

Rationale and Justification Document for ICS and IAM Draft Amendments

Prepared by Solicitors appointed to review above named drafts.
October 2016

FOREWORD

In our effort to review and amend the Integrated Complaints Procedure Draft Version 1.1 (hereinafter referred to as the ICS draft) and the Independent Appeal Mechanism Version 1.2 (hereinafter referred to as IAM draft) as per our Terms of Reference with RSPO, we found it necessary to make significant changes procedurally as well as substantively. The purpose of this document therefore is to set out the justifications and rationale for making some of the changes that are viewed as significant departures from the ICS and IAM draft.

The fact that the ICS and the IAM (to a lesser extent perhaps) drafts were subjected to a public consultation exercise, in our view warrants an explanatory document of this nature. This document we hope will aid the reading of the Revamped Draft prepared by us and further serve as an explanatory note should the Revamped Draft be subjected to another round of public consultations. Please note that Revamped Draft is now the ICS and the IAM draft combined into one procedural document entitled 'RSPO Complaints and Appeals Procedure'.

1. COMPLAINTS AGAINST RSPO AS AN ORGANIZATION

We find many difficulties and complications that arise from making RSPO as an organization subject to the complaints procedure. This view echoes the views of many stakeholders who have also expressed their reservations on the matter of making the organisation subject to complaints. In the paragraphs that follow we have laid out the reasons for removing the provisions in the ICS draft that contemplates a complaint against RSPO.

- 1.1 It is difficult to understand what is meant by 'complaints against RSPO' as an organisation. RSPO as an organization is in effect an association of members as defined in the RSPO Statutes. A complaint against it is in effect a complaint against the association of members. It is difficult to envisage the circumstances in which such a complaint against the association of members can arise.

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Perhaps what is intended is for the complaint to be directed against the Secretariat. But even that in our view is not appropriate for the reasons stated in the paragraph that follows;

- 1.2 First a word about the RSPO Statutes. The RSPO Statutes is the primary document of the association. It is this document that establishes the organization, defines its membership, objectives and its governance structure. It is in effect the constitution of RSPO. If there is a conflict between the Statute and the provisions of any other RSPO document then the provisions that conflict with the Statute is liable to be struck down as being ultra vires the Statute. With this in mind, let us consider the governance structure of RSPO as provided for in the Statute. The Statute provides for a board of governors (BOG) to be elected by the membership. The BOG sets the terms of employment of a Chief Executive Officer (CEO). The BOG together with the CEO sets the terms of employment of the staff that makes up the Secretariat. The structure is designed therefore for the Secretariat to be answerable to the BOG and the CEO and the CEO to be answerable to the BOG. Complaints against the Secretariat or the CEO would ultimately be a complaint with regards the performance or conduct of employees of RSPO. The employees have a legitimate expectation that any complaints against them will be dealt with in accordance with their employment contract and as a human resource issue. A mechanism as prescribed in the draft ICS that attempts to deal with complaints against the Secretariat, which is in essence a complaint against the staff of RSPO, conflicts with the governance structure as provided for in the RSPO Statute and would, in addition, be in conflict with the contract of employment of the staff. We foresee many complications in the future if a complaint against the Secretariat, which is essentially a human resource issue, is dealt through the complaints system. The 'performance' of the RSPO Secretariat noted in 14.6.1 of the ICS draft is fundamentally flawed in identifying 'performance' as a 'procedural complaint' in our view.

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- 1.3 The ICS draft however does provide for complaints to be made with regards shortcomings in the Scheme documents (section 14.6.1). We have dealt with this point in the paragraph below;
- 1.4 It is difficult to understand why a short-coming in the scheme documents are categorized as a complaint against RSPO. Some Scheme documents, as we understand it, are approved and passed at the general meeting. If there are shortcomings in the Scheme then amendments would have to be made at the general meeting (where relevant). If the complaint is that the Secretariat has not made an endeavour (on assumption that it is their duty to do so), to form working groups or other institutional set ups with the objective of reviewing the provisions of the Schemes then again it is a human resource issue; namely the failure of employees to perform their function. In any event we understand that there is already in place a system of reviewing the Schemes periodically.
- 1.5 We are also of the view that shortcomings in the governance structure cannot be dealt with through a complaints system as the structure is provided for in the RSPO Statute. Any shortcomings in the governance structure that needs to be corrected through changes to the structure would have to be voted on and passed at the general meeting of members. Even then we cannot see the value of making such a fundamental change to the governance structure so as to remove the BOG's and CEO's scrutiny of the employees of RSPO. Ideally staff performance ought to be a management concern and not be dealt with outside the employees' contract of employment.
- 1.6 Furthermore, many stakeholders have commented about the unreasonableness of making RSPO a Respondent in a complaint because the Secretariat has an important administrative role in the complaints system. This, many commentators say and we agree, places the Secretariat, which in the context of the complaint is the Respondent, in a position of conflict.

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- 1.7 Finally, there is an avenue in the RSPO Statutes for members to hold the Board of Governors and indirectly the Secretariat to account if there are failures in the governance structure or the performance of the Secretariat's duties. The avenue is to hold an extra ordinary general meeting to either censure or remove the BOG for their failure in monitoring the performance of the Secretariat.

2. Initial Diagnosis

The ICS Draft refers to a "preliminary review" stage at Section 9.3 of the Draft.

- 2.1 We have deleted section 9.3.1 as we do not see the relevance of this process particularly when there is section 9.4 that deals with what is termed as an 'initial diagnosis'. On the matter of the initial diagnosis, we amended section 9.4 and introduced a new section 5.2 to give clarity to what exactly the Secretariat is to do in this process. The amended section requires the Secretariat to look at the allegations in the Complaint against the provisions of the RSPO Scheme Documents and ask itself whether if the allegations are proven to be true would constitute a breach of the provisions of the RSPO Scheme Documents. If the answer is in the affirmative then the Complaint passes the initial diagnosis. If the answer is in the negative then the Complaint is rejected. This amendment identifies a **test** to be employed by the Secretariat to diagnose the complaint which is absent in the ICS draft. The amendment also serves to meet the objections raised by commentators on the requirement that the Complainant identifies the provisions of the scheme documents that the Respondent is allegedly in breach of. These commentators argue that this is unfair and presents itself as an access barrier because Complainants may not be familiar with the scheme documents to be able to specify the relevant provisions of the scheme that has been infringed. The amendments that have been made require the Complainant to only state the

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facts in support of the Complaint leaving it to the Secretariat to determine, based on the facts, which of the provisions of the scheme that they relate to.

3. Interim Measures

In the ICS draft, urgent actions and interim measures appear in Section 10.

- 3.1 The draft ICS provides that it is the Secretariat that decides whether to issue an interim measure in cases where urgent action is required. This contradicts section 13.5 that provides that the Secretariat shall abstain from any 'decision making'. Many stakeholders have also objected to the Secretariat issuing the interim measure. We have therefore introduced an amended section 5.5 for the Complaints Panel (hereinafter the CP) to be constituted soon after the complaint is accepted under section 5.3.1 and for the CP to decide whether to issue an interim measure.

4. ROUTING

The ICS draft refers to a provision to 'rout' Complaints at Section 10.13 after an evaluation on a category of Complaint. The provision on 'categorization' found at Section 10.11 is deleted in the revamped draft. The categorization of a complaint is linked directly to the 'routing' procedure and for the reasons that follow we have removed the routing procedure entire. Consequently, the categorization of complaints are not relevant to the revamped procedure.

- 4.1 The draft ICS contains provisions to 'rout' complaints to be dealt with according to different mechanisms based on the category of the Complaint. The need for routing is based on the premise that complaints of different categories ought to be dealt with by different mechanisms first before it is referred to the Complaints Panel. The rationale presumably is that by this process, Complaints can be concluded expeditiously. We, however, question the validity of this rationale. The provisions relating to routing in the draft

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ICS, are in our opinion, convoluted and challenging to make sense of at face value. For instance Category 1 (relating to certified facilities) complaints under section 10.15.1 in the ICS draft are to be routed to the certificate holder for resolution. Why it should be routed to the certificate holder who is the Respondent to be resolved is difficult to appreciate. Similarly for Category 2 Complaints (which are complaints against a Certification Body), the complaint is routed back to the Certification Body (hereinafter the CB) for 'resolution'. Section 10.14 of the ICS draft where it states that Secretariat attempts to 'evaluate' the complaints at the lowest level for that category adds much confusion. Lack of elaboration related to the routing provisions within the ICS draft compounds the problem of understanding the rationale for such an approach i.e. that the 'lowest level' in some cases is deemed to be the Respondent himself. Can such an approach fulfil the requirement of 'independence' within the Complaints System?

There is also nothing in the section that informs us as to how one is to conclude that the certificate holder has resolved the Complaint or who is to determine that it is resolved. Section 10.15.1 also states that the RSPO¹ is to inform the relevant CB of the action. It is unclear as to what is meant by "action". If what is meant by "action" is the fact of referral to the certificate holder then it should also state the reason for the CB being informed of the referral. After these processes, under the draft, the Category 1 Complaint is to be addressed through the accreditation system (10.16). Why a Category 1 complaint should be dealt by the "accreditation system" is not explained. In our understanding it should be dealt with by the CB in accordance with the certification system. The draft further states at 10.17 that unresolved Category 1 complaints are to be referred to ASI² ; which is an unfathomable recourse for unresolved complaints in this situation. These levels of procedure only stifles the resolution of the complaint. Then there is section 10.20 of the draft ICS that

¹ Repeatedly, the use of the term 'RSPO' with the 'Secretariat' in the same Section poses difficulties in the ICS draft. It can only be presumed that the term RSPO and Secretariat is used interchangeably.

² The current only accreditation body for RSPO

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refers to updates to be given to the Secretariat in relation Complaints that have been routed to “external entities” such as the CB or ASI. Apart from this causal reference there is no clear provision for Category 1 Complaints to be routed to the CB to be dealt with in accordance with the certification systems. This is inexplicable given that there is express provision in the RSPO Certification Systems for the CB to act against a certified facility that transgresses its documented procedures. Then we have section 10.22 which states that if one of the earlier mentioned mechanisms are unsuccessful in “resolving” the complaint it shall be “escalated to Complaints Panel mechanism”. We do not understand what is meant by the word “resolving” in section 10.22. In relation to Category 1 complaints, does it mean that the AB mediates a settlement between the parties? It is unclear why the AB is performing this function when under the certification systems it should be dealt with by the CB. Apart from these shortcomings many commentators have questioned the wisdom of section 10.21 which states that if the Complaint is resolved through the earlier mentioned mechanisms the Secretariat shall record the Complaint as closed. The objection is understandable because the most severe sanction that can be issued, under the certification systems, is the withdrawal of the certificate. This may not in some cases be a sufficient punitive measure, particularly when the transgression, if proven, is serious enough to warrant a suspension or termination of RSPO membership. The draft ICS does not contain any provision that permits serious cases to be referred to the Complaints Panel even if it is “resolved” through the certification systems. Apart from this, requiring complaints to be referred to ASI for resolution is patently misconceived. As we understand it ASI has, presently, been contracted to provide accreditation services for certification bodies. There is obviously no guarantee that ASI’s tenure will continue in perpetuity. It is therefore inappropriate to name ASI as an avenue for resolution of a complaint. The appropriate term to use, if at all, is “accreditation body”.

- 4.2 Apart from the above, an additional objection to the routing procedure identified in the ICS draft is in relation to the question of whether the CB and

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the AB can be subject to the complaints procedure at all. We raise this question because as an organization, RSPO's jurisdiction is over its members. It is by virtue of this membership that RSPO members can be held to account for their transgressions of the Scheme Documents. The CB and the AB, as we understand it, are governed by contracts. In the case of the CB it is the contract that it enters into with the AB before receiving accreditation. In the case of the AB it is contract with RSPO. Although they may in some instances be members, any complaint against the CB or the AB in the capacity as certification and accreditation bodies must be dealt according to the RSPO Certification Systems and the contract. We therefore doubt whether there is any power in RSPO to make the CB and the AB subject to the Complaints system. We have therefore removed the provisions relating to the jurisdiction of the Complaints Panel over the CB or AB. If oversight over the CB and AB through the agency of the Complaints Panel is required then solutions may be found of course, but as it stands, in our view, there does not appear to be any jurisdiction for the Complaints Panel to impose sanctions against them.

- 4.3 In the light of the issues identified and discussed above, routing of Complaints is not only unnecessary but would run counter to the objective of concluding Complaints in a fair and expeditious manner. To summarize; routing will cause delay and would be contrary to the views of stakeholders that notwithstanding a matter being referred to the AB or the CB the Complaints Panel should decide if it should nevertheless investigate the Complaint. We have therefore, with the hope of bringing clarity to the process, made substantial amendments to this part of the ICS draft. We have deleted the provisions for routing and instead introduced a new section 5.9.1 that states the Complaint shall, if it is in relation to a breach by a certified facility, be referred to the relevant CB without a requirement that the CB acts first before it is referred to the Complaints Panel. A new section 5.10.2 and 5.10.3 that expressly provides that the reference of the Complaint to the relevant CB does not preclude the Complaints Panel from investigating the Complaint. Recognizing that in some instances it would be in the interest of a fair conclusion of the Complaint to

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adjourn investigations pending a decision by the CB, we have provided a power to the Complaints Panel to adjourn its investigations when it is in the interest of a fair and expeditious conclusion of the Complaint to do so (See new section 7.1.8). Other relevant amendments pertaining to this issue are:-

- 4.3.1 Section 7.1.8 grants power to the Complaints Panel to adjourn investigations on such terms as it deems fit. Consequently, the Complaints Panel may decide, among other things, to adjourn its investigations into a complaint that has been referred to the CB for such period and on such terms as it deems fit;
 - 4.3.2 Section 7.1.9 gives the Complaints Panel power to consider any information received from the CB;
 - 4.3.3 Sections 8.3.3 for the Secretariat to provide the Complaints Panel with information it receives from the CB or the AB; and
 - 4.3.4 Section 7.1.14.4 gives the Complaints Panel the power to confirm the decision of the CB to withdraw or suspend the certificate.
- 4.4 The aforesaid amendments seek to vest a wide discretion in the Complaints Panel to determine whether or not to proceed with its investigations even when the Complaint is referred to the CB or AB. Thus if the alleged transgression, if proven, is serious enough to warrant a suspension or termination of RSPO membership the Complaints Panel may decide to proceed with its investigations in parallel with the CB's evaluation. On the other hand if the alleged transgression is such that it can be appropriately dealt with by the CB the Complaints Panel can, in its discretion, adjourn investigations pending the CB's decision. In cases where the Complaints Panel adjourns investigations it has the power to require that the CB reports back to it so that if necessary it can decide to begin or resume investigations.
- 4.5 We confirm that the Impacts Division of the Secretariat have expressed their agreement to the changes we have made to this part of the ICS draft.

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5. Bilateral Engagement

Bilateral Engagement in the ICS draft is classed as an alternative pathway at Section 11.6 of the ICS draft. Some of the reservations in relation to its prescription as being hierarchical within the procedure are discussed below.

- 5.1 Section 11.3 of the draft ICS states that bilateral engagement is a condition precedent before a complaint is referred to the Complaints Panel for Category 4 and 5 Complaints³. On the hand Category 1, 2 and 3 Complaints are to be dealt with through the “external processes” referred to in section 10 of the draft. I have already discussed why in our view “external processes” ought not to be a condition precedent before the complaint is referred to the Complaints Panel. We are of the view that the same reasoning applies to Bilateral Engagement. Waiting for bilateral engagement to be exhausted before referral to the Complaints Panel will result in delay and protraction of a complaint. Expedience will be better served if the Complaints Panel is given wide discretion to manage the investigation. At times, proceeding with the investigations will serve as an incentive for parties to resolve the complaint especially through bilateral engagement as the risk of a having an adverse decision by the Complaints Panel may persuade a party to take the necessary action to achieve a resolution of the complaint.
- 5.2 Additionally, Bilateral Engagement is by definition a voluntary process. It would serve no purpose to make bilateral engagement a compulsory step before the Complaint is brought to the Complaints Panel if either one or both parties, for whatever reason, do not wish to engage in it.
- 5.3 Section 11.9 of the draft ICS provides that the parties are to provide detailed information about previous efforts (if any) to resolve the issue through bilateral engagement or otherwise. There is no provision in the draft as to what

³ Please note that in the revamped draft Category 5 is removed as per our analysis of considering RSPO as a Respondent within the ICS

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the Secretariat is required to do with this information. Is the Secretariat, based on this information, going to decide that the parties have exhausted the avenue of bilateral engagement and that therefore the complaint will be dealt with according to next procedural step? Is the Secretariat equipped to make this decision? What if, notwithstanding the failure of Bilateral Engagement at the initial stages, the parties should decide that they would like to resume bilateral engagement even after the Complaints Panel is constituted? Are they precluded from doing so because bilateral engagement has failed initially? If they are not precluded from doing so then why make bilateral engagement a condition precedent before it is referred to the Complaints Panel? We raise these questions to demonstrate the inappropriateness of compulsory bilateral engagement before a complaint is referred to the Panel.

- 5.4 We are however aware that Bilateral Engagement and DSF are important mechanisms to resolve complaints. We have therefore introduced a new section 5.7 which requires the Secretariat to advise the parties that notwithstanding the formation of a Complaints Panel they are entitled to attempt a resolution through bilateral engagement and DSF. We are also aware that in some instances proceeding with the Complaint Panel's investigations may be an impediment to an early resolution through these mechanisms. In such cases the Complaints Panel can adjourn the investigations to await the outcome of these alternative processes (See new section 7.1.8). This way the Complaints Panel can manage the case and if the alternative mechanisms are taking too long to resolve the complaint, it can begin or resume its investigations which will not prevent the parties from continuing to engage each other bilaterally or through the DSF on a without prejudice basis.
- 5.5 Some commentators have expressed the view that even if the parties reach an agreement either bilaterally or through DSF the matter should nevertheless be referred to the CP to be investigated. We believe that the consequence of adopting this view would be that no Respondent would want to engage bilaterally or use the DSF. If notwithstanding any agreement reached by the

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parties the Respondent can nevertheless be sanctioned the Respondent would not want to expend time and resources to negotiate a settlement. This would render bilateral engagement and DSF redundant procedures.

6. REVIEW OF THE COMPLAINTS REPORT BY THE PARTIES

The requirement to subject the Complaints Report to a review by the Parties to the complaint is provided for at Section 13.25 of the ICS draft.

6.1 Section 13.26.1 provides that the complaints report, which is essentially the decision of the Complaints Panel, shall be delivered to the parties to comment on the fairness of proposed sanctions, and the adequacy and practicality of proposed corrective actions. We are of the view that this provision undermines the authority of the Complaints Panel. The Complaints Panel in delivering its decision must be presumed to have determined that the sanction is fair and that the corrective actions are adequate and practicable. The Complaints Panel during the investigation stage is entitled, among other things, to obtain the assistance of experts, to question witnesses and to direct the parties, when it deems necessary, to make their arguments on what the appropriate corrective measure should be. Consequently the need for parties to comment on the decision before it is finalized ought not to arise. If a party believes the Complaints Panel has erred in imposing sanctions or ordering corrective measures then that party's avenue is to appeal to the Appeals Panel. The better approach, if there are concerns about the competence of the Complaints Panel, is to capacity build Panel members and to provide them assistance in the form of guidelines.

6.2 Another reason why it is not advisable to request the parties' comments before a decision is finalized is that a party who realises that the decision is against it would attempt, through its comments, to persuade the Panel to change its decision even though there is a provision that states "no new

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information submissions' is permitted. Comments on the fairness of the sanctions can be structured in such a way as to reopen the complaint. This would place the Complaints Panel in a difficult position of defending its decision against the parties. This is not desirable as it may delay the disposal of the complaint.

7. REMOVAL AND CHANGES TO OTHER PROVISIONS (VARIOUS HEADINGS)

- 7.1 We also advise the Secretariat to remove the provision requiring stipulation of associated documentation found at Section 4 in the ICS draft. We do not see a real requirement to stipulate these in a procedural document. If anywhere, the RSPO website is deemed a sufficient and adequate platform to highlight the necessary documents in relation to complaints.
- 7.2 We also have removed the provision that states the 'guiding principles' in Section 6 of the ICS draft. These guiding principles, prescribed in such a detailed fashion within the ICS draft serves no purpose nor adds real value to a procedural document. The reference to voluntary soft law documents such as the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework is not necessary in our view. The guiding principles provided therein fundamentally relate to 'effectiveness criteria for non-judicial grievance mechanisms' which are universal and generic (transparency, legitimacy, equity etc.). These criteria are intended to serve as benchmarks for grievance mechanisms of a non-judicial nature, and whether the RSPO Integrated Complaints Procedure measures up to the criteria lie in the content of the complaints procedures themselves. We do not believe that by declaring that the procedure abides by these principles enhances the confidence of the aggrieved party to resort to the system. We have despite these reservations, provided for a more concise statement of the main principles in Section 1 of the revamped ICS document.

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- 7.3 We have also given extensive powers to the Complaints Panel to determine the procedures for dealing with Complaints and to delegate some of its powers to the Secretariat. The latter provision was introduced after discussions with the Impacts Division within the RSPO Secretariat where the practical difficulties of imposing the burden entirely on the Complaints Panel to decide on procedural matters were highlighted to us. In particular we were informed that the Complaints Panel may not convene often enough to give necessary directions on procedural matters to the parties to the Complaint.
- 7.4 Another matter that was highlighted to us was the need for the identities of the Complaint Panel members to remain confidential. We have accordingly, as instructed, deleted the right to object to Panel members that were originally provided for in the ICS draft.

8. APPEALS (REVAMPED FROM IAM VERSION 1.2)

8.1 In relation to the draft IAM we have made substantial changes. Firstly we have merged the provisions in relation to appeals into the RSPO Complaints Procedure and is now accordingly entitled 'RSPO Complaints and Appeals Procedure'. We are of the opinion that it is not necessary to have separate document for appeals. The advantage of having one procedural document is that parties will from the outset be informed that they have the recourse of an appeal and be aware of what they ought to do in event that they should use this recourse.

8.2 Secondly, we note Section 7.3 of the draft IAM refers to the appointment of a third party impartial and independent Appeals Panel. Read with the section 6.1.4 of the draft TOR of the Appeals Panel this is intended to mean that the Appeals Panel shall be composed of persons who are independent of RSPO. This would exclude not only members but a wider section of persons who though not members are in some manner or form connected to RSPO. The rationale for such an approach is unclear. If the Complaints Panel can only function effectively if they have experience and knowledge in matters pertaining to the oil

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palm industry then the same can be said of the Appeals Panel. Consequently, excluding RSPO members and other persons connected to RSPO from the Appeals Panel may not inspire confidence in the process. For this purpose we have in the definition section defined “Appeals Panel” as being composed of members and/or non-members and not included any condition that they must be independent of RSPO.

8.3 Thirdly the use of the word “independent” exclusively in the appeal process and not in the complaint process gives the impression that the Complaints Panel is not “independent”. Special mention of impartiality and independence in the IAM gives the false impression that these elements are not present in the complaint process. We have therefore removed the description of the Appeals Panel as independent and impartial third parties. We have however retained the requirement for the Appeal Panel members to make declarations of “no conflict”.

8.4 Section 8 of the draft IAM provides a list of the grounds upon which an appeal can be lodged. This, in our view, is not desirable. A party’s right to appeal ought not to be limited to only specific grounds. Limiting the grounds upon which appeals can be lodged may result in injustice. A party may be shut out from presenting an appeal even if the Complaints Decision is patently wrong if that party’s grievance against the decision does not fall within any of the categories of grounds specified in section 8. We have accordingly deleted the requirement for the appeal to be based on specific grounds.

8.5 Section 11.7.1 of the draft IAM has a provision for the decision of the Appeals Panel to be ratified by the RSPO Secretariat. This suggests that the Appeals Panel decision is not final and can be ignored. This is not a desirable situation. As in the case of Complaints Panel if there is a fear that the Appeals Panel may go beyond their mandate then the solution would be to build their capacity and provide them with guidelines. We have accordingly removed the provision for ratification.

8.6 We have also on the instructions of the Impacts Division of the Secretariat deleted entirely the provision in relation to cost distribution and schedule of fees in both the draft ICS and IAM.

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8.7 We do believe that there should be processes that provide for continuous improvements of the Complaints and Appeals system and procedure. That said, provisions and policy statements related to ‘Systems Improvement’ does not belong in the procedural document and is duly removed. We trust that the RSPO Secretariat will be able to secure a more appropriate public platform to make these statements other than in the procedural documents.

Before we end this narrative there is one matter of importance that we need to raise. This is relation to the process of suspending or terminating an RSPO member as provided for in the RSPO Statute. Articles 8 (b) and (c) provides the power to the BOG and the CEO respectively to terminate or suspend a member after receiving an explanation from the member concerned as to why he or it should not be suspended or terminated. We have prepared the revamped document on the assumption that steps will be taken to ensure that Statutes are consistent with the complaints procedures.

Another point that deserves attention is the role of the Secretariat when it receives a ‘recommendation’ for sanctions against the Respondent from the Complaints Panel. The word “recommendation” implies that the Secretariat or the Board has discretion to alter or even overrule the decision of the Panel. Some commentators have argued that the Secretariat should not have any discretion in the matter and should merely comply with the directions of the Complaints Panel. This view is consonant with the recommendation made by the consultants that prepared the Review of the Complaints System of RSPO of December 2014, which document we understand was endorsed by the Board of Governors. Several pages of the review are dedicated to the removal of the BOG’s involvement in the process. Given that the Secretariat, under the governance structure prescribed by the RSPO Statutes, is answerable to the Board of Governors it is therefore not desirable, if the consultant’s recommendations are to be accepted, for the Secretariat to have any discretion to ignore or alter the decision of the Complaints Panel. We have consequently replaced the word “recommend” with the word “direct”.

Feedback from RSPO Secretariat concurs with the views expressed above and the changes made to the ICS and IAM drafts.

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