address the possible conflict and/or remove her/himself from the Panel deliberation for that particular complaint.

Members of the Complaints Panel shall refrain from offering, soliciting or accepting any sort of business or economic opportunities from the complaint parties, Secretariat or others in the course of the complaint process. If a Panel member is approached by any of the complaint parties in such a

manner, they shall immediately inform the RSPO Secretariat and Panel Chairperson, which shall hold all details in confidence.

### **2.3. Confidentiality**

As a general rule, all Complaints Panel members must respect and maintain the confidentiality of all information (including written and oral) to which they have access or are otherwise privy by virtue of their membership in the Complaints Panel.

More specifically:

- If any member of the Complaints Panel wishes to make public or reveal to a third party any information supplied by another Panel member or generated by the RSPO Secretariat as part of a complaint process, s/he shall seek the prior written consent of the Panel member concerned and the Chairperson of the Panel and/or RSPO Secretariat before doing so. If there are concerns about the release of particularly sensitive information, the Secretary General and Board of Governors may also be consulted.
- All information submitted or otherwise gathered from parties to complaints in furtherance of the complaint process shall remain confidential, unless already in the public domain. If any member of the Complaints Panel wishes to make such information public or provide it to a third party, s/he shall seek the prior written consent of the complainant(s) or respondent(s) concerned before doing so. Complainants and respondents are under no obligation whatsoever to consent to such sharing if they do not wish to do so.

In addition, the identities of Complaints Panel members shall remain confidential in relation to specific complaints that are the subject of the Panel's deliberations.

### **2.4. Communications**

All Complaints Panel members have a shared responsibility to ensure the credibility and good professional image of the the Complaints Panel and System and RSPO more broadly, and to ensure that no Panel member causes any reputational damage to the same.

Complaints Panel members shall not have any direct communication with the parties to a complaint which they are deliberating. Any questions or clarifications required of complaint parties shall be directed to the RSPO Secretariat for further action.

In informal or personal communications with anyone outside of the Complaints Panel, each member of the Panel shall take care to not do or say anything that may undermine or compromise the deliberations and decision-making processes within the Complaints Panel or the ultimate consensus decision itself.

The RSPO Secretariat shall generally be the focal point for providing the RSPO membership and general public with information about complaints. In the event that a Complaints Panel member is

asked to communicate with stakeholders or make a public statement on decisions or outcomes of the Complaints Panel, s/he shall ensure such communications are accurate and consistent with the consensus reached by the Complaints Panel and are fully in accordance with the present Code of Conduct's confidentiality requirements (Article 2.3).

### **3. Grievances**

In the spirit of working together in an amicable, solution-oriented and constructive manner in pursuit of the objectives of the Complaints System, any member of the Complaints Panel who has a *bona fide* personal grievance about the conduct of the Panel or Secretariat in its dealings with the Panel shall refer the grievance in writing to the RSPO Secretariat and/or Chairperson of the Complaints Panel.

The RSPO Secretariat and Chairperson of the Complaints Panel shall refer to the Secretary General any alleged breaches of the present Code of Conduct by any member of the Complaints Panel. The Secretary General, at the recommendation of the Chairperson of the Complaints Panel and where bilateral engagement did not elicit the desired change in behaviour, may decide to suspend or terminate the tenure of the Panel member in breach.

### **4. Exclusion of Liability**

The RSPO Secretariat shall not be held responsible under any circumstances for any loss or damage arising from the breach of any of the provisions contained in this Code of Conduct by a member of the Complaints Panel or by observers, technical advisors, external experts and consultants to the Complaints Panel.

### **5. Code of Conduct Declaration**

I, ....., hereby confirm that I have read and understood the terms of this Code of Conduct and agree to abide by the provisions contained herein as a member of the Complaints Panel of the RSPO.

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Date]

## **Annex 7. Complaints Panel Appointment Letter**

*This Appointment Letter should be read and applied together with the Code of Conduct for Complaints Panel Members (Complaints System Procedures: Annex 6).*

(Sample letter)

[DD/MM/YYYY]

Dear \_\_\_\_\_,

### **RE: Appointment to the Complaints Panel of RSPO**

We congratulate you on your appointment to the Complaints Panel of RSPO.

Please note the following terms and conditions:

#### **1. Tenure**

All Complaints Panel members hold office at the discretion of the Secretary General. This appointment is effective for a period of two (2) years, starting from DD/MM/YYYY and ending on DD/MM/YYYY. Renewal of the appointment shall be at the sole discretion of the Secretary General in consultation with the Impacts division.

#### **2. Meetings and Attendance**

Panel meetings are generally held once a month. As a Complaints Panel member, you are required to attend a minimum of eight (8) meetings each year. All meetings are conducted via teleconference, unless you choose to attend in person at your own expense (unless otherwise notified by RSPO) at the RSPO Secretariat Office in Kuala Lumpur.

#### **3. Management of Meetings**

The RSPO Secretariat will facilitate all of the meetings and provide administrative support for all Complaints Panel Members.

#### **4. Conflict of Interest**

As a member of the Complaints Panel, you are required to declare prior to the deliberations if you have or might have a potential conflict of interest in each particular complaint being heard by the Complaints Panel. Conflict of interest may include current or past dealings (commercial, occupational or personal) with any of the parties to the complaint which may affect your ability to impartially participate in the deliberations and reach a decision on the complaint.

#### **5. Code of Conduct**



As a member of the Complaints Panel, you agree to adhere to the Code of Conduct for Complaints Panel Members (*Complaints System Procedures: Annex 6*).

## **6. Confidentiality**

As a member of the Complaints Panel, you are required to maintain confidentiality on all matters that are shared with and discussed and deliberated by the Panel. You are strictly prohibited from using any information obtained in your work as a Complaints Panel member to gain a personal advantage, profit or any kind of pecuniary interest.

## **7. Remuneration**

As a member of the Complaints Panel, you will serve as a volunteer and will not receive any remuneration. However, travel costs, subsistence allowance and other related expenses (if incurred in the course of carrying out the work as a Panel member and requested by the Complaints Panel Chairperson) will be reimbursed by RSPO where applicable and where expressly provided.

## **8. Resignation and Termination**

A Complaints Panel member may resign from the Complaints Panel by giving one (1) month's notice.

The Secretary General may, at his / her discretion and with reasonable justification (e.g. breach of the Code of Conduct of Complaints Panel Members), terminate the tenure of any member of the Complaints Panel by giving one (1) month's notice in writing.

Thank you for your willingness to serve on the Complaints Panel.

Yours sincerely,

(signed)

Darrel Webber  
Secretary General

## **Declaration of Acceptance**

I, ....., hereby confirm that I have read and understood the terms of my appointment, including the Code of Conduct for Complaints Panel Members, and agree to abide by them as a member of the Complaints Panel of RSPO.

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Date]

DRAFT

## **Annex 8. DSF Framework, ToR and Protocol and DSF Procedure Flowchart<sup>14</sup>**

### **Dispute Settlement Facility (DSF)**

Framework, Terms of Reference, and Protocol

**PROPOSED REVISIONS, JANUARY 2012**

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#### **I. Framework:**

##### **A. Overview and Objectives**

RSPO requires in its Code of Conduct and in its Principles & Criteria (P&C) that members adhere to specific requirements. When stakeholders wish to raise a complaint or dispute against a member regarding conformity with RSPO requirements, recourse is ultimately available through RSPO's Complaints System. In order to engage this Complaints System in a practical and more efficient way, parties are encouraged to seek avenues for resolution of disputes under a framework that applies the relevant sections of the P & C in a consistent manner that is complementary and subordinate to the Complaints System. The addition of a Dispute Settlement Facility (DSF) under RSPO attempts to fulfil this need; the DSF addresses disputes arising from issues relevant to certain RSPO P&C, as detailed in Section I.B below.

RSPO acknowledges the need to work within the legal framework of each nation, but also acknowledges that the legal system and judiciary sometimes fall short of resolving land-related disputes. Inconsistencies within and implementation of the legal system can also contribute to or complicate such disputes. Additionally, there is an apparent need for a non-legalistic approach, which could act more in the realm of conflict resolution and prevention than arbitration.

The aim of the DSF is thus principally to:

1. Provide a means for achieving fair and lasting resolutions to disputes in a more time efficient and less bureaucratic and/or legalistic manner, while still upholding all RSPO requirements including compliance with relevant legislation.
2. Alleviate administrative and technical burdens placed on the currently existing Complaints System and its executors.

##### **B. Context**

How the context of the DSF falls into the larger context of the Complaints System is depicted in the flow diagram and text of the document entitled, "RSPO Complaint System.doc."

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<sup>14</sup> Commentary: The preparation of the Integrated Complaints Procedures did not include a revision of the DSF framework, terms of reference and protocol; Annex 8 contains nothing new and is simply a cut-and-paste of existing procedures. Significant revisions are needed, however, and are expected to be undertaken by the DSF manager and Advisory Group. See the 2015 technical review for recommendations concerning DSF.

Palm oil land related disputes show they mostly result from lack of FPIC, recognition of the community voice, and respect for customary rights. The RSPO P&C criteria 2.2, 2.3, 6.4, 7.5, and 7.6 specifically require certain kinds of interactions regarding how producers are to proceed when dealing with issues surrounding land use and customary rights of local peoples, and most notably to follow processes of Free, Prior, Informed Consent as specified in the P & C. Furthermore, requirement 4.2.4 in the RSPO Certification Systems document states that certification is not possible when there are ongoing disputes. To more expeditiously settle disputes of these kinds between RSPO members and their respective stakeholders, RSPO has thus created an additional Dispute Settlement Facility (DSF), described herein.

The DSF enables a mediation process that may be undertaken by mutual consent of the parties involved in the dispute. While the primary intention of this DSF is to address land-related disputes, parties may choose this system as a way to resolve other forms of disputes as well. In all cases, parties are encouraged to first try to settle disputes on their own, i.e., by directly engaging the other side, without seeking outside help. Failing this, the preferred course of action, for the reasons described above, is to seek mediation through the DSF as a way to achieve resolution. The DSF is subordinate to the RSPO Complaints System, which may be further pursued if a party rejects the mediation process or the DSF mediated process fails to achieve a resolution.

### **C. Categories of Disputes:**

For the purposes of the DSF, disputes shall be divided into five categories:

1. *A dispute that has existed and is known by the RSPO member, but is not divulged once they have initiated the certification process* – Disputes of this category require that the member agree to the mediation process detailed in section IV of this document immediately as applicable and if so requested by the disputing party(ies). Certification shall be suspended until a resolution has been achieved between the two sides on their own, through the DSF, or through the Complaints System.
2. *A dispute that has been “acquired,” or “assumed” by a member via their acquisition of land or operations from another company, but the member is otherwise in good standing* - In this category, the member must agree to the mediation process detailed in section IV of this document immediately as applicable and if so requested by the disputing party(ies). As long as the member cooperates, certification status of other operations shall not be adversely affected. A prerequisite to this is that it must be clarified and agreed, from a historical perspective, who the parties initially involved in the dispute were. In any case, this category of dispute shall not be construed as a means for any member to acquire such a disputed situation as a way to alleviate another company of responsibility and/or penalty under point (1) above.

3. *A new dispute that arises only after certification has been granted.*
4. *A dispute that had been settled and recognized by relevant parties (and perhaps the authorities) but for whatever reason the dispute resurfaces.* For example, a dispute over land, which had been settled amicably between the elders of the local community and a plantation company and the settlement was duly witnessed by the district government. However, with the passage of time, some younger members of the local community felt that their community had not been given a fair deal and called for a renegotiation for a better compensation, thus leading to the resurrection of a previous conflict.
5. Other disputes brought to the DSF at the discretion of the parties directly involved in the dispute.

## **II. Terms of Reference:**

### **A. Stakeholder Standing and Engagement**

Parties who shall have primary standing and therefore recourse under the DSF are those who have a direct land-related conflict or other disputes with each other, i.e., individuals, smallholder groups, and/or their communities, and companies. Other stakeholders and associated organizations such as conservation-based NGOs, certification bodies, etc., may be called upon for support by the parties having primary standing, but they may not exercise the DSF as a recourse for disputes they raise from their own organizations; such complaints have recourse through the main RSPO Complaints System.

At the same time, it is important to conduct the DSF in a way that minimizes the likelihood that once a resolution has been reached through the DSF, that the same disputes will not flare up again, the outcomes being contested by other parties who consider themselves also stakeholders (e.g. a section of a community which somehow does not feel their concerns are adequately addressed, etc). In this respect, disputants should, as part of their responsibility under the DSF, be required to demonstrate that they diligently communicate with their constituents on a scale that is broader than their immediate members, such as to district and local levels. This communication process should occur in an ongoing manner as the DSF is employed, through to the proposed resolution, such that the resolution is communicated to the broader context of stakeholders and acceptance thereby maximized.

### **B. Oversight and Administration**

The RSPO Executive Board (EB) shall have full responsibility for oversight of the DSF and the Secretariat shall oversee the administration of it. The EB may, at its discretion, appoint a “DSF Steering Committee” to oversee the DSF, which shall be entrusted with ensuring its proper functioning, and making recommendations and adjustments to the structure of the DSF as needed. This Steering Committee shall report its activities, as well as any

recommendations and adjustments, to the Secretariat on at least a semi-annual basis, with any substantive changes in procedure notified in advance to and duly approved by the EB.

The Secretariat may also outsource any or all of the duties associated with the maintenance and the flow of information involved with the DSF to a contracted service provider (or providers), but said contracted provider(s) shall not have the power to make decisions regarding the outcome of any case where the DSF is used. This service provider shall report to the aforementioned Steering Committee or directly to the Secretariat, as determined by the Secretariat.

To facilitate the mediation processes intended by the DSF, the following components are hereby named as integral and therefore necessary aspects of the aforesaid oversight and administration by RSPO:

### **C. Building Capacity to use the DSF**

RSPO, working with the DSF Steering Committee shall establish a program to enable RSPO members, local stakeholders and other parties' awareness of and understanding of how to use the DSF, including how to involve/commence a DSF mediation process, how a mediation process is conducted, what are requirements, and how to prepare oneself. Such a program of education and awareness includes but is not limited to:

- Publications bearing on the DSF and the RSPO that are accessible to and understandable by the people who need to use them (in translation, with easily understandable terms); and
- Meetings in-person and otherwise.

Topics include but are not limited to:

- When and how to pursue mediation as an option;
- How to notify the other side of a request for mediation
- How to notify RSPO of the desire to initiate mediation
- How to choose a mediator
- What to expect from the mediation process
- Recourse when obstacles are encountered
- The broader context of the DSF with respect to RSPO requirements in general and the Complaints System in particular.
- How to develop and disseminate communications related to participation in and outcome of the DSF process.

### **D. Approval of Mediators**

The Secretariat or a party commissioned by the Secretariat shall maintain and publish a list of approved mediators. Approval of mediators shall follow an accreditation process whereby at least the following criteria are met:

- Each mediator shall have the demonstrated qualifications and/or credentials and experience. These shall be evaluated by the Secretariat or a duly empowered service provider, the criteria for decision (i.e., minimum acceptable qualifications) and approval specified in writing and employed consistently for all persons seeking approval. Qualifications include but are not limited to:
  - Training as a mediator, with adequate experience
  - Availability to actually carry out the work
  - Familiarity with the area/region wherein a dispute is situated
  - Fluency in the (local) language relevant for the region
  - Awareness of local culture and social realities, including but not limited to issues pertaining to Land Ownership Claims, Payments for Land Compensation, Ancestral Land and also its Divisions Amongst Descendants
  - Familiarity with land use related issues
  - Basic know-how of legal framework, national laws and legislation
  - Knowledge of RSPO Statutes, By-Laws, Code of Conduct, P&C, Complaints System, and other relevant motions of the General Assembly, as well as RSPO communications mechanisms
- Each mediator shall submit a full declaration of interests and update this declaration at least annually and also as new interests arise.
- Each mediator shall enter into an agreement with RSPO and with each of the parties involved in the dispute, to maintain confidentiality.
- Each mediator shall agree to follow minimum requirements for conducting and reporting on mediation, as detailed in this document or applicable references stated herein.

#### **E. Housing of Information and Notification**

The Secretariat shall itself house or otherwise have unlimited access to all information held and processed by a contracted service provider for the DSF. Similarly, all relevant information must be accessible to RSPO stakeholders via the RSPO website, taking the following into consideration:

The DSF aspires to ensure transparency throughout the mediation process and the reporting thereof. Decisions not to disclose information through the RSPO website or other media require motivation on genuine grounds that disclosure will go against the interest of the mediation process and/or may jeopardize the well-being or safety of stakeholders involved, and that non-disclosure does not undermine adherence to the principles and objectives of RSPO, to wit:

1. The non-disclosed information relates to a legitimate aim, i.e. peaceful and constructive dispute settlement in accordance with RSPO objectives and P&C;
2. The disclosure of said information threatens harm to that aim; and
3. The harm to the aim is greater than the public interest in having the information disclosed.



In addition, the Secretariat shall make available, on its website and through other media as it deems useful or necessary, summary reports of the information, activities, status, and results of all persons and parties involved with the DSF. This reporting shall be done in a consistent manner per a template or format provided by RSPO that allows comparison and overview of the DSF over time, as a means of better assessing its effectiveness.

## **F. Monitoring**

The DSF shall formally report to the Executive Board on at least an annual basis about its activities, and the Executive Board shall, with at least the same frequency, review the activities and cases encompassed by the DSF, and thereby evaluate its effectiveness.

Revisions to procedures and practices shall be made along specified timelines, as the EB deems prudent. The EB may assign part of the evaluation work to the Secretariat or to a contract service provider, and these entities may make recommendations, but final decisions on action shall be the exclusive power of the EB.

This monitoring and review process and the associated outcome(s) shall be reported on the RSPO website at least annually.

## **III. PROTOCOL**

### **A. Timelines and Expectations:**

#### **1. General expectations of the DSF and its mediation processes**

- Mediation is not the same as arbitration. Both sides of a dispute must ultimately voluntarily and mutually agree on the decided outcome.
- Resolutions reached through mediation processes are often “iterative” in nature; while the compromises reached may satisfy the parties involved in a permanent way, they do not necessarily completely eliminate the possibility of further evolution, discussion, and/or alternative outcomes in the future, provided these opportunities are acknowledged and mutually agreed by the parties as being part of the process.

#### **2. Refusal of aggrieved parties to participate**

- The DSF presumes that both sides involved in a dispute will agree to participate in a mediation process. RSPO realizes however that good-faith attempts to enter the DSF process by the party against whom the dispute is raised may be met with refusal to use the DSF by the aggrieved side, for whatever reason. Such a unilateral refusal to participate could be used to force the other side through the RSPO Complaints System and thereby incur penalties that might otherwise be avoided had the DSF been successfully used. In such cases the refusal to participate in the DSF must be

evaluated by the RSPO Complaints Panel in order to inform their decision about the party against whom the complaint is held.

- In order to inform the Complaints Panel, the Complaints Panel shall direct the DSF Manager to contract an external expert to investigate the nature of the refusal. The primary parties involved shall have the opportunity to object to the expert assigned to this task. The costs for the expert's investigation shall be born by RSPO.

### **3. Completion of the DSF process**

Notwithstanding point (2) above, the expectation is that once a mediator has been engaged, that either:

- resolution will be achieved or at least all parties involved express that adequate progress is reached, within one year, and in particular, accordance with clause 4.2.4. of RSPO Certification Systems (26 June 2007) (currently being reviewed);
- the mediation process will have been abandoned by one or both sides for another avenue of recourse such as the Complaints System; or
- both sides mutually agree to extend the mediation process. In such cases, use of the DSF can be construed under the RSPO Principles & Criteria to be a "recognized dispute resolution process acceptable to both parties," in which case decisions regarding withdrawal of a company's certification (or similar adverse actions against said company) are not yet necessary.

### **4. Notification and Continuity**

- Post-mediation dialogue between the immediate parties using the DSF and their respective stakeholder communities is necessary diligence, to ensure that the resolution(s) reached through the DSF are clearly communicated and thus better accepted.
- In all cases, once a mediator has been engaged, it shall be the responsibility of the mediator to update the Secretariat on the status of the dispute on at least a quarterly basis and also upon resolution or abandonment of the process.

## **B. Flow and Detail of Events:**

The basic steps involved with use of the DSF are as follows:

### **1. Preliminary/Inquiry**

- a. RSPO receives a formal complaint through its Complaints System. If the Complaints Panel determines that the case is justified and that P & C are relevant to the DSF's context, RSPO or its contracted service provider directs the inquiring party to the appropriate information, mechanisms, and/or parties that will enable it to engage the DSF. The Secretariat or its contracted service provider shall document the inquiry, including the name(s) or the inquiring side, the topic and party being disputed against, and the date of the inquiry.

- b. RSPO receives an inquiry from either or both sides of a dispute for assistance through the DSF to resolve a dispute. In such cases the DSF is seen as an opportunity to resolve a dispute before it escalates to the status of a formal complaint under RSPO. Inquiries of this nature, i.e., where no formal complaint has yet been raised, shall be subject to all RSPO requirements for the DSF process, except that they shall be, at their explicit request, exempt from public RSPO announcements and communications about the mediation process as specified in this document, provided that this “quiet” approach is acceptable to all parties of primary standing in the dispute.
2. Initiation - If a party wishes to engage in mediation (i.e., use the DSF), they must notify RSPO in writing of that intention. The Secretariat or its contracted service provider shall document this notification, including retaining the original notification, the date it was received, the basic claim(s) or subject of the dispute, and the opposing side(s) to be involved in the mediation.
3. Agreement on a mediator. The mediator must be approved under the DSF per section 3 above and agreed upon by both sides involved in the mediation.
4. Once the mediator has been chosen, s/he will then notify RSPO that s/he has been engaged for the work. The Secretariat or its contracted service provider shall note the identity of the mediator and the date on which engagement – and therefore the mediation process – has begun.
5. The mediator will conduct the mediation and will report to RSPO as described in Section IV above. The mediator’s final report shall include at least the following:
  - a. That both sides agreed on the process of the mediation, including setting/location for meetings, meeting frequency, and persons to be directly involved in the mediation. The mediator shall include a description of the roles and responsibilities of each person involved in the mediation and an assessment of their suitability to the process.
  - b. An agreement on the costs incurred by each side involved in the mediation, and what they were.
  - c. While it is expected that the intended goal of the mediation process is a rapid and lasting resolution, both parties, at their mutual consent, may explicitly agree that a temporary resolution may be an acceptable outcome. In such cases, a commonly agreed time frame for the duration of the temporary resolution must be specified, with a proposed subsequent development aimed at alleviating the dispute and ensuring full adherence to RSPO requirements. The mediator shall report all such intentions and outcomes in detail.
  - d. An agreement on the history and facts of the case. This must be based on:
    - i. a presentation of facts by each side and a summary thereby included in the mediator’s report;
    - ii. reference to customary laws, applicable; and
    - iii. a statement by each side of desired outcomes of the mediation
  - e. The actual outcome of the mediation process. The outcome can be one of two basic paths:

- i. Successful – a mutually agreed outcome. In this case the mediator shall specify the terms of the agreement.
    - ii. Unsuccessful – in this case the mediator shall detail the essential nature of the disagreement that still exists and a summary of each side's stated intentions as to the next step(s) they each intend to take.
  - f. An overview of the broader stakeholder engagement done by the primary parties involved in the mediation process, to help ensure that the resolution(s) reached will be durable, along the lines of sections II.A and III.A.3 of this document.
6. The mediator shall submit his/her report simultaneously to both sides and to RSPO. Both sides must then validate the mediator's report in writing to RSPO, or otherwise state what aspect(s) of the report they do not consider accurate and the reasons why. The Secretariat shall determine the proper course of action, consulting with the EB as necessary.
7. The RSPO Secretariat or its contracted service provider shall publish the outcome of the mediation on the RSPO website, as well as document the outcome in summary form for the purposes of monitoring and oversight as described in Section II above.

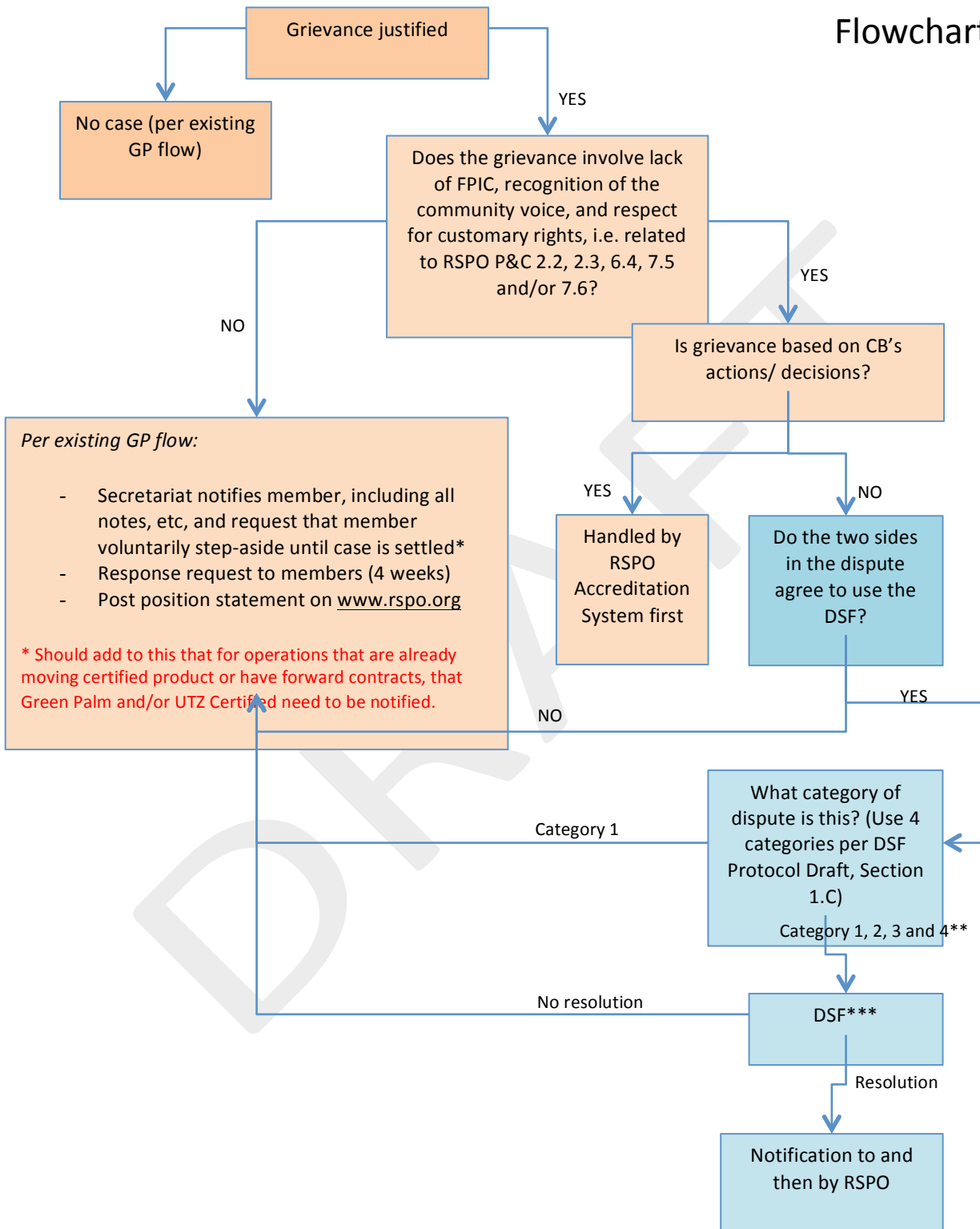
### C. Costs

The costs for the mediator's services shall be borne in total by the sum payments of both sides engaged in the mediation, with deductions based on discretionary financial support tendered by RSPO. For its first year of operations, the DSF shall publish fee schedules of all mediators approved under the DSF.

In order to calculate the share each side must pay, proportionate to the respective parties carrying capacity, the following factors must be taken into consideration:

- a base administrative fee for maintenance and processing of the data by RSPO or its designated agent;
- costs of travel-related expenses incurred by the mediator and each side engaging in the mediation, compared to overall revenues and financial resources devoted to the operation(s) under dispute;
- the number of individuals (or farming families) poised to benefit from compensation resulting from a positive outcome to the mediation process, the idea being that larger numbers of people can collectively bear more costs;
- the gross revenues and/or volumes gained by the party being disputed against, the idea being the greater the amount, the greater the cost that should be borne.

# DSF Procedure Flowchart



**\*\* Even a “category 1” dispute could still use the DSF as a way toward resolution.**

\*\*\* For the DSF, there could be another, separate flow diagram, reflecting what is in the narrative protocol