

# A Review of the Complaints System of the Roundtable on Sustainable Palm Oil

Final Report

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**NATURAL JUSTICE**

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All figures are by the author unless otherwise specified.

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**BC Initiative**, Sdn. Bhd., is a social enterprise based in Sabah, Malaysia, that conducts analytical research on legal, policy and institutional governance structures. BC Initiative's collective social, environmental, and technical experiences provide insights into the working of governance and institutional mechanisms from legal, socio-economic and pragmatic perspectives.

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## LIST OF ACRONYMS

|                |  |
|----------------|--|
| <b>ACOPs</b>   | Annual Communications of Progress                      |
| <b>ASI</b>     | Accreditation Services International                   |
| <b>BoG</b>     | Board of Governors                                     |
| <b>CAO</b>     | Compliance Advisor Ombudsman                           |
| <b>DSF</b>     | Dispute Settlement Facility                            |
| <b>FPIC</b>    | Free, Prior and Informed Consent                       |
| <b>FSC</b>     | Forest Stewardship Council                             |
| <b>HCV</b>     | High Conservation Value                                |
| <b>ICCPR</b>   | International Covenant on Civil and Political Rights   |
| <b>IFC</b>     | International Finance Corporation                      |
| <b>MIGA</b>    | Multilateral Investment Guarantee Agency               |
| <b>NGO</b>     | Non-governmental organisation                          |
| <b>NPP</b>     | New Planting Procedure                                 |
| <b>OECD</b>    | Organisation for Economic Co-operation and Development |
| <b>P&amp;C</b> | Principles and Criteria                                |
| <b>RSPO</b>    | Roundtable on Sustainable Palm Oil                     |
| <b>RT</b>      | Roundtable   |
| <b>ToRs</b>    | Terms of Reference                                     |
| <b>UN</b>      | United Nations   |

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# EXECUTIVE SUMMARY

Palm oil is one of the most closely scrutinised and hotly debated commodities of the 21<sup>st</sup> century. The Roundtable on Sustainable Palm Oil (RSPO), which aims to make sustainable palm oil the norm, has a major task ahead.

Central to RSPO's credibility is an accessible and effective grievance mechanism. Since its first iteration of a grievance mechanism in 2006, the RSPO Secretariat and other key stakeholders have made a number of changes that laid the foundations for the current Complaints System, which now includes procedures for mediation, compensation, concerns with certification, and third-party decisions by the Complaints Panel. It has been and continues to be an ongoing process of monitoring, review and improvement. Forty-nine complaints have been submitted to date, the vast majority of which are against growers in Indonesia (followed by Malaysia) and concerning either free, prior and informed consent or High Conservation Values.

However, the Complaints System has been beset by a range of fundamental critiques over the past several years. These led to a resolution adopted by RSPO's General Assembly in 2013 which requires a strict separation of powers in handling complaints 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. As part of RSPO's efforts to implement the resolution, this report summarises an in-depth review of the current Complaints System against the UN Guiding Principles and recommendations for improvement.

## Research Findings

RSPO's Complaints System is at a critical juncture. Although several important changes have been introduced, the Secretariat faces a significant backlog of unresolved complaints (including several long-standing), the limited pool of Complaints Panel members are overburdened, and complainants and responding RSPO members alike have fundamental concerns with transparency, independence, efficiency, accessibility, and procedural consistency. There is no functioning monitoring system (either for individual complaints or for adherence of the Secretariat and Panel to state procedures), little to no internal reflection or analysis of lessons learned, and multiple loopholes between different RSPO components, including the critically important accreditation and certification system. In addition to failing to fulfil Principle 31's effectiveness criteria, the overall picture is one of growing frustration and declining trust in the Complaints System, which in turn affects confidence in RSPO as a whole.

Each individual complaint is a unique process deeply rooted in the local context and influenced by the approaches and agendas of the various parties involved. RSPO needs to take a much more strategic, proactive and systematic approach to complaints in order to accommodate their implicit diversity and complexity. In order to be effective and efficient, the Complaints System must have clear, rigorous, and consistently applied procedures and independent decision-making free from conflict of interest. It should be flexible and responsive to emerging issues, lessons learned, and broader trends.

Complaints should not be seen as inconveniences to be ‘managed’ or ‘closed’, but as specific situations and symptoms of broader patterns of non-compliance that must be prevented or meaningfully resolved for the betterment of RSPO. The organisation must therefore strike a delicate balance between retaining members and upholding a clear threshold for compliance beyond which firm actions must be taken.

### Overview of the Recommendations

This review has brought to light a number of important insights about the structure and functioning of RSPO’s Complaints System. The 68 recommendations prescribe significant improvements to its effectiveness, efficiency, and credibility. If implemented effectively, the proposed improvements will enable RSPO to develop its own ‘jurisprudence’, facilitate constructive resolution and remedy of individual complaints, and promote the systematic change needed to realise RSPO’s objectives.

Many of the recommendations aim to improve RSPO’s Complaints System by fostering more effective and efficient implementation of existing procedures, or by introducing small changes that will have a noticeable impact. These aim to address easily identifiable and well-known bottlenecks and gaps. Conversely, some address more fundamental aspects (particularly concerning governance) or propose more far-reaching changes or additions. These may be more challenging or time-consuming to implement, but will pay off in dividends and provide a much more solid foundation for the coming years.

The recommendations aim to strike a reasonable balance between ideals towards which RSPO should strive over time (such as transparency, independence, and an integrated systems approach) and readiness and feasibility in the near future. They are organised into the following

categories, in line with Principle 31 of the UN Guiding Principles on Business and Human Rights:

- 1) **Governance of the Complaints System:** *Improving Legitimacy and Transparency*
- 2) **Management of the Complaints System:** *Improving Accessibility and Predictability*
- 3) **The Complaints Procedure:** *Improving Equitability and Compatibility with Rights*
- 4) **Public Communications and Outreach:** *Improving Accessibility and Transparency*
- 5) **Institutional Vitality:** *Improving Continuous Learning and Engagement and Dialogue*

The recommendations should be seen as an ecosystem of interrelated and mutually reinforcing improvements. They should be implemented in a coordinated and complementary manner according to three phases: 1) short-term (by late 2014); 2) medium-term (by late 2015); and 3) longer-term (between 2016 and 2018). The vast majority of changes should be complete by late 2015.

The RSPO Secretariat has already shown leadership by implementing a number of the short-term recommendations in 2014. The Board of Governors has expressed its support for the proposed reforms, as have a wide range of stakeholders who have engaged in the Complaints System or are otherwise invested in improving RSPO. There is political will, institutional backing, and considerable momentum to usher the Complaints System into a new phase of legitimacy, transparency, accessibility, predictability, and equitability. The time is right for robust reforms to the Complaints System, which will in turn improve RSPO’s credibility and stakeholder confidence in sustainable palm oil.

# 1. INTRODUCTION & METHODOLOGY

Resolution 6f, entitled “Guaranteeing Fairness, Transparency and Impartiality in the RSPO Complaints System”, was adopted by the 10<sup>th</sup> General Assembly of the Roundtable on Sustainable Palm Oil (RSPO) in November 2013.<sup>1</sup> In adopting the Resolution, the General Assembly agreed that the Executive Board (Board of Governors) shall ensure a strict separation of executive powers in handling complaints and grievances in order to align with the United Nations (UN) Guiding Principles on Business and Human Rights, particularly the criteria of Principle 31 concerning legitimacy, predictability, equitability, transparency, and the operational system.<sup>2</sup>

Following an open call for tenders in January 2014, Natural Justice and BC Initiative (“the review team”) were commissioned by the RSPO Secretariat to undertake a third-party review of RSPO’s Complaints System from April to November 2014.<sup>3</sup> The review aimed to:

- 1) *Review the current Complaints System against the UN Guiding Principles on Business and Human Rights, as requested by Resolution 6f;*
- 2) *Recommend and prioritise steps for further improvement and indicate costs involved; and*
- 3) *Recommend improvements for efficiency of the Complaints System.*

<sup>1</sup> The Resolution was submitted by Sawit Watch, LINKS, Pesticide Action Network Asia and the Pacific, and SETARA, and supported by WildAsia. It is available online at: <http://www.rspo.org/file/resolutions/GA10-Resolution6f.pdf>.

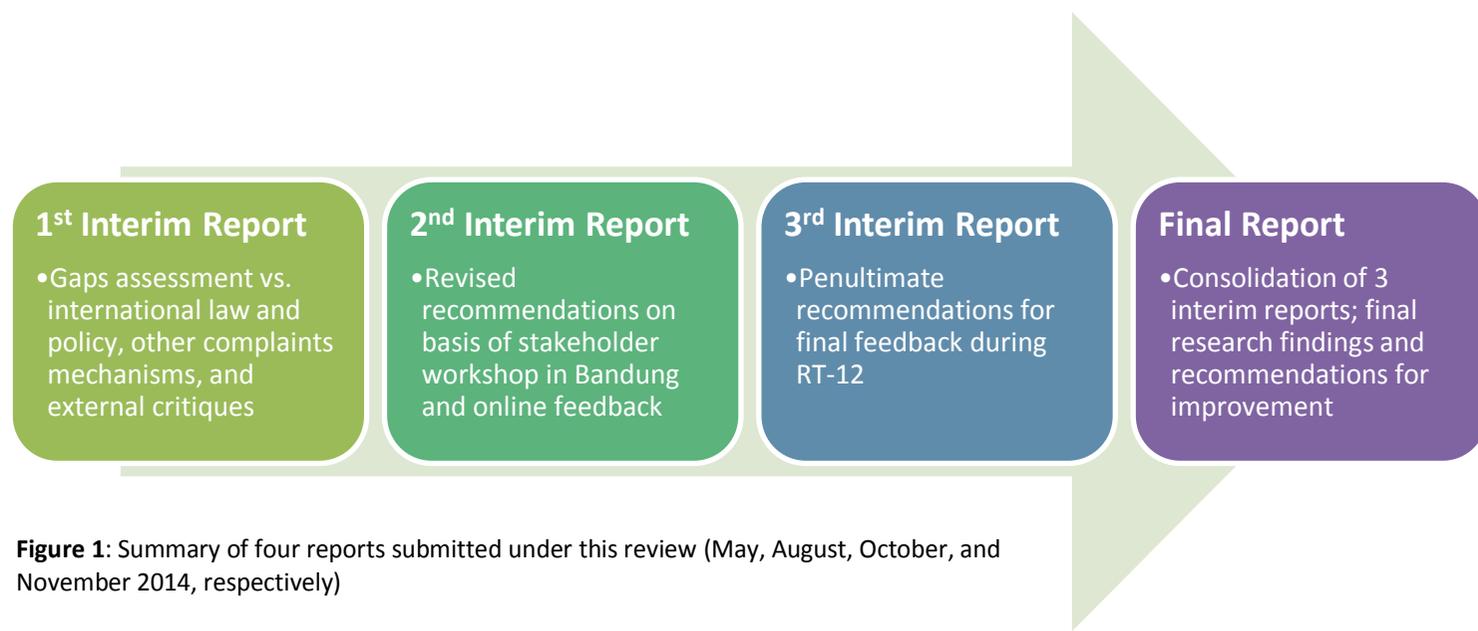
<sup>2</sup> The UN Guiding Principles are further discussed in **Section 3.2** of this report.

<sup>3</sup> Neither organisation is an RSPO member or has been involved in any complaints.

The review methodology consisted of the following components:

- a) Desktop research and an interim report in May with preliminary recommendations for feedback from the Secretariat and Board of Governors (BoG) meeting in June;
- b) Further research and analysis;
- c) Stakeholder engagement, including several online interviews and discussions and a multi-stakeholder workshop from 18-19 August in Bandung, Indonesia with 43 participants;
- d) Site visits to two RSPO complaints in September, which focused on the processes undertaken and perceptions of the parties involved and included interviews with complainants and supporting organisations, responding RSPO members, Complaints Panel members, and Secretariat staff;
- e) Presentation of and feedback on the penultimate findings at the 12<sup>th</sup> Roundtable (RT-12) and BoG meeting in November; and
- f) Finalisation of the report.

Three interim reports were submitted in May, August and October 2014, respectively (see **Figure 1** below), to facilitate continued engagement of and inputs from a range of stakeholders throughout the review process. The present **final report** consolidates the content of and feedback on all three interim reports and sets out the research findings and final recommendations for improvement of the Complaints System. The content of the final report is explained below.



**Figure 1:** Summary of four reports submitted under this review (May, August, October, and November 2014, respectively)

### ***Content of the Final Report***

Following this introduction (Section 1), **PART I** (Sections 2-5) focuses on the research findings, which provide the basis for the recommendations. **Section 2** describes the current complaints system, including its history and development to date, its structure and procedures, an overview of complaints in the system, and observations from the two site visits.

**Section 3** outlines key provisions in international law on elements of a fair and effective complaints process, and introduces the UN Guiding Principles on Business and Human Rights, with particular emphasis on Principle 31 (effectiveness criteria for non-judicial grievance mechanisms). **Section 4** provides examples of complaints mechanisms in other sectors, including other commodity roundtables and certification schemes, financial institutions and economic cooperation bodies, and human rights bodies. **Section 5** assesses the strengths, weaknesses and

gaps of five aspects of RSPO’s complaints system; it also identifies opportunities for improvement on the basis of Sections 2, 3 and 4, external critiques, and further research and analysis.

**PART II** (Sections 6-9) provides an overview of the recommendations. **Section 6** elaborates on three sets of key issues considered and balanced in their formulation. **Section 7** clarifies how the recommendations are organised, while **Section 8** explains how they should be implemented. Finally, **Section 9** provides a summary of the recommendations themselves.

**PART III** consists of six annexes. **Annex I** sets out the final detailed recommendations and action plan. **Annexes II** and **III** list the proposed changes to the Procedure Flowchart and Complaints Form, respectively. **Annexes IV** and **V** offer illustrations of the proposed integrated complaints system and staffing needs and roles, respectively. Finally, **Annex VI** lists the references contained in this report.

# PART I: RESEARCH FINDINGS

## 2. THE CURRENT COMPLAINTS SYSTEM

This section describes the current complaints system, including its history and development to date, its structure and procedures, an overview of complaints in the system, and observations from the two site visits.

### 2.1. History and Development to Date

The first iteration of the RSPO Complaints System was the Grievance Process established in response to a labour complaint in 2006. At the time, there was no certified palm oil and the Principles and Criteria (P&C) were still being developed. The first few years of the Grievance Process faced an increasing number of cases and limited capacity in handling of the complaints. In 2010, the first real panels were convened and Johan Verburg assumed the chair position. The Complaints System's Terms of Reference (ToRs) and Procedure Flowchart evolved through practice and were the subject of a review and public consultation in mid-2012. A revised version was adopted in 2012, at which point the chair was assumed by Henry Barlow.

With the influence of a range of institutions and actors, the Complaints System established links with the Certification System and then-new Dispute Settlement Facility (DSF). Following a BoG endorsement in November 2013, the [Complaints System's components and ToRs](#) were updated to reflect proposed changes to the Complaints Panel composition and to include a new procedure for compensation for land clearance without a prior High Conservation Value (HCV) assessment. According to the RSPO website, the [Procedure Flowchart](#) was last revised in January 2014. A number of changes introduced over the past year in particular are acknowledged throughout this report.

### 2.2. Structure and Procedures

According to the Complaints System's Components and ToRs, the RSPO Secretariat is responsible for coordination, administration, and communications of all aspects of the Complaints System and is meant to provide regular summaries to the BoG of complaints received and handled. Any complaints concerning the performance or decision of auditors or certification bodies are to be addressed first through RSPO's Certification System and accreditation mechanisms. The DSF is a channel for mediation of disputes, both prior to certification and in remediation. The newest component, Compensation Procedures for land clearance without prior HCV assessment, applies to non-compliance with specific provisions of RSPO Principle 7.3 and/or the New Plantings Procedure (NPP). Complaints concerning these issues can be referred to the Compensation Panel directly by the Secretariat or via the Complaints Panel.

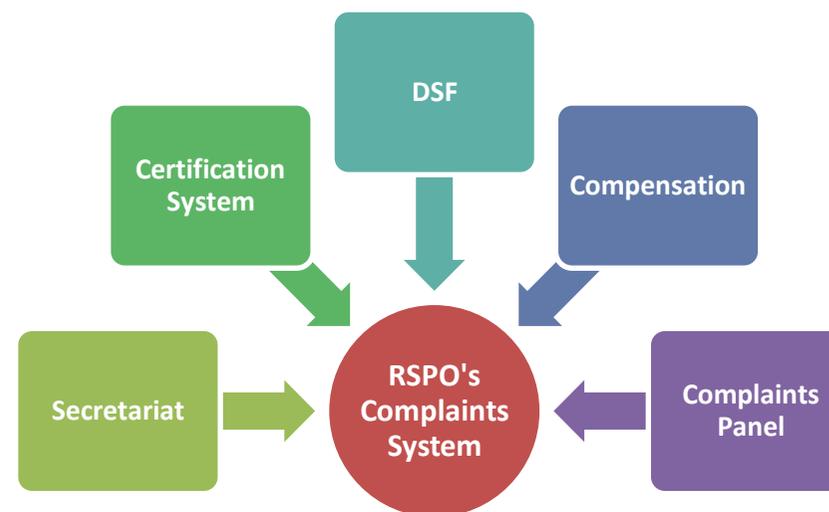


Figure 2: Components of the Complaints System

The Complaints Panel is intended to serve as a “last resort” to deliberate and decide on complaints falling outside of or not resolved by RSPO’s other mechanisms. It is constituted as a high-level body that handles complaints against RSPO as an organisation and addresses breaches of the Code of Conduct, among other things. Its main tasks are to decide on the legitimacy of complaints and any interim measures needed, deliberate and decide by consensus on a course of action to be taken, and propose any sanctions in the case of an unsatisfactory resolution. It also has the mandate to review and formulate practical actions to mitigate conflict, provide solutions to address core issues, capture wider lessons, and make recommendations to the BoG on systemic improvements.

For any given complaint, the Panel is comprised of five expert members<sup>4</sup> from a pool of RSPO members, which currently has 10 people.<sup>5</sup> Conflict of interest is reviewed before each complaint and certain members may be replaced at times to achieve balance and expertise. The Panel may call upon additional RSPO members or external experts to provide advice on individual complaints. According to the minutes of the 15 January 2014 Panel meeting, proponents of Resolution 6f and the chair of the BoG suggested that the Panel transition towards only non-BoG members to ensure greater independence and avoid conflict of interest. This process was completed by the end of November 2014.

### 2.3. Overview of Complaints

At the time of publication, the Secretariat has received a total of 49 complaints. Monitoring of each case should be conducted on a regular

<sup>4</sup> The standard composition from amongst the RSPO membership includes: an environmental NGO; a social/development NGO; a grower; a processor/trader, consumer goods manufacturer, retailer, or bank/investor; and an Affiliate Member.

<sup>5</sup> The list of current Complaints Panel members is available at: <http://www.rspo.org/members/complaints>.

basis, but in the past, this task has typically been constrained by capacity and time. The Secretariat now updates and shares with the BoG its confidential internal database each month. Very recently, the Secretariat committed to updating the [Case Tracker](#) every week for each complaint unless there are no new developments.

At the beginning of this review, the RSPO Secretariat provided the review team with the confidential internal database and analysis of complaints in the System. Certain inconsistencies were observed between these internal files and the information available in the online Case Tracker, including:

- a) Complaint types were not identified in the same manner;
- b) Some cases were online but not included in the analysis report; and
- c) Country locations of some complaints were identified incorrectly.

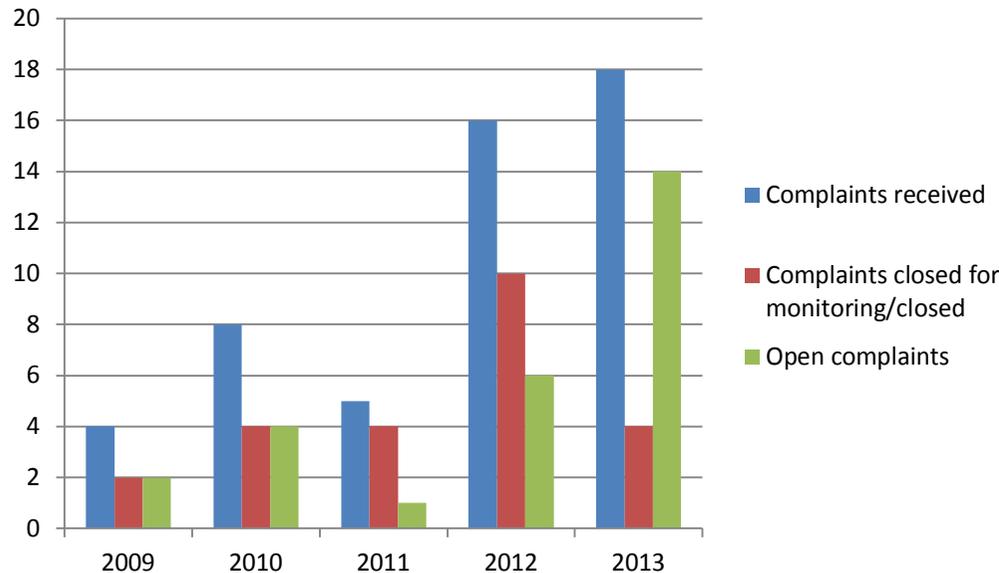
In addition, a report by Grassroots indicated that over 50 complaints were filed by the end of September 2013 but only 22 were available online.<sup>6</sup> This has largely been rectified in the past year, with 47 of 49 complaints now published on the Case Tracker.

Such concerns with clarity and consistency of the Secretariat’s records of certain basic facts and figures – perhaps in part due an insufficient Complaints Form, among other things – raises questions about the overall dependability and accuracy of raw data being processed by the Secretariat, used in deliberations by the Complaints Panel and other RSPO mechanisms, and published on the Case Tracker.

As illustrated by **Figure 3**, the number of complaints received increased from 2009-2010, decreased slightly in 2011, then increased significantly in

<sup>6</sup> Grassroots, 2013. *Beyond Certification: Reforming RSPO’s Complaints System to meet stakeholder expectation*. Section 4.1, page 13.

2012 and again slightly in 2013. The number of open complaints was on par with the number of complaints closed for monitoring and closed in 2009 and 2010; it increased in 2012 from the 2011 low, and jumped dramatically in 2013 beyond the number of closed for monitoring and closed complaints. The data for 2013 in particular show a correlation between increasing numbers of complaints and an increasing proportion of open complaints (i.e. not yet resolved), though several other factors may be at play.



**Figure 3:** Number of complaints per year (received, closed for monitoring/closed, and open) (courtesy: BC Initiative Research Unit)

Nearly all complaints have been filed against growers (44 or 90% of the total); two have been filed against retailers and three against “others” (unspecified in the Secretariat’s database). No complaints have been filed against banks and investors, consumer goods manufacturers, social NGOs, processors, or traders. At the time of publication, Indonesia hosts the most complaints (30 cases or 61% of the total), followed by Malaysia (nine cases or 19% of the total); the remaining 20% are spread across four other countries (see **Figure 4**). The vast majority of complaints are categorised as concerning either free, prior and informed consent (FPIC) or HCV (**Figure 5**). However, there are concerns that categorising complaints as only one topic does not accurately reflect the complexity and multiple issues often at play in any individual complaint.

In addition to the raw complaints data, the RSPO Secretariat provided the review team with 13 sets of Complaints Panel minutes in April 2014, with some dating back to 2011. Over that time period, particularly up to 2012, the minutes suffered from inconsistent formats and levels of detail and a lack of concerted discussion in the consideration of each complaint; they focused primarily just on action points and very brief summaries of decisions taken. Improvements have been made in recent months, including minutes being recorded in a more consistent format, though they still lack detail in terms of the content of the deliberations and justifications for decisions.

Notwithstanding the current confidential nature of Panel minutes, such brevity in the documentation poses challenges to transparency and accountability even within the Panel, as there is no official record of thought processes and rationales behind the decision-making. It significantly reduces the likelihood of ensuring clarity and consistency when interpreting similar issues, and limits otherwise useful opportunities for reflection, analysis, and institutional learning.

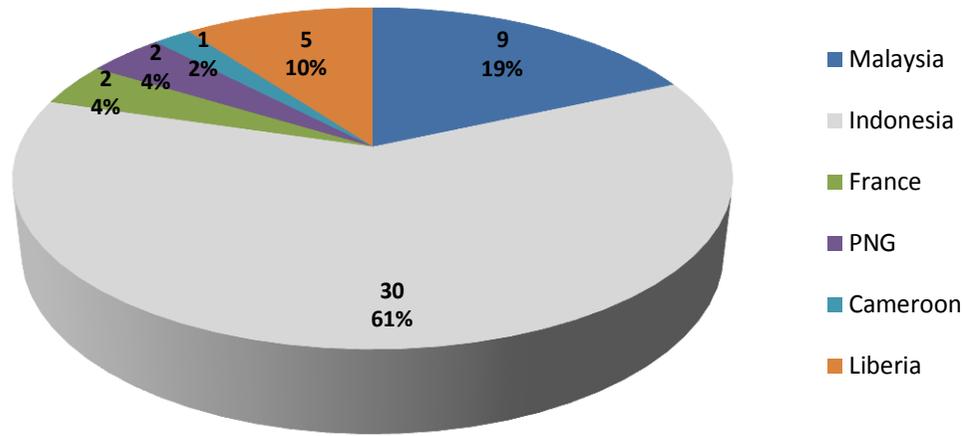


Figure 4: Distribution of complaints by country location (courtesy: RSPO Secretariat)

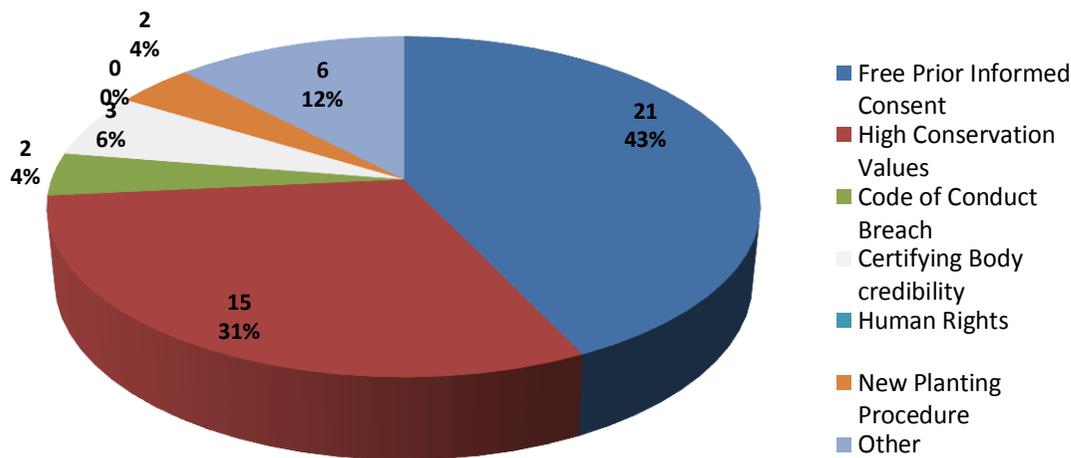


Figure 5: Distribution of complaints by type or category (courtesy: RSPO Secretariat)

## 2.4. Observations from Complaints Site Visits

**Purpose and methodology:** As indicated in Section 1 above, the review team undertook site visits to two ongoing RSPO complaints with the consent of the parties involved. The aim of the site visits was to further explore the processes undertaken and perceptions of the various parties involved in each; it was not an investigation of the merits or an attempt to resolve the complaints. Following selection (see below), the review team conducted a total of 18 separate interviews with each complainant, supporting NGO, and responding RSPO member, Complaints Panel members, and Secretariat staff. Where possible, the interviews were conducted in person; otherwise, they were by phone or Skype. Electronic copies of company policies and standard operating procedures concerning grievance or complaint mechanisms as well as publicly available annual reports and Annual Communications of Progress (ACOPs) were also reviewed. As agreed at the beginning of each interview, identities and specific details of the complaints would remain confidential, though lessons, insights, and observations would be used to inform the review and further refine the recommendations.

**Selection of Complaints:** The two complaints were selected on the basis of criteria agreed between the review team and RSPO Secretariat, including:

- a) One each from the two most prevalent topics (FPIC and HCV);
- b) At least one in Indonesia;
- c) Different statuses;
- d) At least one long-standing;
- e) Concerning one RSPO member that is more responsive and/or compliant and one that is less so;

- f) Availability and willingness of both parties in each to engage cooperatively with the review team;
- g) If applicable, availability of complainants’ supporting organisations; and
- h) Cost-effectiveness of travel time and distance, physical accessibility, and safety.

After an initial short-list of two complaints, consent was sought from the relevant complainants and responding RSPO members. The responding RSPO member for the selected long-standing complaint did not provide its consent to engage with the review team. Given the time constraints by that point, it was not possible to get agreement on a different long-standing complaint, so that selection criterion was the only one left unfulfilled.

**Overall observations:** Although there may be some commonalities between certain complaints, each individual complaint is a unique process that is deeply rooted in the local context and influenced by the approaches and agendas of the complaints parties involved (i.e. the complainants and responding RSPO members). The interviews elicited many contradicting views about what happened or didn’t happen, and painted quite a grim picture overall about stakeholders’ experiences with and perceptions of the Complaints System.

Complainants felt that submitting and following through with a complaint is a significant investment of time and human resources, but with very few results. One of the responding RPSO members nearly withdrew because they similarly felt that not enough progress was being made on the multiple complaints against them. In terms of relations between parties, it was suggested that they should be constructive and respect the complaints process and perhaps subject to a code of conduct or specific guidance on good faith engagement.

Each individual complaint is a **unique process** that is **deeply rooted** in the local context and **influenced** by the **approaches and agendas** of the complaints parties involved.

All parties felt that RSPO needs to place more emphasis on prevention and on regular monitoring of its members’ activities. Where complaints do arise, more options for resolution are needed, including informal mediation. The Secretariat needs to build a better process for due diligence and independent verification; complaints are often dragged out by extended correspondence around the facts of the complaints, which should be clarified relatively quickly at the beginning of the process.

In terms of compliance, there are concerns with low quality HCV and impact assessments and audits, despite assessors and auditors being appointed by RSPO itself. Clear sanctions and penalties imposed by the Complaints Panel, as well as negative publicity associated with complaints, do have impacts on RSPO members and can positively influence their behaviour by motivating them to take more clear or concrete actions to move towards compliance. Overall, there is a need for firm and consistent application of procedures to ensure fairness and to underscore that violations or non-compliance will result in repercussions.

Despite all of these challenges, parties perceived RSPO’s Complaints System (a non-judicial grievance mechanism) as much more accessible than judicial mechanisms. They lamented the need for positive

precedents and success stories; there are so many negative experiences that some groups who haven't engaged directly with RSPO simply refuse to do so.

Looking ahead, as the Secretariat and Complaints Panel strive to address the backlog of complaints, there is a risk that some complaints, particularly complicated long-standing ones, will be rushed and not undertaken in a carefully considered manner. Quality processes should not be sacrificed just for the sake of statistics on how quickly complaints have been "closed".

**On governance:** In one of the complaints, a Panel member whose organisation has clear ties to the responding RSPO member did not declare a conflict of interest, allegedly because s/he understood the Panel member role as one of individual capacity and unrelated to her/his organisation. However, that Panel member also acknowledged that the Secretariat did not specify in what capacity Panel members serve or provide a clear procedure and guidelines for self-declaring conflict of interest. Given the Panel has operated to date on the basis of informal and voluntary declaration of conflict of interest, this discrepancy and potential loophole is of serious concern.

**On the Secretariat:** One of the most consistent concerns raised across nearly all of the interviews was the Complaints Coordinator's lack of proactivity and insufficient and inconsistent communication. The complaints parties expressed dissatisfaction with long delays in correspondence (sometimes with gaps of several months), at times interspersed with seemingly out-of-the-blue urgent requests for responses with short turnarounds. Several parties contended that the Complaints Coordinator was unresponsive, unprofessional and/or defensive in correspondence and often failed to follow up on agreed tasks or respond effectively to questions, even when repeated more than once.

The complainants and several Panel members in both cases contended that the Secretariat should have treated the complaints with more urgency, including through more timely and effective correspondence. Some complaints parties helpfully suggested that the Secretariat should help clarify up front a single point of contact from each of the Secretariat, complainant, and responding RSPO member in order to streamline communication between them.

**On the Complaints Panel:** Some of the complaints parties expressed a desire to have more direct engagement with each other before the complaint is taken up by the Panel. On the other hand, others were adamant that the Secretariat places too much emphasis on bilateral engagement and that the Panel should take swifter action on clear violations.

In both complaints, the responding RSPO members perceived the Complaints Panel as faceless, inflexible, inaccessible, and lacking transparent, in large part due to the confidentiality of Panel members' identities and meeting minutes as well as the Secretariat's failure to convey the Panel's justifications for its decisions.

From the Panel's perspective, two members interviewed were not provided any orientation or materials about the Complaints System upon joining in 2013. In practice, they contributed to deliberations and decisions without actually understanding the adopted procedures or the nuances by which decisions should be guided.

**On intermediary organisations:** In both complaints, the main local complainants had at least one national or international organisation either serving as a co-complainant and/or providing technical support without being a formal complainant. According to both local complainants, they would not have been able to undertake the process without the assistance of these other organisations, particularly those

who have been involved in RSPO for several years and who have the technical know-how needed to navigate the Complaints System. In one case, however, there were concerns about a co-complainant based overseas that took a different approach than what was desired by the main local complainant. This created some tensions between them and confusion on the part of the responding RSPO member.

In the other complaint, the local complainant's self-identified limited confidence to engage directly with international NGOs required the engagement of a national-level organisation to act as a further intermediary between them. This arrangement led to inadequate communication between the multiple complainants and ensuing frustration when certain unstated expectations were not met.

In both complaints, these issues could have been prevented or mitigated by having a clear discussion up front about respective roles, responsibilities, and expectations of each complainant and supporting organisation, including at different stages and in possible scenarios. Clarifying such details between them would also provide greater clarity to the Secretariat and responding RSPO member about the complainants' position and objective in the complaints process.

**On the complaints procedure:** In both cases, neither the complainants nor responding RSPO members were provided information about the procedure that would be undertaken or the roles of related bodies such as the Secretariat and Complaints Panel. This lack of clarity was perceived by the various parties as either the lack of any procedures or inconsistently applied procedures, since they were not given a standard against which they could assess their experience. Addressing this relatively minor detail at the beginning of each complaint process could have prevented a number of instances of misunderstanding and miscommunication, including what each party should expect from the

Secretariat and from each other, what the Secretariat would expect of them, and corresponding timeframes.

One of the local complainants indicated that English-language materials and correspondence with the Secretariat was a significant barrier to their understanding of and effective participation in the complaints process. It was suggested that the Secretariat should at minimum provide materials and the option to correspond in the national languages of Indonesia and Malaysia (as the two main palm oil producers in the world and location of the majority of complaints), in addition to English. Translation or interpretation support should be provided by the Secretariat where needed to ensure effective communication and participation.

In one case, the responding RSPO member was issued a stop-work order. However, before the order was lifted, forest clearing resumed without the awareness of the senior management, allegedly because of pressure from local communities concerned about loss of income. This indicates a disjunction between the stated company commitment to uphold the order (which was trusted by the Secretariat and Panel) and actual operations. This is deeply concerning, given most of RSPO's monitoring procedures rely on members' self-reporting. Two supporting NGOs underscored the potentially crucial role of accessible satellite imagery in monitoring, prevention, and independent verification. The responding RSPO member also indicated the need for clear guidance on what a stop-work order entails in practice and how to work towards having it lifted.

The complainants in one case contended that they had not been informed or consulted about the proposed compensation plans or before their complaint was closed for monitoring. This is contrary to the Procedure Flowchart and basic principle of participation and involvement of all complaints parties in the process and outcome, and undermines confidence and trust in the system.

**On substantive aspects:** One of the complaints was passed from the Complaints Panel to the HCV Compensation Panel. Notwithstanding the fact that RSPO’s compensation framework is still being developed, the complainants and responding RSPO company both expressed concerns with the whole notion of compensation, contending that it allows companies to “clear now and pay later”, does not impose any particularly detrimental penalties for doing so, and still allows for subsequent certification. The complainant also expressed doubts over the feasibility and practicality of economically valuating forest ecosystems as the basis for compensation. They and the responding RSPO member raised concerns over the roles of different groups in the compensation process, including other opportunistic organisations that were previously unwilling to engage but were keen to do so once compensation was suggested.

**On communications and outreach:** Nearly all of the complaints parties expressed a desire for information and outreach materials about the Complaints System and related components (including NPP and DSF) that are tailored to different stakeholder groups and available in different formats and languages. Regarding the Case Tracker, some of the parties raised concerns about updates such as correspondence or outcomes of Complaints Panel meetings not being posted online or posted only after extended periods of time or requests. The complainants also indicated that the Case Tracker should identify the parent company or companies of subsidiaries in order to assist with monitoring and, where relevant, enable discussions about systemic issues.

RSPO member companies need to be sensitised to the complexity of both environmental and social issues on the ground. This is not to say that lack of or inadequate responses from companies are always unintentional, but there are some instances in which the biggest obstacle in a complaint process may simply be a lack of understanding of the issues and how best

to approach and address them in practice and engage with NGOs. On the other side, there is a need for in-person orientation or training on the Complaints System and related components for potential complainants, particularly Indigenous peoples, local communities, and local NGOs.

**On institutional learning:** In the context of both selected complaints, the responding RSPO members had at least one other complaint filed against them. The Secretariat and Complaints Panel confirmed that they prefer to consider multiple complaints against the same member in succession in Panel deliberations and to highlight issues that appear to be systemic. This is a useful practice from which further analysis and lessons could be drawn, including key characteristics of different complaints and associated parties and key factors influencing their effective resolution. In addition, all parties identified the overall lack of detailed procedures and guidance as a major obstacle to the effective handling and resolution of complaints.

Two of the complainants acknowledged that sharing experiences with others about similar complaints and/or the same RSPO member had helped them better understand and engage with their own complaint process.



**A major obstacle to the effective handling and resolution of complaints is the overall lack of detailed procedures and guidance.**

### 3. INTERNATIONAL LEGAL AND POLICY FRAMEWORK

This section provides a brief summary of key international law and policy provisions of relevance to the RSPO's Complaints System.

#### 3.1. International Law on Remedy and Redress

All persons have the right to equality before the law, courts and tribunals<sup>7</sup> and to access a review procedure before an independent and impartial body.<sup>8</sup> States should provide access to justice for infringements of tenure rights, effective and accessible means through judicial and other approaches to resolve disputes, and affordable and prompt enforcement of outcomes; states should also take active measures to prevent tenure disputes from arising and escalating into conflicts.<sup>9</sup>

The UN recognises five main components of the right to redress: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>10</sup> States must ensure that any person whose rights or freedoms are violated has an effective remedy determined and enforced by a competent authority.<sup>11</sup> All persons have the right to seek just and

adequate reparation or satisfaction for any damage suffered as a result of discrimination.<sup>12</sup>

Indigenous peoples in particular have the right to understand and be understood in proceedings, including through interpretation where necessary.<sup>13</sup> Indigenous workers must be fully informed of their rights and available means of redress.<sup>14</sup> Indigenous peoples have the right to effective mechanisms for prevention of and redress for any action that dispossesses them of their lands, territories or resources.<sup>15</sup> They have the right to access just and fair procedures for resolution of conflicts and disputes, and effective remedies for infringements of individual and collective rights.<sup>16</sup> Actors that should bear the responsibility for liability, redress, insurance, and compensation for any proposed developments on Indigenous peoples' lands should be clearly identified.<sup>17</sup> If any activities result in adverse consequences for Indigenous peoples or their lands and waters, appropriate restitution or compensation should be provided through mutually agreed terms with the communities concerned.<sup>18</sup>

<sup>7</sup> Article 14(1), International Covenant on Civil and Political Rights (ICCPR); Article 5, International Convention on the Elimination of All Forms of Racial Discrimination.

<sup>8</sup> Article 9(1), Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters.

<sup>9</sup> Guideline 3(1), FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.

<sup>10</sup> UN General Assembly Resolution 60/147, 2005. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. UN: New York. These principles and guidelines have also been recognised by General Comment No. 3 of the UN Committee Against Torture. [Available online](#).

<sup>11</sup> Article 2(3), ICCPR.

<sup>12</sup> Article 6, International Convention on the Elimination of All Forms of Racial Discrimination.

<sup>13</sup> Article 12, ILO Convention No. 169.

<sup>14</sup> Article 20(3), ILO Convention No. 169.

<sup>15</sup> Article 8(2), UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

<sup>16</sup> Article 40, UNDRIP.

<sup>17</sup> Guideline 20, Akwé: Kon Voluntary Guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities (adopted pursuant to the UN Convention on Biological Diversity).

<sup>18</sup> Section 2(22), Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to

### 3.2. UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights (UN Guiding Principles) were endorsed by the UN Human Rights Council in June 2011.<sup>19</sup> They consist of three pillars of principles concerning: a) the state duty to protect human rights, b) the corporate responsibility to respect human rights, and c) access to remedy for victims of human rights abuse. The third pillar, access to remedy, begins with the following foundational principle (Principle 25): “As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.” Principles 26 and 27 focus on state-based judicial and non-judicial grievance mechanisms, respectively, and Principles 28-30 focus on non-state-based grievance mechanisms. RSPO has placed particular emphasis on Principle 31, which sets out eight criteria for effectiveness of non-judicial grievance mechanisms (below).

The UN Guiding Principles are considered the most authoritative and international recognised framework for business and human rights, as they were developed through extensive consultations over six years and are backed by UN member states and many business and industry associations.<sup>20</sup> The Guiding Principles have clarified that businesses have

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the Conservation and Sustainable Use of Biological Diversity (adopted pursuant to the UN Convention on Biological Diversity).

<sup>19</sup> UN, 2011. *UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. UN: New York and Geneva. [Available online](#).

<sup>20</sup> Van Huijstee, M., V. Ricco, and L. Ceresna-Chaturvedi, 2012. *How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy*:

the responsibility to address their impacts on human rights, including through their own activities, as a result of business relationships with others, and throughout their supply chains.

However, the UN Guiding Principles are not without critiques.<sup>21</sup> They do not create new international enforceable legal obligations for companies and do not themselves provide a grievance or complaints mechanism for victims of business-related abuses. The UN Guiding Principles also fail to incorporate explicit reference to the wide range of existing human rights laws and standards, thus providing loopholes for companies and states to evade responsibilities and obligations in those instruments. The commentary to Principle 12 is thus helpful in stating that:

*“... enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, UN instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families.”*<sup>22</sup>

In this light, it is essential that the RSPO also considers relevant international human rights provisions on remedy and redress, including those noted in **Section 3.1** above.

When the UN Guiding Principles are viewed alongside international law on remedy and redress, it is clear that both states and businesses have a range of obligations and responsibilities to uphold vis-à-vis individuals and communities within their jurisdictions and supply chains (respectively).

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*A guide for civil society organisations*. SOMO, CEDHA and Cividep India: The Netherlands.

<sup>21</sup> Van Huijstee *et al* 2012.

<sup>22</sup> UN 2011, page 14.

**Guiding Principle 31:**<sup>23</sup> In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

(a) **Legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes.

**Commentary:** Stakeholders for whose use a mechanism is intended must trust it if they are to choose to use it. Accountability for ensuring that the parties to a grievance process cannot interfere with its fair conduct is typically one important factor in building stakeholder trust.

(b) **Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access.

**Commentary:** Barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location and fears of reprisal.

(c) **Predictable:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.

**Commentary:** In order for a mechanism to be trusted and used, it should provide public information about the procedure it offers. Timeframes for each stage should be respected wherever possible, while allowing that flexibility may sometimes be needed.

(d) **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms.

**Commentary:** In grievances or disputes between business enterprises and affected stakeholders, the latter frequently have much less access to information and expert resources, and often lack the financial resources to pay for them. Where this imbalance is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at durable solutions.

(e) **Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake.

**Commentary:** Communicating regularly with parties about the progress of individual grievances can be essential to retaining confidence in the process. Providing transparency about the mechanism's performance to wider stakeholders, through statistics, case studies or more detailed information about the handling of certain cases, can be important to demonstrate its legitimacy and retain broad trust. At the same time, confidentiality of the dialogue between parties and of individuals' identities should be provided where necessary.

(f) **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognised human rights.

**Commentary:** Grievances are frequently not framed in terms of human rights and many do not initially raise human rights concerns. Regardless, where outcomes have implications for human rights, care should be taken to ensure that they are in line with internationally recognised human rights.

(g) **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

**Commentary:** Regular analysis of the frequency, patterns and causes of grievances can enable the institution administering the mechanism to identify and influence policies, procedures or practices that should be altered to prevent future harm.

*Operational-level mechanisms should also be:*

(h) **Based on engagement and dialogue:** consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

**Commentary:** For an operational-level grievance mechanism, engaging with affected stakeholder groups about its design and performance can help to ensure that it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success. Since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.

<sup>23</sup> The text on this page (criteria and commentary) is taken directly from Principle 31 of the UN Guiding Principles. See UN 2011, pages 33-35.

## 4. GRIEVANCE MECHANISMS IN OTHER INDUSTRIES AND SECTORS

RSPO's Complaints System aims to address the UN Guiding Principles' effectiveness criteria for non-judicial grievance mechanisms. The Centre for Research on Multinational Corporations describes the advantages of such mechanisms as the possibility for prevention, termination, mitigation, and/or remediation of harmful business activities and specific remedies for victims; fact-finding processes and policy compliance reviews; public awareness and media attention; and improved policies, practices, and standards among particular companies, projects, or sectors.<sup>24</sup>

However, non-judicial grievance mechanisms also have many limitations, including a tendency to fail to meet basic performance criteria such as accessibility, predictability, equitability, transparency, and independence; taking excessive amounts of time to resolve complaints; confidentiality rules that limit what can be discussed and shared publicly; dependency on the willingness of the company concerned to be involved; resource-intensive and time-consuming procedures; lack of means to protect complainants against retaliation; and lack of binding recommendations and enforcement mechanisms.<sup>25</sup> Those developing and managing such mechanisms must balance a number of practical considerations when defining timeframes and decision-making processes, securing financial resources whilst protecting neutrality, and providing sufficient and diverse human resources.

Looking critically at mechanisms in other industries and sectors can help identify options and possible combinations of procedures for RSPO's Complaints System. This section provides a brief overview of two grievance mechanisms from each of: a) other commodity roundtables and certification

schemes; b) financial institutions and economic cooperation bodies; and c) human rights bodies.<sup>26</sup>

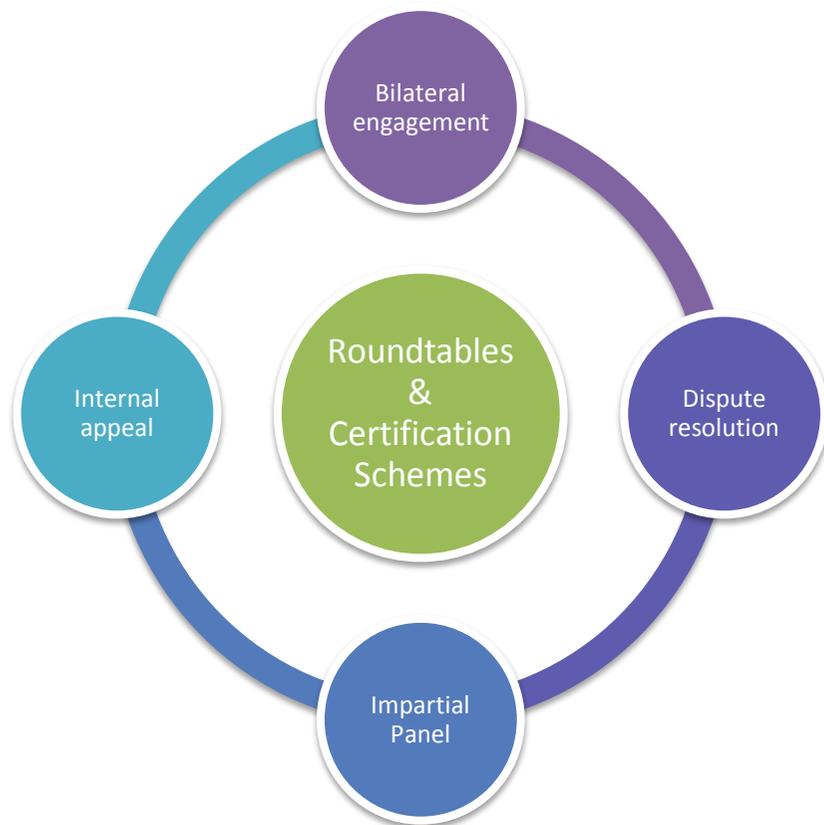
### 4.1. Roundtables and Certification Schemes

There are a number of counterpart commodity roundtables and certification schemes with their own procedures for addressing complaints and disputes. Examples from the Forest Stewardship Council and Better Sugar Cane Initiative (Bonsucro) are provided below. In comparison, RSPO's Complaints System is most actively utilised and has more resolution pathways, but its procedures are not as clear as those of FSC. Bonsucro's mechanism appears to suffer from many of the same critiques that beset RSPO, though more acutely so, including lack of accessibility and transparency, conflicts of interest with executive bodies, and insufficient follow-up with certification and auditing bodies. FSC and Bonsucro both have stricter time-bound requirements than RSPO for resolving complaints, which may be beneficial in some situations (for example, sanctions for non-cooperation or non-compliance), but too inflexible in others (for example, timeframes for complainants' responses). In discussions with complaints management staff from FSC and Bonsucro, it was suggested that a procedure for assessing and prioritising higher-risk complaints could assist with backlog and produce potentially precedent-setting decisions. Both organisations expressed keenness in continually improving their grievance mechanisms and underscored the importance of building a streamlined system with clear procedures, guidance and other tools for decision-making such as checklists and templates to ensure transparent and consistent application.

<sup>24</sup> Centre for Research on Multinational Corporations (SOMO), 2013. *Introduction to Non-judicial Grievance Mechanisms*. SOMO: The Netherlands. [Available online](#).

<sup>25</sup> SOMO, 2013.

<sup>26</sup> Please contact the author for more information. Natural Justice is currently finalising a compilation of nearly 50 grievance mechanisms across a range of industries, sectors, and legal frameworks.



**Figure 6:** Key elements of roundtables’ and certification schemes’ grievance mechanisms

### **Forest Stewardship Council’s Dispute Resolution System<sup>27</sup>**

**Institutional Framework:** The Preamble of the Revised Principles and Criteria ([FSC-STD-01-001 \(V5-0\)](#)) of the Forest Stewardship Council (FSC) states that the relevant FSC procedures for dispute resolution and

<sup>27</sup> For more information, please see: <https://ic.fsc.org/dispute-resolution.139.htm>.

interpretation apply in the case of disputes between stakeholders concerning compliance or the interpretation of the Principles and Criteria and FSC Forest Stewardship Standards. Grievance mechanisms are explicitly provided for with respect to workers (Criterion 2.6) and local communities (Criterion 4.6).

**Procedures:** The FSC’s Dispute Resolution System ([FSC-STD-01-005 \(V1-0\)](#)) provides a framework for the resolution of disputes that stakeholders may have with the FSC Board of Directors, the FSC and/or its affiliates, Accreditation Services International (ASI), FSC-accredited Certification Bodies, or FSC Certificate Holders. It is guided by the following principles: disputes should be resolved by discussions and negotiations and formal procedures should only be adopted as a last resort; disputes should be addressed at the lowest level possible; any dispute related to the FSC Certification Scheme shall be treated with procedural fairness and transparency; and parties involved in a dispute shall agree to follow the applicable procedure.

The Dispute Resolution System is managed by a Quality Assurance Unit and has detailed procedures for each of its three components<sup>28</sup>:

- 1) Appeals concerning decisions taken by FSC ([FSC-PRO-01-005 \(V3-0\)](#)), which can only be submitted by the body subject to the decision, are considered by an impartial Appeals Panel appointed by the FSC Director General and require a decision by consensus within 60 days<sup>29</sup>;
- 2) Complaints regarding the FSC Certification Scheme, including its normative framework and the performance of FSC International, the FSC Network, or ASI ([FSC-PRO-01-008 \(V2-0\)](#)), which may be filed by

<sup>28</sup> The Dispute Resolution Map is annexed to each procedure referenced below.

<sup>29</sup> Appeals concerning accreditation decisions are processed by ASI according to the procedure [ASI-PRO-20-103-Appeals-V4.0](#) and can only be submitted by the certification body that was subject to the decision.

any individual or organisation, are evaluated by the FSC Director General and require a response (including a conclusion, rationale and any follow-up measures to be taken) within 60 days of receipt<sup>30</sup>; and

- 3) Complaints concerning the compliance of organisations with the Policy for the Association of Organisations with FSC ([FSC-PRO-01-009 \(V3-0\)](#)), which may be submitted by any individual or organisation, are evaluated by an impartial Complaints Panel appointed by the FSC Director General and require a recommendation by consensus (including a conclusion, rationale and any follow-up measures to be taken) to be submitted within 60 days to the FSC Board of Directors for a final decision.

Each of these procedures can be extended by a maximum of 30 days by the FSC Director General, making the total timeframe for conclusion a maximum of 90 days. At the time of publication, the FSC website indicates that there are nine closed and two ongoing disputes, the most recent of which was submitted in September 2014 against the Vietnam Rubber Group.

**Useful elements:** RSPO may wish to consider adapting the following elements of FSC’s system, among others: a) specific reference to grievance mechanisms in the P&C; b) an option for online submission; c) clear admissibility criteria and information required in submission forms; d) providing support to complainants to file complaints correctly; e) putting Complaints Panel members through a selection process for each complaint, including checking for conflict of interest, and concluding a signed service agreement; f) giving complaints parties the right to object to any member of the Complaints Panel with valid reasons; g) appointing a non-voting and impartial secretary to the Complaints Panel to collate and present facts of the complaint; h) allowing the Complaints Panel to contact the complaints parties and others able to contribute to fact-finding; i) building a network of

<sup>30</sup> If the complainant is not satisfied with the outcome, s/he may appeal the decision according to FSC-PRO-01-005.

regional partners to assist with fact-finding and verification; j) clear timelines for processing; k) documenting and filing all incoming and outgoing correspondence, including final decisions and follow-up actions; and l) producing of an evaluation report of each complaint by the Complaints Panel (including the full confidential version and a public summary).

**Challenges:** The FSC Secretariat is not informed of complaints concerning certification bodies or ASI, so the number of actual complaints could be much higher. Unlike RSPO, FSC’s System does not explicitly provide for mediation, given its overarching priority is compliance. It does not have a functioning complaints database or much information available on the website about ongoing or closed disputes. More broadly, the main thrust of the System is to close the issue and strictly adhere to its procedures; it does not include stakeholder perceptions as an indicator of success (which arguably should be a key factor) or procedures for conflict prevention. Notwithstanding these limitations, it has improved since the creation of the Disputes Manager position in 2011 and added emphasis on evaluation of complaints based on the written procedures, which have also been updated in 2014.

### ***Better Sugar Cane Initiative’s Complaints Resolution Process<sup>31</sup>***

**Institutional Framework:** In its revised [Production Standard](#), the Better Sugar Cane Initiative (Bonsucro) includes the “existence of a recognised and accessible grievance and dispute resolution mechanism for all stakeholders” as an indicator for Criterion 5.8’s requirement to “ensure active engagement and transparent, consultative and participatory processes with all relevant stakeholders”. Its [Guidance for the Production Standard](#)

<sup>31</sup> Available online at: <http://bonsucro.com/site/about/complaint-resolution-process/>.

recognises that conflicts are detrimental to all parties involved and further states that conflicts “shall be prevented by a clear grievance and dispute resolution mechanism”. If conflicts occur, they “must be identified and resolved in a transparent and consultative manner” and recurrence prevented.

**Procedures:** Bonsucro has a [Complaints Resolution Process](#), which aims to resolve issues in the following three areas:

- 1) Complaints regarding a Bonsucro member’s alleged violation of the Bonsucro Code of Conduct;
- 2) Complaints against the awarding of a Bonsucro certificate against the Bonsucro Production Standard or Chain of Custody Standard, or about audits, auditors, the auditing process, the Bonsucro Production Standard, or the Auditing Guidelines; and
- 3) Complaints against actions or decisions of an individual Bonsucro Director, committee members or staff.

Much like FSC, it is underpinned by a number of principles such as, among others: attempting to resolve problems directly between parties before making a formal complaint; upholding an appropriate and fair timetable; operating in a spirit of openness; maintaining a formal record of complaints, and following up to ensure compliance with agreements. The Complaints Resolution Process is handled by a Complaints Manager, who submits a report and recommendations to Bonsucro’s Chief Executive, who in turn proposes a decision to the Board. The Board either authorises the decision or provides guidance to the Chief Executive for reformulation. Both parties to the complaint have the opportunity to accept the decision or submit a counter-proposal; the Board of Directors makes the final decision if agreement is not reached between the parties.

The Process also provides for an appeal of the decision by either party, who must notify the Complaints Manager of their intention to appeal in writing within 21 days. The appeal panel is comprised of the Chair of the Directors

and three other Bonsucro member representatives appointed by the Board and acting in their individual capacities. The decision of the panel (whether to uphold or revise the original decision) is final and not subject to further appeal. An outline with the final results, including the determination and any corrective action to be taken, is to be published on Bonsucro’s website. The draft wording is to be circulated to the complaints parties for consensus before publication. At the time of publication, there is only one complaint listed on Bonsucro’s website, which concerns a company that was suspended in 2013 and subsequently resigned from membership in 2014. It is not clear if there are other complaints currently being processed or that have been resolved.

**Useful elements:** Bonsucro’s Production Standard and related Guidance reference grievance mechanisms in relative detail. The Complaints Resolution Process has clear (albeit short) timeframes for engagement between the Complaints Manager and complaints parties. RSPO may wish to consider both as well as core principles for its own Complaints System.

**Challenges:** The Resolution Process does not provide any information about what recommendations and decisions could be proposed by the Complaints Manager and Chief Executive, respectively. It does not specifically reference other possible pathways for resolution such as mediation or compensation, innovative procedures such as independent investigations, or a procedure for evaluation. In discussions with the Secretariat, insufficient human resources was identified as a critical limiting factor in Bonsucro’s pursuit of effectively handled complaints. The prescribed timeframes are too short to enable in-depth review and stakeholder engagement. The central involvement of both the Chief Executive and the Board of Directors undermines transparency and is likely to lead to conflicts of interest in practice. It is much preferred to have a grievance mechanism with strict separation of powers between the governing body and the complaints procedure and with diverse resolution pathways that utilise innovative procedures, as is the case with RSPO.

## 4.2. Financial Institutions and Economic Cooperation Bodies

International and regional financial institutions tend to have independent accountability mechanisms for grievances and investigations, which provide a necessary critical perspective of large-scale investments and loans. The independence of these mechanisms is essential to their watchdog-type role. However, there are varying levels of accessibility and “success”, largely influenced by each mechanism’s approach and aims. Two examples are provided.



Figure 7: Key elements of financial sector grievance mechanisms

### *International Finance Corporation and Multilateral Investment Guarantee Agency’s Compliance Advisor Ombudsman<sup>32</sup>*

**Institutional Framework:** The International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) constitute the private sector lending and insurance arms of the World Bank Group. They are guided by IFC’s Sustainability Framework, which includes [Environmental and Social Performance Standards](#) that define their clients’ responsibilities to manage their environmental and social risks under eight categories. The Compliance Advisory Ombudsman (CAO) is an independent accountability and recourse mechanism for individuals and communities affected by IFC- or MIGA-funded projects.

**Procedures:** The CAO places primary importance on independence and impartiality in order to foster trust and confidence of stakeholders in a dispute, and reports directly to the President of the World Bank Group. It has three main functions, as indicated by its name and set out in its [Operational Guidelines](#):

- 1) **Compliance:** the CAO conducts audits to determine the extent of IFC’s and MIGA’s compliance with the relevant policies, standards, guidelines, procedures, and conditions at the project level; if it finds non-compliance, it monitors the situation until assurances are made that the project is compliant; cases can be referred to Compliance at the initial assessment phase of a complaint or if dispute resolution is not possible, or directly by the President of the World Bank, IFC or MIGA senior management, or the CAO vice-president.
- 2) **Advisor:** on the basis of lessons learned from its caseload, the CAO provides advice to the President of the World Bank Group and

<sup>32</sup> For more information, please see: <http://www.cao-ombudsman.org/>.

management of IFC and MIGA on emerging trends and strategic issues related to policies, standards, procedures, guidelines, resources, and systems; and

- 3) **Ombudsman**: an individual, group or community directly or likely to be affected (or representative thereof) may file a complaint, which then proceeds (subject to eligibility criteria and an initial assessment) to dispute resolution or compliance; its objective is to help the parties identify and implement their own solutions and includes techniques such as conflict assessment, mediation and dispute resolution, consensus building, multi-stakeholder problem solving, and interest-based facilitation and negotiation.

Upon receipt of a complaint, the CAO immediately acknowledges it and provides the complainants with a copy of the Operational Guidelines. It assists the parties to the complaint to negotiate ground rules for their engagement, including with respect to confidentiality, media, and so on. The Ombudsman (dispute resolution) function is a fairly comprehensive process, which includes pre-mediation capacity building with the complainants and strong emphasis on self-representation of the affected individuals or communities. The CAO produces reports of each complaint (while respecting requests for confidentiality), a detailed annual report (with a strong focus on analysis, lessons learned, and themes and trends), internal and external reviews of its work, and other publications such as films and monographs, all of which are available online in additional languages. It also maintains a user-friendly online case database.

The CAO website lists 131 cases, 90 of which have been closed. Staff foresee a growing number and complexity of cases in the near future. The online case database can be searched by case name, region, country, status, and project phase, and displays a global map indicating countries with open or closed cases. It also releases a summary of cases every six weeks. Although each complaint is a unique process and could vary widely depending on the circumstances, they generally take between six

months and three years to resolve. Measurements of success are defined by the parties and include both quantitative and qualitative indicators concerning relationships, power dynamics, and capacities, in addition to actual outcomes.

The CAO has a team of 15 qualified staff from diverse professional and ethnic backgrounds and with clear ToRs and procedures, together focusing on the three main functions as well as research, communications and outreach, and administrative support. It also engages with a group of seven strategic advisors, a network of independent accountability mechanisms of international financial institutions, and neutral third-party facilitators with appropriate cultural and linguistic skills to work directly with local stakeholders.

**Useful elements:** In comparison with many other non-judicial grievance mechanisms, the CAO Ombudsman function is easier to access and has fewer eligibility criteria. It approaches in-depth stakeholder-driven processes as a necessary foundation for equitable dispute resolution and is accordingly much more attuned to community dynamics and sensitivities than other mechanisms. Its succinct yet reflective case reports, case database, and other publications provide a detailed account of its work and the processes undertaken and lessons learned along the way. It is well-staffed, continually builds its network of in-country third-party facilitators, works with advisors and other accountability mechanisms, and remains open to civil society engagement. It places high priority on monitoring, analysis, lessons learned, and proactively identifying emerging trends and strategic issues.

**Challenges:** As a corollary to the abovementioned useful element, in-depth processes require investments of time as well as financial and human resources, the latter of which must be experienced and highly sensitive and responsive to community dynamics. However, it should be noted that such costs pale in comparison to the large-scale project

investments with which the complaints concern; successful resolution of complaints will likely mitigate or prevent full-scale conflict, which can be extremely costly in terms of delays or even cancellation of the project. Other weakness include the lack of an appeal mechanism, for which the CAO has been criticised as being a “toothless tiger”, and its lack of mandate to make direct orders for divestment or otherwise; it relies on civil society to pressure IFC and MIGA for such tangible change.

### ***OECD Guidelines for Multinational Enterprises’ Specific Instances Mechanism***<sup>33</sup>

**Institutional Framework:** The Organisation for Economic Co-operation and Development (OECD) [Guidelines for Multinational Enterprises](#) are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct in a number of areas, including human rights, environment, and competition. The OECD Guidelines are the only government-backed international instrument on responsible business conduct with a built-in grievance mechanism, referred to as specific instances.

**Procedures:** Under the specific instances mechanism, each adhering country (of which there are currently 45) is obliged to set up an impartial National Contact Point to further the effectiveness of the Guidelines and to provide a platform for stakeholder discussion and resolution of issues arising from alleged non-observance. National Contact Points have varying institutional arrangements but should be “functionally equivalent” by adhering to the core criteria of visibility, accessibility, transparency, and accountability. The OECD Secretariat provides assistance where needed.

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<sup>33</sup> For more information, please see: <http://mneguidelines.oecd.org/specificinstances.htm>.

Anyone can submit a specific instance, consideration of which includes three phases: 1) an initial assessment to determine if the issues raised merit further examination; 2) offer of good offices to facilitate informal problem-solving and mediation, upon agreement of both parties; and 3) a conclusion to issue statements or reports. National Contact Points can undertake fact-finding missions and field visits and seek information from independent experts and other representatives from civil society and business; they can also work together if a specific instance is filed in both the host and home countries. They aim to complete the second phase (mediation) within 12 months of an instance being filed.

Approximately 300 specific instances have been handled by National Contact Points since the introduction of the mechanism in 2000. The database is searchable by National Contact Point, theme (as per the Guidelines), date, host country, source of case, status, and industry sector, and includes statistics relevant to each search in the sidebar. Each National Contact Point submits an annual report and OECD itself publishes annual reports that address work undertaken, new developments, and emerging issues; the entire 2012 report was dedicated the mediation and consensus-building. This mechanism receives a significant level of civil society attention and scrutiny, particularly through OECD Watch, a global network for corporate accountability.

**Useful elements:** Transparency is a core criterion for handling specific instances, as stipulated by the Procedural Guidance to the OECD Guidelines. The National Contact Points hold an annual meeting back-to-back with the Global Forum on Responsible Business Conduct and recently introduced a voluntary peer review processes, both of which provide a critical basis for peer learning and capacity-building. As with the CAO, it has a user-friendly online database and reflective annual reports and analyses.

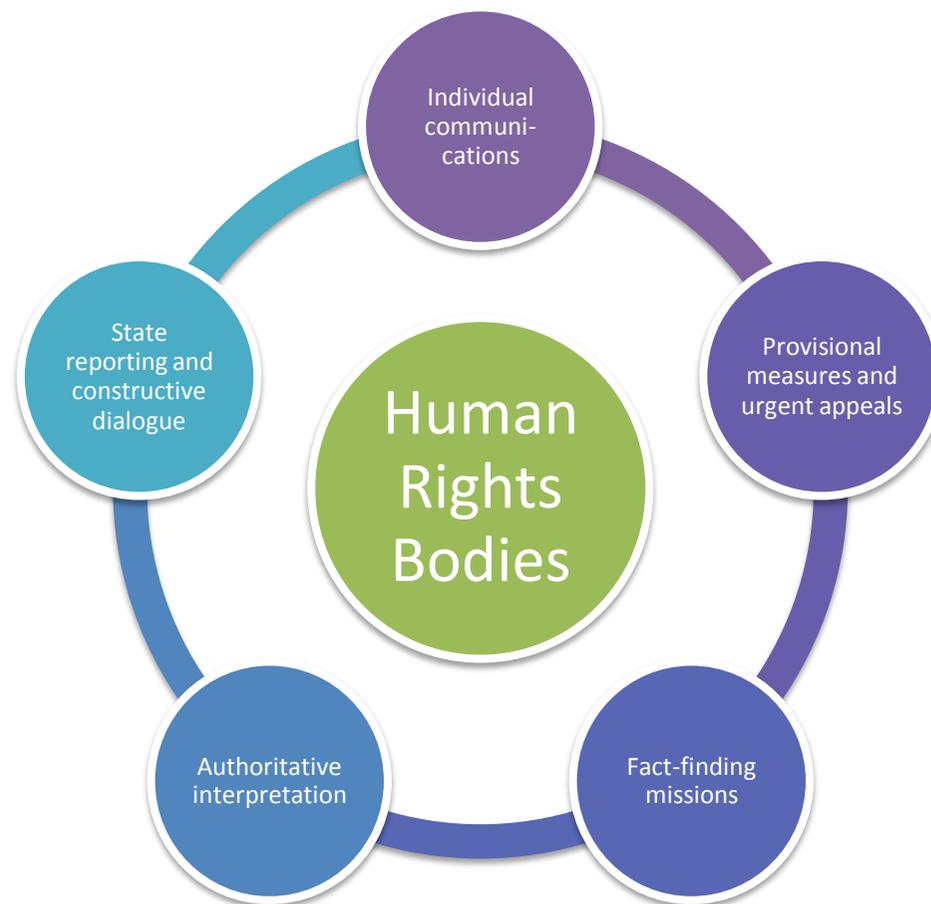
**Challenges:** Along with varying institutional arrangements, National Contact Points have varying degrees of effectiveness and consistency depending on the structure, location, and staffing, among other factors. OECD Watch recommends that they be independent and have an oversight body such as an ombudsman or multi-stakeholder group to advise on issues raised in complaints or on proper procedures for handling complaints.<sup>34</sup> National Contact Points do not have a formal monitoring role, though parties may seek their assistance in following up on agreements. There is also no formal appeals process. The ultimate effectiveness of this mechanism relies heavily on active civil society engagement with the National Contact Points.

### 4.3. Human Rights Bodies

Though they were adopted in multilateral fora, the complaints mechanisms under UN human rights treaties and Charter-based bodies provide important lessons and innovative procedures that could easily be taken up by RSPO. Of particular importance and interest are independent fact-finding missions, the use of decisions from individual communications and complaints to develop the body of jurisprudence and authoritative interpretation of the instrument concerned, clear admissibility criteria and procedures for handling complaints, and incorporation of decisions into mandatory state reporting procedures. Interestingly, UN human rights bodies face many of the same challenges as RSPO such as shortages of personnel and funding, backlogs of cases, non-cooperation and non-compliance of state parties with decisions, and election of representatives with dubious records and lack of commitment and political will.<sup>35</sup> Two examples are provided below.

<sup>34</sup> OECD Watch, 2013. *Calling for Corporate Accountability: A Guide to the 2011 OECD Guidelines for Multinational Enterprises*. OECD Watch: The Netherlands.

<sup>35</sup> Some of the information in this sub-section is drawn from the following: Steiner, H. J., P. Alston, and R. Goodman, 2007 (third edition). *International*



**Figure 8:** Key elements of human rights grievance mechanisms

*Human Rights in Context: Law, politics, morals*. Oxford University Press: Oxford; and Rehman, J., 2009 (second edition). *International Human Rights Law: A practical approach*. Longman: London.

### ***Human Rights Treaty Bodies’ Individual Communications (Example: International Covenant on Civil and Political Rights)<sup>36</sup>***

**Institutional Framework:** The International Covenant on Civil and Political Rights (ICCPR) was adopted by the UN General Assembly in 1966 and entered into force in 1976; it currently has 168 state parties. The Human Rights Committee is the Covenant’s principal body for monitoring and implementation and is comprised of 18 independent experts who meet for three sessions each year.

**Procedures:** One of the most significant mechanisms under international law is the individual communications (complaints) procedure under ICCPR’s First Optional Protocol, which enables individuals to seek remedies for alleged infringement of their rights under the Covenant. The Human Rights Committee has clear admissibility criteria and procedures for such communications, as well as the mandate to impose interim measures in order to prevent possible irreparable damage to the alleged victim. Decisions are to be taken into consideration in the mandatory state reporting procedure, including in the dialogue process between the concerned state and the Committee. At the time of publication, the Committee has received 1468 individual communications.

**Useful elements:** The ICCPR’s individual communications procedure has been used extensively, developing a significant amount of experience and good practice, and has served as a model for the establishment of a similar procedure under each of the other major international human rights treaties. Decisions on individual communications have contributed enormously to the body of jurisprudence, including authoritative

<sup>36</sup> For more information, please see: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx>.

interpretation of both procedural and substantive aspects of the Covenant. Much of this procedure’s success derives from the embarrassment and shame of negative publicity on the international stage and pressure from civil society groups and the international community; this resonates closely with a number of RSPO complaints that have led to active engagement between parties.

**Challenges:** The challenges faced by ICCPR’s individual communications procedure are remarkably similar to those faced by RSPO’s Complaints System. They include the inability to undertake independent fact-finding when confronted with contradictory evidence, no system of legal aid for those seeking to use the procedure, insufficient resources (personnel and funding), a significant backlog of cases, reliance only on written proceedings, lack of binding sanctions, and concerns with non-cooperation and non-recognition by state parties of the Committee’s decisions. Recommended reforms have included focusing more on research, reflection and elaboration of decisions in order to encourage debate and dialogue, shifting from mandatory to discretionary jurisdiction to reduce the number of decisions required, and actively cultivating collaboration and complementarity between mechanisms under the Covenant itself, with other human rights treaty bodies, and with other international processes such as the Special Procedures under the Human Rights Council.

The **challenges** faced by individual complaints procedures under human rights treaty bodies are **remarkably similar** to those faced by RSPO’s Complaints System.

## ***The Human Rights Council’s Complaint Procedures, Special Procedures and Universal Periodic Review***

**Institutional Framework:** The Human Rights Council was established in 2006 as the successor to the UN Human Rights Commission, which was introduced in 1946 as a central part of the post-World War II international human rights architecture.

**Procedures:** The Human Rights Council provides three particularly useful procedures for complaints and monitoring compliance. Central to all three are fact-finding missions, credibility of which is determined by their thoroughness, objectivity, and procedural fairness. First, the Council’s [Complaints Procedure](#) allows individuals to submit confidential reports of human rights abuses, which sparks a process of dialogue and cooperation with the states concerned; the complainant can be involved at all stages. Confidentiality is ensured, but outcomes are reported via an annual report.

Second, the Council’s [Special Procedures](#) include a wide range of thematic mandates held by individuals and groups that address common themes and phenomena of human rights violations around the world. Their main tasks are to receive and transmit communications, undertake fact-finding missions, and provide annual reports and contribute to the body of jurisprudence. Examples include the Special Rapporteur on the Rights of Indigenous Peoples and the Independent Expert on Human Rights and the Environment.

Finally, the [Universal Periodic Review](#) is a particularly innovative approach to monitoring, in which every UN member state is examined on a 4-year cycle; it ensures every state is treated in the same manner and gives each one the opportunity to demonstrate its compliance with its international obligations.

**Useful elements:** In contrast with the treaty monitoring bodies, organs established under the UN Charter have broader and more flexible mandates and procedures. They place emphasis on fact-finding missions, building bodies of jurisprudence that are actively used in state reporting and monitoring procedures, and producing analytical reports of activities, recommendations, and lessons learned.

Guidance adopted in 1997 by the Human Rights Commission on fact-finding missions, which could be of particular use to RSPO, underscores the importance of offering a variety of procedures suited to different situations, adherence to the principle concept of due process, protection of witnesses, and ensuring they are conducted by independent and impartial persons and are consistent, comprehensive, and uniform.<sup>37</sup> Similar to RSPO, the Council’s procedures aim to bring states into compliance with international standards through constructive dialogue and engagement.

**Challenges:** A key challenge in the past has been the nomination and election process of Commission members, which in effect forced the election of states with dubious human rights records and individual representatives whose positions were closely dictated by their respective governments. However, in the revised procedure under the Council, members are elected through the UN General Assembly by absolute majority and states wishing to be elected must first advance firm written commitment to the promotion and protection of human rights, both domestically and internationally. Another common challenge is that the Special Procedures require the invitation and cooperation of the states concerned.

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<sup>37</sup> Economic and Social Council, 1997. “Terms of reference for fact-finding missions by special rapporteurs/representatives of the Commission on Human Rights”. Appendix V in the report of the meeting of Special Rapporteurs, Geneva, 20-23 May 1997. [Available online.](#)

## 5. GAPS ASSESSMENT & ANALYSIS

Since the first iteration of RSPO’s grievance mechanism in 2006, the Secretariat and other key stakeholders such as active members of the Complaints Panel and non-governmental organisations (NGOs) have made a number of changes to usher it into its current phase. It has been and will continue to be an ongoing process of monitoring, review and improvement. Other commodity roundtables and certification schemes such as Bonsucro view RSPO’s Complaints System as a leading example, with procedures more developed and tested than theirs.

However, RSPO’s Complaints System is arguably at a critical juncture. Although some important changes have been introduced, the Secretariat faces a significant backlog of unresolved complaints (including several long-standing), the limited pool of Complaints Panel members are overburdened, and complainants and responding RSPO members alike raise fundamental concerns with transparency, efficiency and procedural consistency. There are also increasing numbers of external critiques not just of RSPO members’ operations, but also of the Complaints System itself.<sup>38</sup> The overall picture is one of growing frustration and declining trust in the Complaints System. This in turn affects confidence in the RSPO brand as a whole, given the high levels of public scrutiny on the organisation and its members.

Overall, RSPO needs to take a more strategic, proactive and systematic approach to complaints that accommodates their implicit diversity and complexity. Effective complaints mechanisms should have clear, rigorous, and consistently applied procedures and independent decision-making free from conflict of interest. They should be flexible and responsive to

<sup>38</sup> For example: Jacobson, P., 1 June 2014. “Kernels of Controversy”. Tempo Magazine.

RSPO’s Complaints System is at a **critical juncture**. It needs to take a more **strategic, proactive and systematic** approach.

emerging issues, lessons learned, and broader trends. Within the broader context of RSPO, there is also a delicate balance to strike between ensuring certain companies remain in the organisation and upholding a certain threshold for compliance beyond which firm actions should be taken to ensure respect for and confidence in the system.

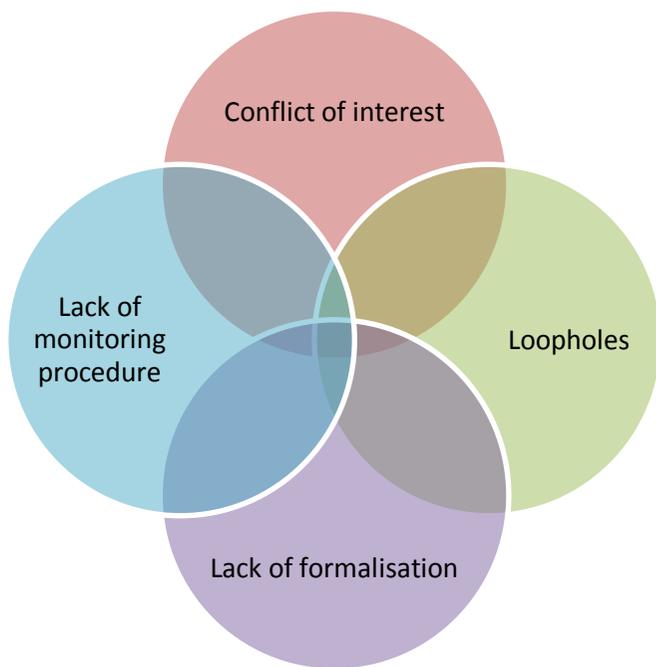
This section assesses and analyses the strengths, weaknesses and gaps of RSPO’s Complaints System and identifies opportunities for its improvement on the basis of **Sections 2, 3 and 4**, external critiques<sup>39</sup>, and additional research and analysis undertaken over the course of the review. It is divided into the following five sub-sections:

- 1) Governance of the Complaints System;
- 2) Management of the Complaints System;
- 3) Procedures of the Complaints System;
- 4) Public communications and outreach; and
- 5) Institutional vitality.

<sup>39</sup> Including: Grassroots, 2013. *Beyond Certification: Reforming RSPO’s Complaints System to meet stakeholder expectation*. [Available online](#); Colchester, Marcus, and Sophie Chao (Editors), 2013. *Conflict or Consent? The oil palm sector at a crossroads*. Forest Peoples Programme, Sawit Watch and TUK Indonesia: UK and Indonesia. [Available online](#); and Ng, Andrew, and Si Siew Lim, 2013. *The RSPO Roulette: How profits win over people and planet*. Pesticide Action Network Asia and the Pacific: Malaysia. [Available online](#).

### 5.1. Governance of the Complaints System

The main issues with governance concern: a) conflict of interest; b) lack of formalisation of the Complaints System in institutional instruments and procedures; c) loopholes between related components of RSPO; and d) lack of a functioning monitoring system (see **Figure 9**). These significant gaps leave far too much room for error and make it extremely difficult for RSPO to track past, ongoing and recurring complaints, prevent future conflicts, and penalise members for non-compliance through the auditing and certification system. Since governance-related concerns underpin the entire Complaints System, addressing these effectively and comprehensively could also have the most impact.



**Figure 9:** Main concerns with governance

**Conflict of interest:** In 2006, the Panel consisted almost entirely of Executive Board members and was headed by the RSPO President (Unilever). It was clear that there was an inherent conflict of interest, given the vast majority of complaints concerned Unilever at some point in its supply chain. Conflict of interest has continued to plague the Complaints System and critiques thereof, with members of the BoG (formerly the Executive Board) still serving on the Panel up until late 2014. The BoG has also retained decision-making powers in the Complaints Procedure Flowchart, including in appeals.

The Complaints Panel currently employs a basic procedure for self-declaring conflict of interest when it is convened for each complaint. Such a voluntary procedure could potentially function well, but neither this nor the broader Panel ToR is sufficiently detailed to ensure consistent application, especially with so many new Panel members. For example, the Panel ToR and appointment letters do not specify whether Panel members serve in their personal capacity, on behalf of their organisations or companies, or on behalf of their stakeholder groups; whichever an individual Panel member perceives is the case will accordingly affect her or his perception of the existence or absence of a conflict of interest. There is at least one recent situation of a Panel member whose company had a conflict of interest in a complaint but proceeded to remain on the Panel because that person did not perceive that s/he was representing the company. The absence of a written procedure with clear parameters also makes it more difficult for new Panel members who do not have the institutional memory of longer-standing members.

On a related note, attempts by complaints parties and other stakeholders to influence decisions through direct engagement with Panel members place the latter in a regrettable position that compromises the official procedure. It has been suggested that RSPO should take a strong stance on addressing this matter and preventing its recurrence, including through clear channels for communication from the Secretariat. One

recent suggestion was to make the Panel members' identities public in order to address the same issue, though this does not yet have broader support.

**Lack of formalisation:** There are currently no requirements for RSPO members to: a) keep records of complaints within their concessions or supply chains (including through any transfers of ownership); b) incorporate the Complaints System into their internal policies and Standard Operating Procedures (though some have done so of their own accord); c) provide information about the Complaints System and any organisational-level grievance mechanisms during operations; or d) report on their engagement with the Complaints System (including components such as NPP and DSF) in their annual reports and ACOPs. RSPO's Statutes do not yet refer to the Complaints System and others have called for its inclusion, even if in general terms. Complaints and grievance are mentioned in general terms in Principle 6.3 of the P&C, but could be further elaborated, including with more specific indicators, and integrate lessons learned from RSPO's Complaints System.

**Loopholes between related components:** A significant concern is the lack of clarity about roles, responsibilities and procedures for complaints that are passed on to other components of RSPO, including the Compensation Task Force and Certification System. Although it is highly desirable to diversify the possible pathways for resolving complaints, an uncoordinated approach creates loopholes if there is no streamlined procedure or monitoring mechanism for tracking a complaint throughout these additional routes. For example, although the Complaints System ToRs refer to DSF and compensation in addition to the Panel, the respective procedures are not fully aligned or complementary. Other related components such as NPP are not even included, though the NPP Process Flowchart does refer briefly (and incorrectly) to the "Grievance Procedure". Where there are (or should be) procedural links between these related components, the roles and responsibilities of the respective

Secretariat staff and/or voluntary bodies must also be clear. Otherwise, it is likely that complaints will be handled inconsistently or in accordance with different and potentially conflicting procedures, or fall through the cracks altogether. Related to the point above about lack of formalisation, there are also concerns with RSPO members appointing and paying for their own auditors and certification bodies, and inconsistent auditing reports that do not pay sufficient attention to alleged environmental and social violations; this greatly impedes the likelihood of comprehensive and objective assessments, including of the extent to which complaints have been resolved in practice.

**Lack of monitoring procedures:** There is no functioning monitoring procedure, either for individual complaints throughout their life-cycles (including if they move between the Complaints Panel and related components such as DSF) or for adherence of the Complaints Panel and Secretariat to their prescribed ToRs and procedures. Unless RSPO members voluntarily report on complaints during audits, there is no way to assess the success of the System as a whole or the satisfaction of complaints parties with the resolution process and outcomes, or to guarantee non-repetition.

## 5.2. Management of the Complaints System

The main gaps in terms of management concern: a) the numbers and capacity (and thus the effectiveness) of both the Secretariat staff and Complaints Panel members; and b) the processes and quality of documentation and deliberations of the Complaints Panel (see **Figure 10**). Investing the time and financial resources needed to address these issues will have significant ripple effects throughout the rest of the Complaints System.

**Insufficient numbers and capacity of Secretariat staff:** The Secretariat currently has a Complaints Coordinator and Dispute Facilities

Manager in the Kuala Lumpur office, with dedicated counterparts for each recently joining the RSPO Indonesian Liaison Office. These additional staff members have improved the flow of information, enabled the Panel to make faster and more transparent decisions, and provided a clear point of contact for complainants and others invested in the process. The Secretariat’s presentation of proposed actions for the Panel’s decision enhances the process as well.

However, there have been many concerns with the Secretariat staff. The most common issue raised is insufficient personnel and capacity to deal with the volume and complexity of complaints. Overall, there is a very low rate of complaint resolution and a significant backlog of unresolved complaints, many of which were submitted more than a year ago and some more than three or four years ago. Contributing factors include lack of proactivity and long delays in communication between the Secretariat and complaints parties (with facts having changed in some cases). There seems to be a correlation between increasing numbers of complaints and an increasing proportion of open complaints, at least in part due to the complexity of outstanding cases. Other concerns raised include: lack of transparency in the Secretariat’s handling of complaints, including determination of validity and procedure; inadequate or unprofessional communication with complaints parties and the general public; and unclear parameters and expectations of the Complaints Coordinator(s), including vis-à-vis the Complaints Panel and complaints parties. There is a clear need for additional staff and building of capacity within the

Secretariat to handle the workload and the sensitivity and complexity of the issues at hand. Notably, a broader mandate for the Secretariat may in itself help build the needed confidence and capacity, particularly to take quick actions in urgent cases such as land clearings.

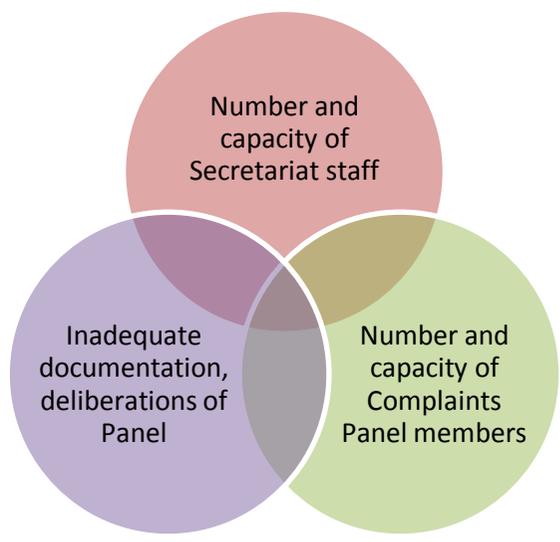


Figure 10: Main concerns with management

**Insufficient numbers and capacity of Complaints**

**Panel members:** Since 2006, the Complaints Panel has expanded and diversified to include the different RSPO stakeholder categories and a larger pool of potential Panel members for each complaint. To a degree, this has also enhanced the understanding of a greater number of RSPO members of the realities and constraints of the Complaints System. Ideally, Panel members should be able to step outside of their “stakeholder boxes”, establish connections between issues and experiences, think critically, ethically, and analytically, be constructive and optimistic, have the capacity and will to objectively identify and propose options for addressing the challenges in each complaint, communicate effectively and efficiently, and demonstrate commitment to work towards the overall aim of improving the RSPO member’s compliance. In practice, however, more emphasis has been placed on ensuring representation of different stakeholder categories than neutrality or these other important qualities.

In addition to needing these qualities, serving as a Panel member demands a significant time commitment and is a relatively thankless task. The Secretariat has accordingly found it difficult to build a large and diverse enough pool of capable and willing Panel members. Another recent push has elicited a handful of new Panel members, though more are still needed. A larger pool would decrease the pressure on each individual, for example, if there were five volunteers from each of the five

stakeholder groups currently represented on the Panel. In an earlier report of this review, it was suggested that the Secretariat consider introducing a system of remuneration for Panel members (as is the case in FSC), but this was eventually dismissed due to concerns that the many other voluntary bodies in RSPO would request the same. At the very least, a comprehensive orientation programme should be introduced, particularly for new Panel members, and acknowledgement of departing members' valuable contributions.

***Inadequate documentation and deliberations of the Complaints Panel:***

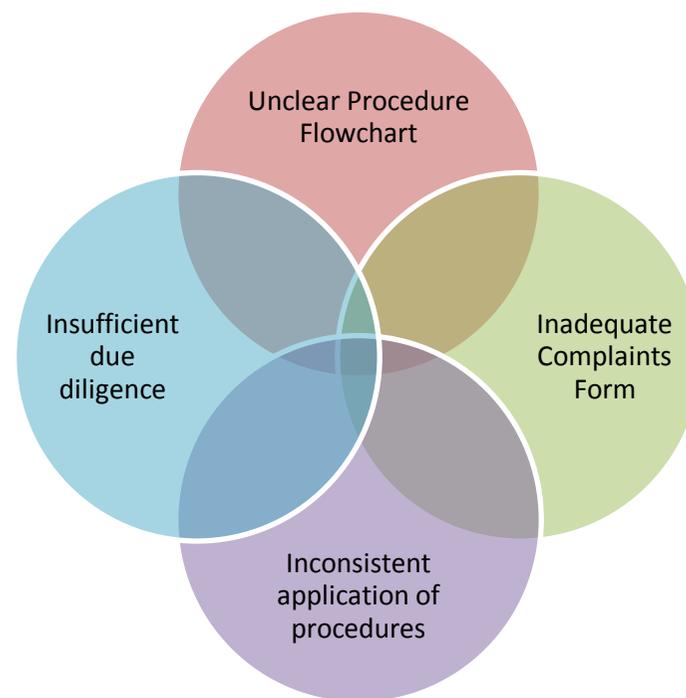
For several months now, the Complaints Panel has held regular monthly meetings. This has generally been seen as a positive change from the previous ad hoc approach to scheduling, which proved to be a consistent challenge amidst the Panel members' many other commitments. In the past two years, there have been some improvements in the provision of synopses to Panel members ahead of the meetings and in the format of Panel meeting minutes. In addition, the Secretariat has recently introduced an online information management system (Salesforce), which has improved the sharing and recording of information before and after Panel meetings.

However, there have also been many critiques, including: Panel members not having access to all original complaints materials before deliberations; lack of detailed discussions about each complaint between decisions are taken; insufficient documentation of the processes and rationales for decisions taken by the Panel; inconsistent and at times inaccurate documentation and communication of information about complaints; and insufficient level of detail in the Complaints Panel minutes. These issues may be partly due to the lack of clarity both of the division of roles and responsibilities between the Panel and Secretariat (particularly in terms of expectations and mandates for decision-making) and of parameters for certain actions that may be taken (for example, interim measures required in urgent cases). While some view the

Secretariat taking on a much greater share of the workload as a positive change, others feel this approach disempowers Panel members and undermines a sense of meaningful participation in what is meant to be a multi-stakeholder process.

**5.3. Procedures of the Complaints System**

The main issues with procedures concern: a) lack of clarity with and inconsistent application of various parts of the Complaints Procedure Flowchart; b) inadequate level of detail in the Complaints Form; and c) insufficient means for undertaking due diligence or independent verification and investigation (see **Figure 11**).



**Figure 11:** Main concerns with procedures

**Unclear Complaints Procedure Flowchart:** Over the years, there have been marked improvements to the Procedure Flowchart. It is now a more formalised process with clearer steps and decision points and provides more pathways for resolving complaints, including dispute settlement and compensation. Notably, the Complaints Panel is not a judicial body and does not hand down legally binding judgments, but tries to create situations for furthering RSPO's mission. Some complaints can be resolved even without the Panel's involvement, as the negative perception of having a complaint filed against them appears to suffice to spur some RSPO members to respond. Importantly, the Complaints Panel has demonstrated that failure to resolve complaints can have significant consequences for RSPO members (for example, suspension or expulsion). Since the adoption of the revised P&C in 2013, some RSPO members are increasingly turning to preventive measures (such as respecting Indigenous peoples' and communities' right to provide or withhold free, prior and informed consent) as they understand how much more difficult situations can become once they escalate into conflicts.

However, there are also many outstanding critiques of the Flowchart and of how complaints have been handled. Whereas some parties greatly prefer to focus on bilateral engagement (particularly before a complaint is formally submitted to RSPO), others feel that an overemphasis on extended and at times ineffective dialogue hampers the Secretariat's ability to impose sanctions for clear violations. In addition, there are not yet any clear standard operating procedures or guidance for a number of practical situations, including: a) conflict between domestic legislation and RSPO's standards and international law; b) multiple and sometimes conflicting options for complaints resolution (including ongoing litigation); c) non-compliance with agreed remediation; and d) recurrence of complaints among the same RSPO members. In the absence of such procedures and guidance, the Secretariat and Panel address such issues on a case-by-case basis but without any parameters for decision-making. Although some degree of learning-by-doing is necessary, this ad hoc

approach decreases transparency and increases the likelihood of inconsistency and unintentionally setting undesirable precedents.

**Inconsistent application of procedures:** Linked to the above, there are also many critiques of the consistency with which the existing procedures are applied, particularly in communication and decision-making points of the Flowchart. Burden of proof remains a point of contention, with both complainants and responding RSPO members separately asserting that they are each asked for more information than is reasonable from the Secretariat and that the burden is not equally shared between the parties. Several parties have also raised concerns with inadequate or inconsistent updates on developments concerning their complaints (for example, correspondence between one party with the Secretariat, Panel deliberations); again, both complainants and responding RSPO members contend that the other party received more or more timely information.

In two complaints concerning land clearing without HCV assessments, one was dealt with relatively swiftly and the other has languished with next to no progress for well over four years. Whilst the two situations do have some necessary differences, the marked disparity in how they have been handled by the Secretariat and Panel is gravely concerning and has led to frustrations among the complainants and responding RSPO members alike, including perceived unfairness, preferential treatment, and inconsistently applied procedures. In another case, the complainants contended that they were not informed about or asked for agreement to a proposed action plan for compensation before the Secretariat informed them that the complaint was closed for monitoring, despite Box F in the Flowchart requiring agreement to be sought from both parties. Lack of adherence to and inconsistent application of stated procedures are serious concerns and greatly undermine the credibility of and stakeholders' confidence in the Complaints System. A number of relatively simple changes, including to how the Secretariat engages with complaints parties, would go a long way towards improving these issues.

**Inadequate Complaints Form:** The Complaints Form template appears to be relatively straightforward and simple to fill out (if the complainant can write in English). However, several concerns have also been raised. In particular, it does not request a summary of the complaint itself or indication of the specific part of the P&C, Statutes, Code of Conduct, or otherwise that is allegedly being violated. As was found in the two complaints site visits, lack of clarity between multiple complainants of their respective roles and responsibilities can cause confusion and disagreement later in the process. A simple request for such details would encourage the complainants to discuss these important matters prior to submission. Improving the Form in these and other simple ways could greatly improve both the quality and level of detail of complaints submitted, which in turn would enable more effective and efficient processing by the Secretariat.

In addition, the Form is only available in English and does not offer any particular support, for example, for women facing gender-related concerns or protection of identities of complainants facing potential retribution. It could also clarify what types of supplementary information is allowed or encouraged, including photographs, videos, and civil society reports, among other things. Providing such options would also increase the accessibility and rights-compatibility of the Complaints System.

**Insufficient means for due diligence or independent verification and investigation:** The Complaints Procedure Flowchart provides for additional investigations in Boxes C and D, which is a welcome option. However, it does not provide any guidance as to what this could or should entail. It also does not specifically mention steps that should be taken by the Secretariat or otherwise for due diligence before proceeding with considering complaints. Continuing civil society concerns with a site visit recently undertaken by the Secretariat highlight the importance of setting clear criteria and guidance for the use of innovative procedures in order to ensure consistency, credibility and confidence of stakeholders. The

dearth of human resources is one of the biggest factors impeding effective use of innovative procedures such as independent verification and investigation. This role arguably should not be fulfilled either by the Panel members or the Secretariat, as has been suggested by some. The Secretariat should work towards building a roster of in-country and regional experts who can be contracted on an ad hoc basis to assist with innovative procedures. This is the model utilised by both the Forest Stewardship Council and Compliance Advisor Ombudsman. Clear UN-adopted guidance on fact-finding missions should also be used.

At least five complaints have been closed due to insufficient evidence, but it is not clear why this happened and whether any particular guidance or support could have been provided; this should be further explored in order to identify ways to address it in the future. In addition, factors affecting long-standing complaints need to be better understood, including the relationships and conflicts between voluntary and legal systems, the benefits of in-person interaction and mediation versus solely online engagement, and the balance between more constructive approaches and punitive action. Some complaints appear to become protracted primarily because of sustained lack of meaningful or constructive communications on various sides.

#### 5.4. Public Communications and Outreach

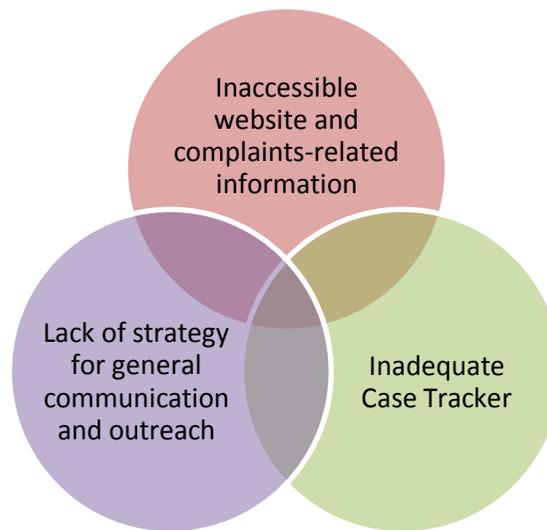
The main issues with public communications and outreach concern: a) inconsistencies and inaccessibility of the RSPO website and information related to the Complaints System; b) inadequate updates to and functionalities of the Case Tracker; and c) lack of a strategy for general communication and outreach, including a procedure for issuing official responses to external reports (see **Figure 12**).

**Inconsistencies and inaccessibility of the RSPO website:** An overhauled RSPO website was launched in November 2014 and is more

streamlined, user-friendly, and visually appealing. The [“Complaints” page](#) now usefully summarises key statistics of complaints and indicates seven types of developments for which the Secretariat will issue public notifications.

However, one of the main critiques still remains: all information concerning the Complaints System, including the Complaints Procedure Flowchart and Form, are only available in English. This impedes the UN-recognised right to understand and be understood in proceedings. Potential complainants who do not read, speak or write English thus cannot directly submit a complaint, let alone engage in English-only proceedings. Communities and local NGOs are forced to depend upon more internationally connected intermediary organisations due to constraints with language, jargon, legal expertise, financial and human resources, and technology. This can be and often is a mutually beneficial relationship, and intermediary organisations provide much needed support. Nevertheless, it also comes with inherent challenges with communication, representation, managing expectations and perceptions, and differing individual or organisational agendas. Providing all documents and information related to the Complaints System in additional languages is a minimum first step towards improving accessibility and compatibility with rights.

**Inadequate Case Tracker:** Particularly in the past few months, the Secretariat has made welcome efforts to publish updates more often on the Case Tracker. The new website states that the Case Tracker will be updated weekly unless there are no new developments. It also now includes the option to search by keyword, country and/or RSPO member



**Figure 12:** Main concerns with public communications and outreach

category, although this does not appear to be completely functioning; it would also benefit from additional search options. Furthermore, there are still concerns that insufficient information is posted online about many complaints, including minutes of Complaints Panel meetings (even if the identities of Panel members need to be removed), correspondence with the complaints parties, and summaries of decision-making processes undertaken. These concerns contribute to the overall sense of inadequate levels of transparency and accessibility.

**Lack of strategy for general communication and outreach:** RSPO and its members are increasingly the subjects of critical civil society reports. In particular, those that are well-researched and substantiated and raise clear concerns and suggested improvements

should be taken seriously by RSPO, even if the authors do not wish to utilise the Complaints System. An informal procedure for considering such reports and issuing responses has already been tested this year, shows promise, and should be further developed and formalised. This new procedure demonstrates a healthy organisational attitude towards external critiques as valid sources of information that can make useful contributions to the broader debate.

In addition to this specific situation, there is also a need for a strategy, plan and procedure for general communication and outreach about the Complaints System (for example, improvements made, complaints resolved, lessons learned, etc.) to different target audiences. RSPO’s embracing of a range of perspectives and opinions, including through the

Better Palm Oil Debate platform, should serve as a model for accepting and addressing critiques of the Complaints System directly and more proactively. Production of multimedia outreach materials on the Complaints System, tailored to specific stakeholder groups and in multiple languages, could also help dispel myths and hopefully prevent conflicts from occurring in the first place.

### 5.5. Institutional Vitality

The main issues with institutional vitality concern insufficient learning loops both a) within RSPO (especially in terms of experience with the Complaints System and among Secretariat staff) and b) between RSPO and other related complaints mechanisms (see **Figure 13**). Overall, complaints should not be seen as inconveniences to be ‘managed’, but as specific situations and symptoms of broader patterns of non-compliance that must be meaningfully resolved and prevented for the betterment of RSPO.

**Insufficient learning loops within RSPO:** The Complaints Panel ToR usefully provides for capturing wider lessons and making recommendations to the BoG on systemic improvements. However, this provision has not yet been utilised, largely due to the Panel’s already substantial workload of individual complaints. RSPO should make it a priority to go beyond the level of single complaints to consider broader lessons, common themes, and emerging issues. The institutional memory of the Complaints System currently rests with very few individuals, yet its details and nuances should be accessible to and understood by all RSPO members and other stakeholders. This could be greatly improved by issuing detailed analyses

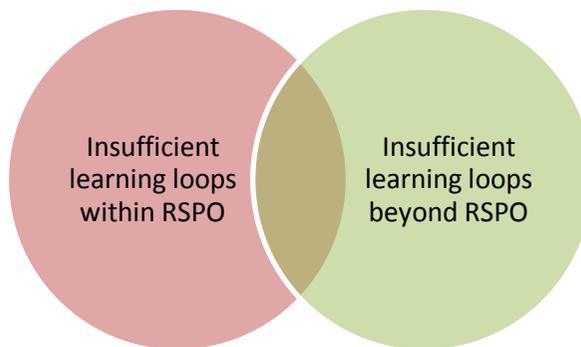
of closed complaints, authoritative guidance on different aspects of the Complaints System, and annual reports, as is done by the CAO and human rights treaty bodies. Another suggestion that arose from the two site visits is to facilitate informal learning platforms within and between complainants and responding RSPO members (particularly those involved in multiple complaints) in order to share experiences, learn from past mistakes and successes (such as NPP comments), and jointly develop good practices and innovative approaches to preventing and resolving complaints.

As is the case with other gaps identified above, a major bottleneck continues to be insufficient human resources in the Secretariat. Additional staff are needed to fulfil the various suggested tasks and professional development opportunities such as periodic trainings should be offered to or made compulsory for existing Secretariat staff.

#### **Insufficient learning loops beyond RSPO:**

Given RSPO has had so much to consider internally, it has not yet taken the time to engage with other complaints mechanisms, including from other commodity roundtables and certification schemes and international, intergovernmental and regional fora. Whilst RSPO may be seen as one of the leading roundtables, it has much to learn from other sectors’ mechanisms such as the CAO (regarding dispute settlement and mediation), OECD (regarding bilateral dialogues), and human rights treaty monitoring bodies (regarding issuance of authoritative interpretations and recommendations). RSPO

could show great leadership by convening a multi-initiative learning group to share and jointly develop good practices.

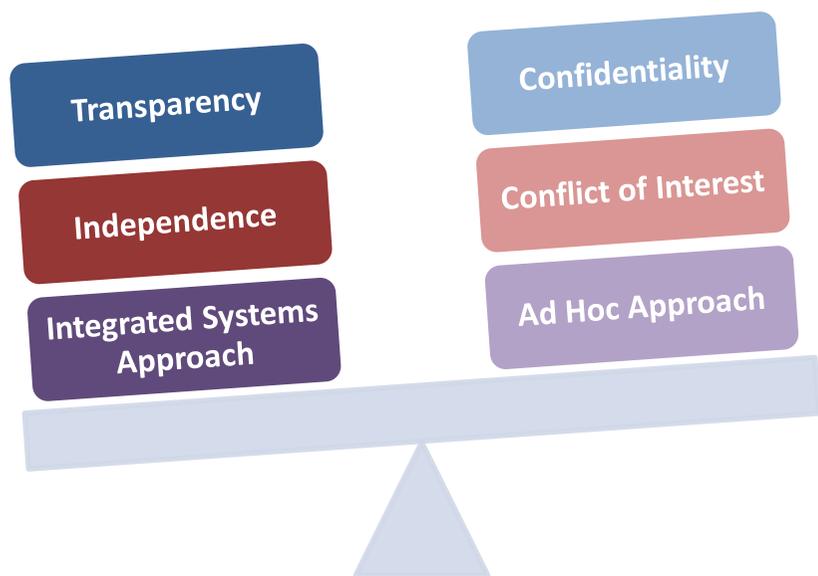


**Figure 13:** Main concerns with institutional vitality

**PART II: OVERVIEW OF THE  
RECOMMENDATIONS**

## 6. KEY ISSUES CONSIDERED

A number of key issues arose consistently throughout the review process, at times portrayed as binary opposites with stark views on either side of a clearly drawn line. In practice, they are manifest along a continuum. This section highlights three pairs of issues in particular that were carefully considered when formulating the recommendations (see **Figure 14**). In doing so, the recommendations aim to strike a reasonable balance between ideals (towards which RSPO should strive over time) and readiness and feasibility in the near future.



**Figure 14:** Striking a balance between several key tensions and ideals

### 6.1. Transparency vs. Confidentiality

The tension between transparency and confidentiality continues to be an issue at the core of many complaints. This is largely due to the wide spectrum of worldviews, communication styles, and situations at play in RSPO, with some complaints parties heavily favouring direct engagement behind closed doors and others demanding full disclosure at all times.

Regardless, transparency is the norm in RSPO. Its centrality has been underscored by both the BoG and Complaints Panel. Publicly sharing information, particularly about decision-making and management procedures, is an essential aspect of building confidence in the Complaints System. There are very few situations in which confidentiality currently trumps transparency in the context of RSPO complaints. These include: a) protecting the identity of complainants facing potential or actual harassment, intimidation or abuse; b) during the proceedings of formal mediation processes (in which confidentiality is a legal requirement); and c) protecting the identities of the Complaints Panel members considering specific complaints. The latter approach was adopted in response to valid concerns with complaints parties attempting to communicate with and influence individual Complaints Panel members during deliberations. One party has recently suggested that public disclosure of the Panel members’ identities would better address the same issue and increase overall transparency, but there are strong views in favour of retaining the current practice of confidentiality. One of the recommendations suggests a more in-depth discussion about the merits and risks of this proposed change to ensure all views and options are carefully considered.

Otherwise, these three exceptions to the norm of transparency can be accommodated while ensuring the required information is provided for a complaint to proceed. In the majority of situations in which transparency is the *modus operandi*, addressing issues such as hesitance or refusal of responding RSPO members to share information (including publicly) is primarily a matter of the Secretariat ensuring compliance with existing decisions and recommendations.

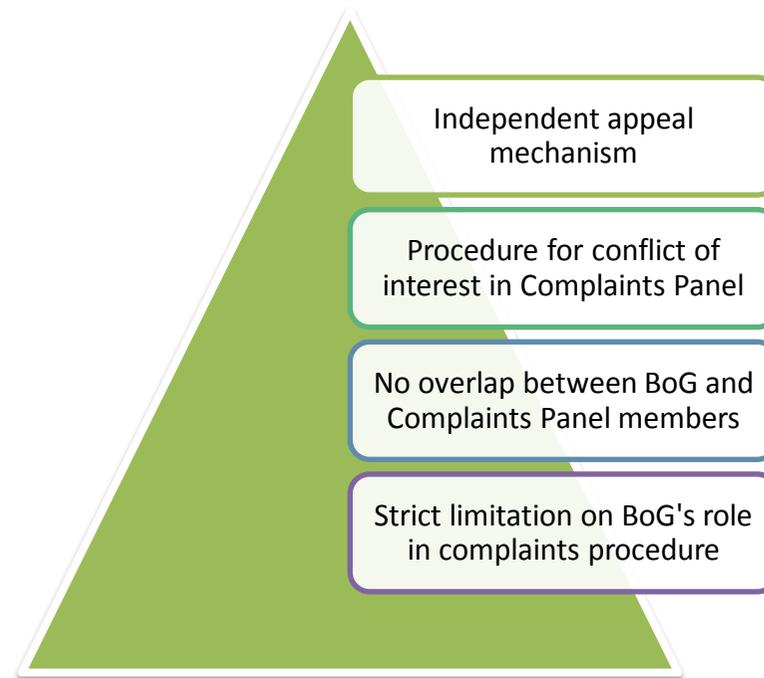
### 6.2. Independence vs. Conflict of Interest

Independence and impartiality in governance and decision-making procedures are essential to the credibility of the Complaints System and RSPO as a whole. At the heart of Resolution 6f is the commitment to ensuring strict separation of executive powers in handling complaints and grievances.

More broadly, some stakeholders would like the entire Complaints System to be independent of RSPO and function more like a watchdog (for example, akin to the CAO as described in **Section 4**). In contrast, others feel strongly that a fully independent Complaints System would not have the requisite experience with the palm oil industry and would not be practicable or desirable in the near future. Although this review does not propose making the Complaints System fully independent from RSPO at this stage, it does recommend removing a number of specific instances of conflict of interest, which should significantly improve such concerns. As the impacts of these recommendations are monitored and reviewed, RSPO should consider taking additional steps in the future to further increase the independence of specific elements of the Complaints System. Even if the Complaints System is never made fully independent, it should be an ideal towards which RSPO strives.

Four of the first recommendations of this review (see **Annex I**) aim to address the central commitment of Resolution 6f and other forms of

conflict of interest currently in the Complaints System, namely by: a) reducing the BoG’s involvement in the complaints procedure strictly to receiving information; b) ensuring there are no Complaints Panel members who are also on the BoG; c) developing a clear procedure for declaring and addressing conflict of interest within the Complaints Panel in relation to specific complaints; and d) establishing an independent appeal mechanism to replace the BoG’s current role in appeals (see **Figure 15**). The first three recommendations can be addressed relatively easily and have not faced any opposition throughout the review process.



**Figure 15:** Recommendations to increase independence and reduce potential conflict of interest

The fourth recommendation arguably requires more time to develop. Examples of independent appeal mechanisms from other sectors (such as immigration, trade and tax) would need to be heavily adapted to suit RSPO. In addition, the Complaints System will function much more effectively after implementation of several other recommendations (including those above concerning conflict of interest). There should be relatively few situations in which an appeal mechanism would be needed in practice; it should, however, still be an option in the procedure. It is thus suggested that an independent appeal mechanism be developed with meaningful stakeholder participation and consultation and alongside a mid-2015 review of the Complaints System revamp process.

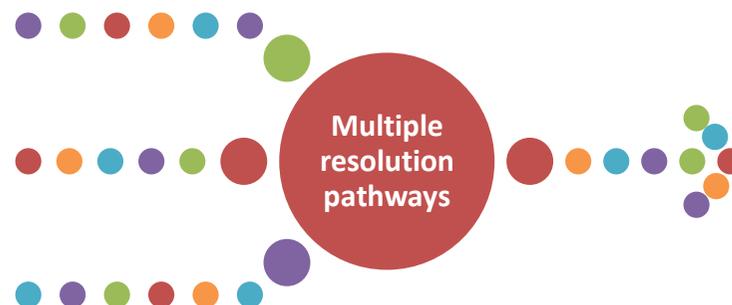
### 6.3. Integrated Systems Approach vs. Ad Hoc Approach

Complaints are diverse, complex and dynamic processes with facts and circumstances that change over time. They often concern several intertwined issues manifest in particular localities and cannot be easily categorised and resolved under the banner of one clear-cut topic (such as FPIC or HCV). Each individual complaint should thus be approached as a unique process. Throughout this review, several stakeholders underscored the need to focus much more on prevention, rather than solely on resolution, especially given the significant backlog in resolving complaints. There are also emerging issues likely to arise more frequently in complaints, but have not yet been built into the procedures.

Since its first iteration in 2006, the Complaints System has developed in a relatively ad hoc and reactive manner. It has had several years to ‘find its feet’ and now needs to make a step-change to be more strategic, proactive and adaptive, particularly by providing multiple options for resolution to accommodate the diversity of complaints.

The present review was intended to focus primarily on the Complaints Panel. However, it soon became clear that several other components of

RSPO are closely related to complaints in practice, but not yet in adopted procedures.<sup>40</sup> The proliferation of new components and voluntary bodies (including working groups, advisory groups and task forces) exacerbates existing challenges with the Complaints System such as insufficient financial and human resources, inconsistent expertise and capacity of voluntary members, shortcomings in reporting, and inadequate monitoring and follow-up. Despite efforts to develop ToRs and procedures for each individual component and body, there are loopholes between them in practice (such as no functioning monitoring system to track complaints passed to or from the Complaints Panel) and insufficient links to the critically important Auditing and Certification process. This had led to a fragmented and uncoordinated approach to complaints. What currently exists needs to be reconceptualised and rebuilt as an integrated *system* that truly functions as such, with multiple options for resolution (see **Figure 16**).



**Figure 16:** The Complaints System needs to provide multiple options to accommodate the diversity and complexity of complaints arising

<sup>40</sup> Including the NPP, DSF, Remediation and Compensation, Auditing and Certification, and ACOPs, as well as other relevant voluntary bodies such as the Human Rights Working Group.

## 7. ORGANISATION OF THE RECOMMENDATIONS

Against a broader backdrop of international law (including the full spectrum of human rights), the framework for the recommendations is provided by Principle 31 of the UN Guiding Principles on Business and Human Rights. As explained in **Section 3**, Principle 31 consists of eight criteria and associated commentary for effectiveness of non-judicial grievance mechanisms. The effectiveness criteria are at the heart of the review’s 68 recommendations, which are listed in full in **Annex I**.

The recommendations are organised into the following overall categories, which respond directly to the gaps assessment and analysis in **Section 5**:

- 6) **Governance of the Complaints System:** *Improving Legitimacy and Transparency*
- 7) **Management of the Complaints System:** *Improving Accessibility and Predictability*
- 8) **The Complaints Procedure:** *Improving Equitability and Compatibility with Rights*
- 9) **Public Communications and Outreach:** *Improving Accessibility and Transparency*
- 10) **Institutional Vitality:** *Improving Continuous Learning and Engagement and Dialogue*

All of the effectiveness criteria are relevant across these five categories. However, each category identifies the two most directly relevant criteria that will be improved through their implementation.

Each of these overall categories is sub-divided into two to four topics, which further streamline the organisation of the individual recommendations (see **Figure 17** on the next page).

Finally, each individual recommendation includes the following details:

- a) Keywords indicating the overall topic;
- b) A brief description of the recommendation and actions to be taken;
- c) Timeframe for phased implementation;
- d) A simple indicator to assist with monitoring and review;
- e) Individuals or groups in charge of implementation; and
- f) Estimated cost implications.

The UN Guiding Principles on Business and Human Rights **criteria for effectiveness of non-judicial grievance mechanisms** are at the heart of this review’s recommendations.

Organising the recommendations in this manner enables RSPO to align the improvement of the Complaints System with realisation of all of Principle 31’s criteria for effectiveness of non-judicial grievance mechanisms.

**Section 8** describes how the recommendations should be implemented. The content of the recommendations is summarised in **Section 9**.

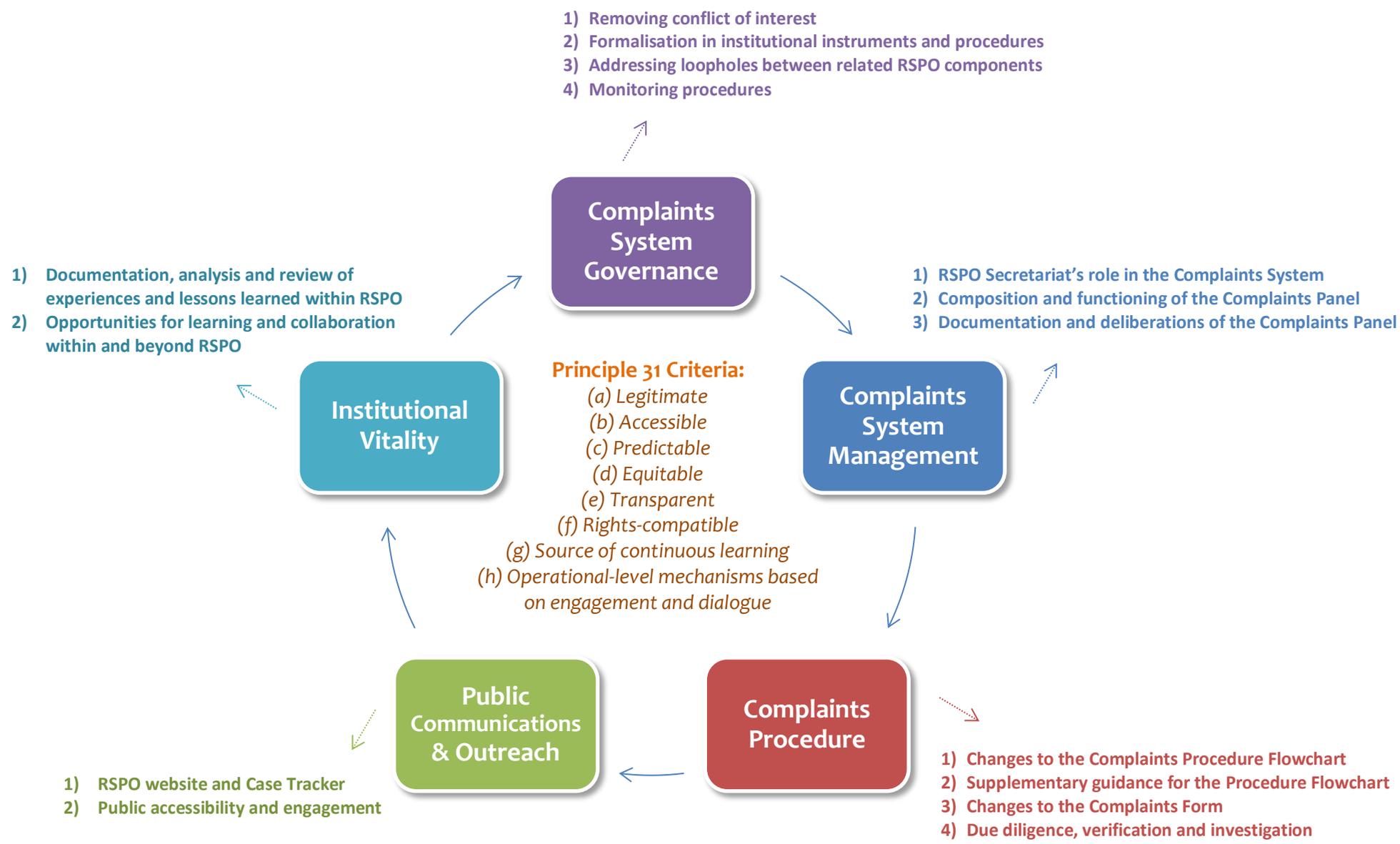


Figure 17: The Principle 31 criteria provide the central framework of the recommendations, which are organised into 5 overall categories, each with 2-4 sub-topics

## 8. IMPLEMENTATION OF THE RECOMMENDATIONS

**Overall Approach:** The recommendations should be implemented in a coordinated and complementary manner. They are not a check-list to be undertaken sequentially, as they do not have a linear cause-and-effect relationship with the gaps they aim to address. They should be seen as an ecosystem of interrelated and mutually reinforcing improvements. Implementation of one recommendation may help address more than one gap. Conversely, more than one recommendation may be needed to effectively address a more systemic issue. For example, the various recommendations concerning monitoring, review, and institutionalisation of lessons learned and guidance will together help improve consistency in application of the complaints procedures (see **Figure 18**). In addition, some recommendations only require one-off tasks (such as changes to the Complaints Form), while others are expected to be sustained on a continual basis (such as improvements to the Complaints Panel’s deliberations). The suggested regular monitoring and annual review of the implementation process will be essential to its success.

**Timeframes:** The recommendations are to be implemented according to three phases, which aim to balance urgency and importance with feasibility and readiness:

- 1) **Short-term:** before or immediately after RT-12 in November 2014;
- 2) **Medium-term:** before or immediately after RT-13 in 2015; and
- 3) **Longer-term:** before the adoption of the next revised RSPO P&C between 2016 and 2018.

Most of the recommendations are identified for medium-term implementation and only a select few are longer-term. The bulk of the revamp process should thus be complete by RT-13 in late 2015. The RSPO Secretariat has already begun to implement many of the short-term recommendations identified in the three interim reports.

**Indicators:** Each recommendation includes a simple indicator to assist with regular monitoring and review of the implementation process.



**Figure 18:** The recommendations should be implemented in a coordinated and complementary manner

**People or Groups in Charge:** Each recommendation identifies a person or group in charge of its implementation (see **Annex I**). This could entail undertaking the suggested activities themselves or working with or contracting others to assist. They should remain informed of the various changes being made (and their impacts) through other recommendations in order to imaginatively implement those allocated to them.

**Cost Implications:** Each recommendation also includes its estimated cost, where applicable. The costs of restructuring the Secretariat’s Impacts Unit will provide the basis for implementing the majority of recommendations. Others that entail additional costs beyond staff time primarily concern stakeholder consultations, travel and events, professional development, and short- to medium-term technical support.

## 9. SUMMARY OF THE RECOMMENDATIONS

This review has brought to light a number of important insights about the structure and functioning of RSPO’s Complaints System. The final recommendations (**Annex I**) prescribe significant improvements to the effectiveness, efficiency, and credibility of RSPO’s Complaints System. If implemented effectively, they will enable RSPO to develop its own “jurisprudence”, facilitate constructive resolution and remedy of individual complaints, and promote the systematic change needed to realise RSPO’s objectives.

Many of the recommendations aim to improve RSPO’s Complaints System by fostering more effective and efficient implementation of existing procedures, or by introducing small changes that will have a noticeable impact. These aim to address easily identifiable and well-known bottlenecks and gaps. Conversely, some of the recommendations address more fundamental aspects of the Complaints System (particularly concerning governance) or propose more far-reaching changes or additions. These may be more challenging or time-consuming to implement, but will pay off in dividends and provide a much more solid foundation for the Complaints System for the coming years.

This section provides a summary of the recommendations in each of the five categories. As explained in **Section 7**, each category is sub-divided into two to four topics. These are used as the basis for summarising the individual recommendations in the text and tables below. Please see **Annex I** for the full list of recommendations, which includes detailed descriptions as well as indicators, people in charge, and estimated costs.

### 9.1. Governance of the Complaints System

**Removing conflict of interest:** The first five recommendations suggest: a) removing the BoG’s decision-making powers in the complaints procedure;

b) removing the overlap between BoG and Complaints Panel composition; c) adopting a clear procedure for Panel members to declare conflict of interest in complaints deliberations; d) further discussing whether Panel members’ identities should be disclosed or kept confidential; and e) establishing an independent appeal mechanism. The first relates to the Procedure Flowchart and the second is nearly complete. The latter two require additional stakeholder consultation (see **Section 6.2** above).

**Formalisation in institutional instruments and procedures:** Five recommendations call on the RSPO Secretariat and members to keep detailed records of all complaints and to integrate and formalise the Complaints System in: a) members’ operations and certification processes; b) members’ internal policies, procedures, reports, and ACOPs; c) RSPO’s Statutes; and d) RSPO’s P&C.

**Addressing loopholes between related RSPO components:** Two closely related recommendations call for: a) review of current and potential loopholes between all components of RSPO that (should) relate to complaints; and b) building an integrated Complaints System with additional resolution pathways and clear procedures linking related components. See **Annex IV** for an illustration of the proposed system.

**Monitoring procedures:** Two recommendations aim to enable the Secretariat and stakeholders to monitor the process of implementing this review’s recommendations (the “revamp process”). The Secretary General has convened an Advisory Group for periodic monitoring and feedback, and should hire a part-time consultant in early 2015 for regular internal monitoring and review. Two additional recommendations call for the development of monitoring procedures for the Complaints System itself, including for individual complaints and for adherence of the Secretariat and Complaints Panel to the Complaints Procedure Flowchart.

**Table 1:** Timeframes for implementing 16 “Governance” recommendations

| Recommendations (by topic)                                | Timeframe |      |      |
|---|-----------|------|------|
|   | Short     | Med. | Long |
| Removing conflict of interest                             |           | 5    |      |
| Formalisation in institutional instruments and procedures |           | 3    | 2    |
| Addressing loopholes between related RSPO components      |           | 2    |      |
| Monitoring procedures                                     | 1         | 3    |      |

### 9.2. Management of the Complaints System

**RSPO Secretariat’s role in the Complaints System:** In conjunction with the recommendation to build an integrated system, the first two *Management* recommendations could have the most impact. They suggest a restructuring of the Impacts Unit and further elaboration of ToRs in line with staffing needs and roles such regional complaints coordination, technical expertise, and cross-cutting support. See **Annex V** for an illustration of the proposed staffing needs and roles that may be needed from 2015-2018.

**Composition and functioning of the Complaints Panel:** Three recommendations call for recruitment of additional Panel members, adoption of more detailed roles and responsibilities, and development of an information package and orientation programme for Panel members.

**Documentation and deliberations of the Complaints Panel:** These five recommendations should be implemented in the short-term but upheld on a continual basis, namely: a) improving the online information management system; providing Panel members with b) all documentation sufficiently ahead of Panel meetings and c) accurate synopses of each complaint; d) undertaking more in-depth deliberations; and e) using a consistent format for more detailed minutes.

**Table 2:** Timeframes for implementing 10 “Management” recommendations

| Recommendations (by topic)                       | Timeframe |      |      |
|--|-----------|------|------|
|  | Short     | Med. | Long |
| RSPO Secretariat’s role in the Complaints System |           | 2    |      |
| Composition and functioning of the Panel         |           | 3    |      |
| Documentation and deliberations of the Panel     | 5         |      |      |

### 9.3. Procedures of the Complaints System

**Changes to the Complaints Procedure Flowchart:** Two recommendations should be implemented in the short-term but upheld on a continual basis: a) providing complaints parties with timely updates of all developments; and b) seeking agreement from complaints parties before final decisions. Seven other recommendations concern simple additions to the Flowchart: a) recorded bilateral engagement; b) providing basic information to complaints parties; c) identifying the potential violations raised; d) option for complaints parties to make oral presentations; e) additional attempts at resubmission; f) suspension if there is no response or action within 4 weeks; and g) sanctions for non-compliance. These suggested changes should be undertaken in early 2015 and subject to public consultation. It will need to be further revised alongside the process of building an integrated Complaints System.

**Supplementary guidance for the Complaints Procedure Flowchart:** Seven recommendations suggest additional guidance, criteria and/or procedures for the following: a) engaging in good faith; b) currently unclear terms and criteria; c) reasonable evidence needed to trigger a response; d) sharing the burden of proof; e) innovative procedures; f) interim measures; and g) sanctions and penalties. These should be undertaken in early 2015 along with the above changes to the Flowchart.

**Changes to the Complaints Form:** Six suggested changes are: clarifying a) types of supplementary information and b) information about the

complainants; giving options for c) translation and interpretation, d) gender-sensitive support, and e) protection of identities due to safety concerns; and f) requiring a concise summary of the complaint. These changes should be made in early 2015 and subject to public consultation.

**Due diligence, verification and investigation:** Four recommendations aim to: a) assist with independent verification of complaints; b) identify reasons for complaints that have been delayed or closed due to lack of evidence; c) give focused attention to long-standing complaints; and d) build a roster of in-country and regional experts to assist the Secretariat on an ad hoc basis.

**Table 3:** Timeframes for implementing 26 “Procedures” recommendations

| Recommendations (by topic)                    | Timeframe |      |      |
|---|-----------|------|------|
|   | Short     | Med. | Long |
| Changes to the Complaints Procedure Flowchart | 2         | 7    |      |
| Supplementary guidance for the Flowchart      |           | 7    |      |
| Changes to the Complaints Form                |           | 6    |      |
| Due diligence, verification and investigation |           | 3    | 1    |

### 9.4. Public Communications and Outreach

**RSPO website and Case Tracker:** Four recommendations call for: a) consistency in information and terms used on the website; b) time-bound updates to the Case Tracker for new developments and periodic updates; c) revising the Case Tracker into a user-friendly and searchable database; and d) providing the option to submit complaints and supporting documentation online. The first three have been partially implemented.

**Public accessibility and engagement:** Five recommendations aim to: a) provide information about the Complaints System in multiple languages; b) produce multimedia outreach materials tailored to specific stakeholders; c) develop a communications plan for general outreach; d)

adopt a procedure for issuing official responses to external reports; and e) developing an SMS or social media hotline for communities and local NGOs to alert the Secretariat of potential violations.

**Table 4:** Timeframes for implementing 9 “Communications” recommendations

| Recommendations (by topic)          | Timeframe |      |      |
|-------------------------------------|-----------|------|------|
|                                     | Short     | Med. | Long |
| RSPO website and Case Tracker       | 2         | 2    |      |
| Public accessibility and engagement |           | 4    | 1    |

### 9.5. Institutional Vitality

**Documentation, analysis and review of experiences and lessons learned within RSPO:** Four recommendations suggest: a) producing publicly available summary reports of all closed complaints; b) documenting wider lessons and issuing authoritative guidance to RSPO members; c) producing annual reports; and d) undertaking annual reviews of the System with a view to identifying further improvements.

**Opportunities for learning and collaboration within and beyond RSPO:** Two recommendations call for professional development opportunities for Secretariat staff, and developing informal learning platforms for complaints parties. The third recommendation suggests a learning group between RSPO and other industries’ and sectors’ complaints mechanisms.

**Table 5:** Timeframes for implementing 7 “Institutional Vitality” recommendations

| Recommendations (by topic)  | Timeframe |      |      |
|---|-----------|------|------|
|   | Short     | Med. | Long |
| Documentation, analysis and review of experiences and lessons learned within RSPO |           | 4    |      |
| Opportunities for learning and collaboration within and beyond RSPO               |           | 2    | 1    |

# PART III: ANNEXES

## ANNEX I. FINAL RECOMMENDATIONS AND ACTION PLAN

This Annex sets out the final recommendations and plan for their implementation. It is organised into five categories. Each recommendation contains a reference number, keywords, description, timeframe for implementation, indicator, person or group in charge of implementation, and estimated costs.

### Governance of the Complaints System: *Improving Legitimacy and Transparency*

| No.        | Keywords  | Description of Recommendation  | Timeframe   | Indicator  | In Charge   | Costs   |
|------------|---|--|-------------|--|---|---|
| <b>1</b>   | <b>Removing conflict of interest</b>                                |  |             |  |   |   |
| <b>1.1</b> | <i>Involvement of BoG in complaints procedure</i>                   | Remove decision-making powers of the BoG in all aspects of the complaints procedure, including in appeals (current Box P), and limit BoG involvement strictly to receiving information, including of sanctions to be implemented (current Boxes L and N). <i>[Note the related recommendations on an independent appeal mechanism (No. 1.5 in this section) and on changes to the Procedure Flowchart (No. 1 under “Complaints Procedure”).]</i>   | Medium-term | No decision-making powers of BoG in complaints procedure | RSPO Secretariat (Head of Impacts)                    | Existing staff time + proposed Revamp Advisor |
| <b>1.2</b> | <i>Strict separation of powers between BoG and Complaints Panel</i> | Develop and implement a responsible exit strategy for the replacement of all Complaints Panel members who are also on the BoG by new non-BoG members. <i>[As of November 2014, this recommendation was completed. Note the related recommendations on Complaints Panel composition and functioning under “Management of the Complaints System”.]</i>   | Medium-term | No overlap between BoG and Complaints Panel              | RSPO Secretariat (Head of Impacts)                    | None (existing staff time)                    |
| <b>1.3</b> | <i>Conflict of interest in Complaints Panel deliberations</i>       | Further develop and adopt a clear procedure for Complaints Panel members to self-declare any or a certain degree or type of conflict of interest at the beginning of a new complaint or when a new Panel member is appointed in the middle of an ongoing complaint. This relates to the capacity in which Panel members are serving and how conflict of interest is accordingly defined. <i>[Notably, the Complaints Panel ToR already provides for a review of conflict of interest, but it should be further elaborated and included in Complaints Panel ToRs as proposed in Management Recommendation No. 2.2 below. There has been at least one recent instance in which it was not upheld, partly due to lack of clarity of what constitutes conflict of interest.]</i> | Medium-term | Clear procedure for declaring conflict of interest       | RSPO Secretariat (Head of Impacts) and Advisory Group | Existing staff time + proposed Revamp Advisor |
| <b>1.4</b> | <i>Confidentiality of Complaints Panel members’ identities</i>      | Facilitate an in-depth discussion and stakeholder consultations about the merits and risks of publicly disclosing the identities of Complaints Panel members considering specific complaints, and whether the composition of   | Medium-term | Agreement on confidentiality vs. disclosure              | RSPO Secretariat (Head of                             | Existing staff time + proposed                |

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|  |   | the Panel should be subject to consent of the complaints parties. <i>[Notably, this is in response to a suggestion received late in the present review process, so such discussion could not be accommodated in this review.]</i>  |             | of Panel members' identities  | Impacts), with Advisory Group                                       | Revamp Advisor  |
| <b>1.5</b>   | <i>Independent appeal mechanism</i>                               | Alongside implementation of the short-term and medium-term recommendations, conduct a review in 2015 to identify concrete options for an independent, third-party recourse and appeal mechanism, drawing from experiences and lessons learned from a range of different sectors. Facilitate an inclusive process of stakeholder consultation and engagement to identify and adopt clear ToRs and procedures that would best suit RSPO. <i>[Note the related discussion in Section 6.2 of the main report.]</i>   | Medium-term | Legitimate independent mechanism  | RSPO Secretary-General, with Advisory Group                         | Medium-term consultancy (~RM 40,000) + stakeholder consultations (~RM 30,000) |
| <b>2 Formalisation in institutional instruments and procedures</b> |   |  |             |   |   |   |
| <b>2.1</b>   | <i>Records of complaints</i>                                      | Develop and implement a time-bound requirement for the RSPO Secretariat and all members to keep detailed records of all past, ongoing and recurring complaints within members' concessions or supply chains (including through any transfers of ownership). These records should be made publicly available on each member's page and the Complaints page of the RSPO website (at minimum). They should also be provided as part of NPPs and to auditors and certifying bodies. This information should also be shared with the Sustainable Palm Oil Transparency Toolkit and Global Forest Watch-Commodities website. | Medium-term | Records of member's complaints publicly available on RSPO website and used in NPPs and audits | RSPO Secretariat (Technical Director with Member Relations Manager) | None (existing staff time)  |
| <b>2.2</b>   | <i>Operations and certification</i>                               | Add explicit indicators into the auditing and certification procedure (including partial certification) to monitor the extent to which RSPO members provide information about the Complaints System and any organisational-level grievance mechanisms during operations (including FPIC processes, impact and HCV assessments, and other forms of engagement with communities or NGOs). These indicators should assess, at minimum, communities and other stakeholders' awareness and perceptions of the System, and to what extent and how effectively it has been used to address complaints.                        | Medium-term | Integration of Complaints System into auditing and certification                              | RSPO Secretariat (Technical Director)                               | None (existing staff time)  |
| <b>2.3</b>   | <i>Members' internal policies, procedures, reports, and ACOPs</i> | Develop and implement a time-bound requirement for RSPO members to: a) incorporate components of the Complaints System (NPP, Complaints Panel, DSF, and Compensation) into their internal policies and Standard Operating Procedures; and b) report on their engagement with each component in their annual reports and RSPO ACOPs, with specific reference to the number, types, locations, and statuses of complaints.   | Medium-term | Internal adoption and reporting of Complaints System and improved ACOP form                   | RSPO Secretariat (Technical Director with Member Relations Manager) | None (existing staff time)  |

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| <p><b>2.4</b> <i>RSPO Statutes</i></p>                               | <p>Add a new section to RSPO’s Statutes on the Complaints System, including general information after implementation of the present short- and medium-term recommendations.</p>   | <p>Longer-term (2016)</p> | <p>Inclusion of complaints in Statutes</p>   | <p>RSPO Secretariat (Technical Director)</p> | <p>None (existing staff time)</p>                    |
| <p><b>2.5</b> <i>RSPO Principles and Criteria (P&amp;C)</i></p>      | <p>Review implementation of P&amp;C No. 6.3 and integrate lessons learned from the revamped Complaints System into the next version of the P&amp;C (to be adopted in 2018), including more specific indicators. The UN Guiding Principles on Business and Human Rights and the FAO Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests both provide a useful framework for assessment.</p>  | <p>Longer-term</p>        | <p>Further elaborated P&amp;C No. 6</p>  | <p>RSPO Secretariat (Technical Director)</p> | <p>None (P&amp;C Working Group)</p>                  |
| <p><b>3 Addressing loopholes between related RSPO components</b></p> |   |                           |  |  |  |
| <p><b>3.1</b> <i>Review of loopholes</i></p>                         | <p>Conduct a review of the current and potential loopholes between all components of RSPO that have or should have some link to complaints (including NPP, Complaints Panel, DSF, Compensation, ACOPs, and Auditing and Certification). Loopholes may concern overlaps or gaps between procedure flowcharts, monitoring, staffing, voluntary bodies, and so on. Particular emphasis should be placed on how to build an integrated Complaints System across these components and a more proactive approach to conflict prevention. <i>[Note: the present review was intended to focus only on the Complaints Panel, but complaints relate to several other parts of RSPO; further work is needed as it is beyond the scope of this review. The reviews on NPP and social auditing currently being finalised by other consultants are also of relevance.]</i></p>  | <p>Medium-term</p>        | <p>Identification of loopholes, options for integration and conflict prevention</p>                                  | <p>RSPO Secretary-General</p>                | <p>Short-term consultancy (~RM 30,000)</p>           |
| <p><b>3.2</b> <i>Building an integrated Complaints System</i></p>    | <p>On the basis of <i>Recommendation 3.1</i> above, rebuild the many related components as an integrated Complaints System, with additional pathways for resolution of complaints that bring closely related components such as NPP, DSF and compensation under the same umbrella and build explicit links to additional components such as auditing and certification. <i>[Note: please see Annex IV for an illustration of the proposed integrated system.]</i> This also requires development of clear procedures and revised ToRs for each related component and a new overall procedure flowchart for the integrated system (i.e. to replace the current Complaints Procedure Flowchart). Any loopholes concerning auditing and certification or compliance should be addressed as a matter of urgency and priority. As part of this rebuilding process, RSPO could also consider whether the Complaints System should be ISO-certified.</p> | <p>Medium-term</p>        | <p>Adoption of clear ToRs and procedures to address loopholes and to consolidate an integrated complaints system</p> | <p>RSPO Secretary-General</p>                | <p>Existing staff time + proposed Revamp Advisor</p> |

| <b>4 Monitoring procedures</b> |   |  |             |   |  |
|--------------------------------|---|--|-------------|---|--|
| <b>4.1</b>                     | <i>Periodic stakeholder monitoring of implementation of the recommendations</i> | Establish an Advisory Group to the RSPO Secretary General to periodically monitor and provide feedback on implementation of the present recommendations for improving the Complaints System. The Group should consist primarily of the proponents of Resolution 6f and others with relevant expertise, where needed. The meetings should be chaired by the Secretary-General and consist of quarterly conference calls, bookended by two in-person meetings in the first year. <i>[As of RT-12, one in-person meeting was already convened and the first conference call was scheduled for early 2015. The ToR and composition are being discussed.]</i>   | Short-term  | Periodic meetings and inputs of Advisory Group                          | RSPO Secretary-General<br><br>Two in-person meetings (~RM 5,000)                                 |
| <b>4.2</b>                     | <i>Regular internal monitoring of implementation of the recommendations</i>     | Hire a part-time consultant as the “Complaints System Revamp Advisor” to facilitate regular monitoring and reviews of the implementation and revamp process and oversee the development of ToRs and procedures as per the recommendations. This position should be filled as soon as possible after RT-12 and should be up to a 1-year term, including RT-13. In addition, progress reports on the revamp process should be provided to each Complaints Panel meeting and BoG meeting.   | Medium-term | Hiring of consultant with clear ToRs; regular internal progress reports | RSPO Secretary-General<br><br>Medium-term consultancy (~RM 80,000)                               |
| <b>4.3</b>                     | <i>Monitoring the life-cycle of individual complaints</i>                       | Develop and implement a procedure for monitoring a complaint and involvement of parties as it moves through the Complaints Procedure Flowchart and related RSPO components (including NPP, DSF, Compensation, and Certification). Each complaint should be monitored regularly and actively worked on to the extent possible within the Secretariat’s mandate. This procedure should use the UN Guiding Principles criteria for effectiveness of non-judicial grievance mechanisms as a minimum framework and should include quantitative and qualitative indicators. It should also continue or further improve upon the current practice of providing monthly updates to the BoG. <i>[Notably, this procedure should feed into Institutional Vitality Recommendation No. 1 below.]</i> | Medium-term | Adoption of clear monitoring procedure / Quality Management System      | RSPO Secretariat (Technical Director)<br><br>Short-term consultancy (M&E expert) (~RM 30-40,000) |
| <b>4.4</b>                     | <i>Monitoring adherence to the Complaints Procedure</i>                         | Develop and implement a procedure for monitoring adherence of the RSPO Secretariat and Complaints Panel to their respective ToRs and to the Complaints Procedure Flowchart. <i>[Notably, this procedure should feed into Institutional Vitality Recommendation No. 1 below.]</i>   | Medium-term | Adoption of clear monitoring procedure                                  | RSPO Secretary-General<br><br>Same consultancy as in 4.3 above                                   |

## Management of the Complaints System: *Improving Accessibility and Predictability*

| No.        | Keywords   | Description of Recommendation  | Timeframe   | Indicator   | In Charge  | Costs   |
|------------|--|--|-------------|---|--|---|
| <b>1</b>   | <b>RSPO Secretariat's role in the Complaints System</b>    |  |             |   |  |   |
| <b>1.1</b> | <i>Restructure the Impacts Unit</i>                        | In order to accommodate the proposed integrated Complaints System, the Impacts Unit should be restructured to accommodate the following three types of staffing needs and roles: 1) regional complaints coordination (including for Indonesia, Malaysia, and Rest of World); 2) technical expertise (including for preventive, mitigative, and corrective mechanisms); and 3) cross-cutting support (including knowledge management, research and advisory, communications and outreach, and administration). The ToRs and roles of the current Secretariat staff involved in complaints should be revised accordingly and, where needed, additional multidisciplinary staff hired. <i>[Note: please see Annex V for an illustration of the proposed staffing needs and roles for the integrated system. This restructuring process is intended to take place in conjunction with the process of building an integrated Complaints System as per Governance Recommendation 3.2 above. It will also be supported in the interim by the proposed Complaints System Revamp Advisor in Governance Recommendation 4.2.]</i> | Medium-term | New or revised roles for Secretariat staff involved in complaints | RSPO Secretary-General, with Human Resources Manager | Existing staff time + full-or part-time salaries for possible new staff (as required) |
| <b>1.2</b> | <i>Clarify roles and responsibilities of staff</i>         | Pending Recommendation 1.1 above, develop and publish online more detailed ToRs for all Secretariat staff involved in the Complaints System. This should include the following new details at minimum: code of conduct (with emphasis on effectiveness, efficiency, consistency, and impartiality in fulfilling their respective roles in the Complaints System); further clarity of roles and responsibilities vis-à-vis the Complaints Panel and other related components and vis-à-vis complainants and responding RSPO members; further clarity of decision-making powers throughout the Procedure Flowchart; mechanisms for information management; and role in monitoring and evaluation of the overall Complaints System.   | Medium-term | More detailed and clear ToRs                                      | RSPO Secretary-General, with Human Resources Manager | Existing staff time + proposed Revamp Advisor   |
| <b>2</b>   | <b>Composition and functioning of the Complaints Panel</b> |  |             |   |  |   |
| <b>2.1</b> | <i>Recruitment and selection</i>                           | Recruit additional Complaints Panel members to increase the numbers in each membership category to at least 4 people. Particular emphasis should be placed on recruiting more women and individuals from the Global South, and ensuring each Complaints Panel group contains a diversity of relevant disciplines and competencies. The criteria and procedure for recruitment  | Medium-term | Increased number of Panel members with greater                    | RSPO Secretariat (Head of Impacts)                   | None (existing staff time)  |

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|            |  | and selection should also be published online. <i>[Notably, several individuals have recently been invited to join the Panel, though more are needed.]</i>   |             | diversity   |  |  |
| <b>2.2</b> | <i>Clarify roles and responsibilities</i>                      | Develop and publish online more detailed ToRs for Complaints Panel members and append this to the appointment letter for all new Panel members. The ToRs should include the following new details at minimum: code of conduct (with emphasis on impartiality and engagement in good faith); in which capacity Complaints Panel members serve (i.e. personal, on behalf of their organisation or membership category, or otherwise); parameters for declaring conflict of interest ( <i>see Governance Recommendation No. 1.3 above</i> ); further clarity of decision-making powers throughout the Procedure Flowchart; mandate vis-à-vis other relevant RSPO components (NPP, DSF, Compensation, Certification); and issuance of general recommendations ( <i>see Institutional Vitality Recommendation No. 1.2 below</i> ).  | Medium-term | More detailed and clear ToRs  | RSPO Secretariat (Head of Impacts) and Advisory Group    | None (existing staff time / voluntary)   |
| <b>2.3</b> | <i>Information package and orientation programme</i>           | Develop an information package for all Complaints Panel members and online (i.e. not in-person) orientation programme for Panel members involved for less than one year. They should include the following topics at minimum: history of the Complaints System; revised Complaints Panel ToRs ( <i>pending Recommendation No. 2.2 above</i> ); information management; procedure for deliberations and decision-making; guidance about common questions or issues arising; and monitoring and evaluation. This package and programme should be provided to new Panel members at least one month before their first Panel meeting and should include a longer-standing Panel member serving as a ‘mentor’ for the new member’s first three Panel meetings. <i>[Notably, the current practice is to connect new with longer-standing Panel members, so this should continue and perhaps be more formalised to ensure consistency.]</i> | Medium-term | Detailed info package, consistent provision of orientation to new Panel members | RSPO Secretariat (Head of Impacts) with Complaints Panel | Proposed Knowledge Management role + short-term consultancy for design and IT support (~RM 10,000) |
| <b>3</b>   | <b>Documentation and deliberations of the Complaints Panel</b> |  |             |   |  |  |
| <b>3.1</b> | <i>Online information management system</i>                    | Continue to use and improve upon an online information management system, which should be free, user-friendly, and well-organised. Complaints Panel members should be notified in advance of any upcoming changes such as reorganisation or deletion of files or folders. <i>[Notably, the Secretariat currently uses Salesforce, but its use should be continually improved upon.]</i>  | Short-term  | Effectively used and managed online system                                      | RSPO Secretariat (Head of Impacts)                       | Existing staff time + proposed Knowledge Management role   |
| <b>3.2</b> | <i>Information available in advance</i>                        | Provide Complaints Panel members with all documentation for each complaint (including original materials and communications with the   | Short-term  | Timely provision of   | RSPO Secretariat   | Existing staff time +  |

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|            |  | parties) at least 1 week before a regular meeting and 24 hours before an ad hoc meeting via the abovementioned online system. This should include a regularly updated index of documents and the option for Panel members to provide initial written views before a Panel meeting to facilitate discussion.   |            | documents, written inputs                                       | (Impacts)                          | proposed Knowledge Management role                       |
| <b>3.3</b> | <i>Minimum information and accuracy</i>                    | In addition to all original documentation, synopses of each complaint provided by the Secretariat to Complaints Panel members must be accurate, contain certain minimum information about the facts, and sufficiently reflect the complexity of issues raised in the complaint. <i>[Notably, the Secretariat has improved on this in the past year, but should continue to do so.]</i>  | Short-term | Consistency between synopses and original documents             | RSPO Secretariat (Head of Impacts) | Existing staff time + proposed Knowledge Management role |
| <b>3.4</b> | <i>In-depth Complaints Panel deliberations</i>             | Undertake more in-depth deliberations during Complaints Panel meetings, with particular emphasis on comprehensive (rather than selective) consideration of all issues and implications raised. <i>[Notably, the Panel has improved on this in the past year, but should continue to do so; there are still critiques that the interconnections between social and environmental issues are not sufficiently addressed.]</i>   | Short-term | Greater consideration of details, inter-connected issues        | Complaints Panel                   | None (voluntary)   |
| <b>3.5</b> | <i>Content and publication of Complaints Panel minutes</i> | Continue to use and further develop a consistent format for detailed minutes of Complaints Panel meetings, with particular emphasis on justification for recommendations and decisions. Where there is difficulty reaching consensus, the minutes should also summarise the counterpoints raised (not attributed to specific Panel members). The full confidential minutes should be retained by the Secretariat and available to Panel members on Salesforce. A public version, which does not identify Panel members <i>(pending the outcomes of Governance Recommendation No. 1.4 above)</i> , should include at minimum a summary of the issues raised and discussed, decisions taken, and rationales behind them and should be posted on the Case Tracker within one week of their approval. | Short-term | More detailed and consistent minutes, timely online publication | RSPO Secretariat (Head of Impacts) | Existing staff time + proposed Knowledge Management role |

**The Complaints Procedure: Improving Equitability & Compatibility with Rights**

| No.        | Keywords   | Description of Recommendation   | Timeframe  | Indicator                          | In Charge                 | Costs                      |
|------------|--|---|------------|------------------------------------|---------------------------|----------------------------|
| <b>1</b>   | <b>Changes to the Complaints Procedure Flowchart</b> |   |            |                                    |                           |                            |
| <b>1.1</b> | <i>Timely updates</i>                                | In each complaint, provide the complainant(s) and responding RSPO member(s) with updates within 5 working days of all developments concerning their complaint, including publicly available versions of | Short-term | Timely and consistent provision of | RSPO Secretariat (Head of | None (existing staff time) |

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|            |   | Complaints Panel meeting minutes ( <i>see Management Recommendation No. 3.5 above</i> ), proposed action plans, proposed monitoring procedures, etc. The Secretariat should inform the complaints parties at the beginning that the information shared throughout the process will be equal and consistent and will not give preferential treatment to any of the parties. <i>[Note: the need to protect Panel members' identities could change, pending Governance Recommendation No. 1.4.]</i>   |             | updates   | Impacts)  |
| <b>1.2</b> | <i>Bilateral engagement</i>                                 | Add a new pre-complaint box requiring some form of recorded bilateral engagement before submission of a formal complaint (i.e. remove bilateral option from Box B). This could include a request for some form of basic facilitation or mediation by the Secretariat. Indicate the circumstances in which a formal complaint can or should be submitted.   | Medium-term | New element requiring more bilateral engagement                         | RSPO Secretariat (Head of Impacts)<br>None (existing staff time)                        |
| <b>1.3</b> | <i>Provision of basic information to complaints parties</i> | In the current Box A, change the timeframe for the Secretariat's acknowledgement of a complaint to 5 working days (instead of 10) and add a new point requiring the Secretariat to immediately provide basic information to the complaints parties about the process to be followed, including the Complaints System Components and ToR, Procedure Flowchart, the supplementary guidance recommended in Section 2 below (when ready), and indication of the point person in the Secretariat for correspondence.  | Medium-term | Information provided to all complaints parties                          | RSPO Secretariat (Head of Impacts)<br>None (existing staff time)                        |
| <b>1.4</b> | <i>Identification of potential violation</i>                | In the current Box B, regarding the point that reads: "Secretariat determines complaint category", add that there may be more than one relevant category and that the Secretariat should also identify the potential violation raised by the complaint (i.e. the specific relevant part of the P&C, Code of Conduct, Statutes, or otherwise).  | Medium-term | Number of complaints referencing potential violation                    | RSPO Secretariat (Head of Impacts)<br>None (existing staff time)                        |
| <b>1.5</b> | <i>Oral presentations by complaints parties</i>             | Add a new option to Box C for complaints parties to present their cases to the Complaints Panel via conference call when it is first convened, while protecting the identities of Panel members. The latter can be done by having the Secretariat field questions from the Panel members over Skype. <i>[Note: the need to protect Panel members' identities could change, pending Governance Recommendation No. 1.4.]</i> This option should be available to the complaints parties, but to ensure fairness, should only be allowed if both parties are able and have mutually agreed to present or have agreed that the other party can present without them if they do not wish to do so. The Complaints Panel should help define the scope and parameters for such presentations, including a maximum number of minutes for each | Medium-term | New option allowing oral presentations when the Panel is first convened | RSPO Secretariat (Head of Impacts), with Complaints Panel<br>None (existing staff time) |

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|            |   | party’s presentation and maximum number of questions from the Panel and subsequent responses.  |             |  |   |   |
| <b>1.6</b> | <i>Resubmission</i>                                       | Allow for more attempts at resubmission if needed by removing “only 1 attempt within 4 weeks” from Boxes I and O, and by requiring complaints parties to indicate if and when they want to resubmit and what support they may need to do so. The Secretariat (Impacts Unit) should provide guidance and logistical support in response, within reason. In Box O, it should read “Resubmission of action plan”, not “Resubmission of case”.   | Medium-term | Additional attempts allowed  | RSPO Secretariat (Head of Impacts)                    | None (existing staff time)                    |
| <b>1.7</b> | <i>Suspension after first non-response or non-action</i>  | In the current Box K, add another element after the first line stating that the member will be suspended if there is no response or no action within the prescribed 4 weeks. A second notification and request to respond within another 4 weeks should then be issued, with a clear warning that membership will be terminated (Box L) if there is still no response or action.   | Medium-term | Procedure for suspension before termination  | Complaints Panel                                      | None (voluntary)                              |
| <b>1.8</b> | <i>Agreement before closing a complaint</i>               | In each complaint, the complainant(s) and responding RSPO member(s) must agree to proposed plans before final decisions are taken, particularly when the Panel is proposing to close the complaint for monitoring or for good. <i>[Notably, parties’ consent to action plans is already provided in the Procedure Flowchart, but there are concerns that it is not being implemented, including at least one recent instance in which it was allegedly not upheld.]</i>                                      | Short-term  | Adherence to Procedure Flowchart (Boxes F, G and O)                                    | RSPO Secretariat (Head of Impacts)                    | None (existing staff time)                    |
| <b>1.9</b> | <i>Sanctions for non-compliance</i>                       | In or after the current Box G, add a new element providing for sanctions for non-compliance with agreed action plans (i.e. suspension and termination). <i>[Notably, the Procedure Flowchart provides for sanctions in Boxes K and N, but only concerning lack of response, action or cooperation before an action plan has been agreed. It fails to address potential non-compliance in implementation of an action plan and before complaint closure.]</i>   | Medium-term | Clear mechanism for non-compliance   | RSPO Secretariat (Head of Impacts)                    | None (existing staff time)                    |
| <b>2</b>   | <b>Supplementary guidance for the Procedure Flowchart</b> |  |             |  |   |   |
| <b>2.1</b> | <i>Engaging in good faith</i>                             | Add a principle on the centrality of good faith engagement of all complaints parties throughout all stages of the complaints process. Adopt a procedure for identifying, monitoring, and taking action against complaints parties (both RSPO and non-RSPO members) who intentionally obstruct, unduly delay, or otherwise fail to engage in good faith (including by submitting spurious complaints or by failing to respond in a timely and effective manner to alleged complaints or proposed next steps). | Medium-term | Inclusion of principle and adoption of procedure for upholding principle of good faith | RSPO Secretariat (Head of Impacts) and Advisory Group | Existing staff time + proposed Revamp Advisor |
| <b>2.2</b> | <i>Evidence to trigger a response</i>                     | In Box A, provide more detailed guidance on the reasonable minimum amount and types of evidence that should be provided by complainants in   | Medium-term | Provision of detailed  | RSPO Secretariat                                      | Existing staff time +                         |

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|            |   | order to trigger a response from the Secretariat and relevant RSPO member. <i>[Note the related Procedures Recommendation No. 2.6 below concerning burden of proof.]</i>  |             | guidance                                  | (Head of Impacts) and Advisory Group                     | proposed Revamp Advisor                       |
| <b>2.3</b> | <i>Interim measures</i>                 | Adopt clear criteria and procedures for the Secretariat and/or Panel to impose interim measures such as stop-work orders for alerts or complaints of violations that require urgent action (including clearance of HCV areas or peatlands). This should be dovetailed with an emphasis on improved monitoring of and compliance with NPP. <i>[Note that interim measures are provided for in Boxes A and C but have not been defined or actively used.]</i>   | Medium-term | Adoption of clear procedures              | RSPO Secretariat (Technical Director) and Advisory Group | Existing staff time + proposed Revamp Advisor |
| <b>2.4</b> | <i>Definition of terms and criteria</i> | Adopt clear criteria for determining the need for mediation, additional investigation, and/or deliberation by the Panel (Box B) and for what constitutes “legitimate” (Box C). <i>[Note: the related Procedures Recommendation No. 2.6 below may suffice for determining what constitutes “legitimate”.]</i>  | Medium-term | Inclusion of clear criteria               | Complaints Panel and Advisory Group                      | Voluntary + proposed Revamp Advisor           |
| <b>2.5</b> | <i>Innovative procedures</i>            | Provide more detailed guidance on options for “additional investigations” (Boxes B and C), including in-person meetings between complaints parties and the Secretariat, on-site visits and fact-finding missions, and independent inquiries. These should be facilitated remotely by the Secretariat and physically undertaken by a roster of independent in-country and region-based experts to complement evidence and inputs provided by the complaints parties. <i>[Note the related recommendations below on due diligence, verification and investigation.]</i> | Medium term | Provision of detailed guidance            | RSPO Secretariat (Head of Impacts) and Advisory Group    | Existing staff time + proposed Revamp Advisor |
| <b>2.6</b> | <i>Burden of proof</i>                  | Add an explanatory note to current Box C specifying that once a legitimate and reasonably substantiated complaint has been raised by a complainant, the burden of proof shifts to the responding RSPO member and, where needed, shared with the RSPO Secretariat. <i>[Note the related Procedures Recommendation No. 2.4 above on evidence to trigger a response.]</i> Identify and implement a procedure, including monitoring indicators, for ensuring this takes place fairly and consistently in practice.  | Medium-term | More equitable sharing of burden of proof | Complaints Panel and Advisory Group                      | None (voluntary)                              |
| <b>2.7</b> | <i>Sanctions and penalties</i>          | Identify and adopt criteria and procedures for imposing sanctions and penalties upon RSPO members for lack of response, action, cooperation, or compliance and lack of genuine commitment to improvement, with particular emphasis on suspension before expulsion. This should be dovetailed with improved reporting and monitoring in the auditing and certification system. <i>[Note that suspension and/or termination are provided</i>  | Medium-term | Adoption of clear procedures              | RSPO Secretariat (Technical Director) and Advisory Group | Existing staff time + proposed Revamp Advisor |

*for in Boxes L and N but have not yet been defined or actively used.]*

| <b>3 Changes to the Complaints Form</b> |   |  |             |  |                                    |   |
|---|---|--|-------------|--|------------------------------------|---|
| <b>3.1</b>                              | <i>Formats of information to be included in a complaint</i> | Clearly identify what types of supplementary information may be included in a complaint, including verifiable civil society reports, maps, photographs, videos, and oral recordings. Additional guidance could include easy-to-use tools such as printable checklists and templates. <i>[Note the related Recommendation 1.4 under “Public Communications and Outreach” below concerning an online system for submitting complaints.]</i>  | Medium-term | Clarity on information allowed                                   | RSPO Secretariat (Head of Impacts) | Existing staff time + proposed Revamp Advisor     |
| <b>3.2</b>                              | <i>Information about the complainants</i>                   | Add a new section to request information about the roles of each complainant and/or RSPO member, if there is more than one involved, and indicate who will be the point person for correspondence with the Secretariat. If one or more of the complainants is illiterate, the supporting organisation(s) should explain the process they undertook to discuss the complaint and the individual’s provision of his/her free, prior and informed consent to participate in the complaints process.                     | Medium-term | Clarity on details of complainants                               | RSPO Secretariat (Head of Impacts) | None (existing staff time)                        |
| <b>3.3</b>                              | <i>Translation and interpretation</i>                       | Add a new option for complaints parties to request professional translation and interpretation to assist with complaints that cannot be conducted in English. The Secretariat should provide in-house expertise or contract individuals to provide such assistance. <i>[Note the related Recommendation No. 2.1 under “Public Communication &amp; Outreach” below regarding translation of complaints-related materials.]</i>  | Medium-term | Availability of other languages and gender-specific support      | RSPO Secretariat (Head of Impacts) | Short-term translators, interpreters (~RM 50,000) |
| <b>3.4</b>                              | <i>Gender-sensitive support</i>                             | Add a new option for complaints parties to request communication with female Secretariat staff in cases of gender-sensitive complaints. The Secretariat should have in-house expertise to provide such assistance, including by requiring all staff members to undergo gender-sensitivity training.  | Medium-term | Availability of gender-sensitive support                         | RSPO Secretariat (Head of Impacts) | None (existing staff time)                        |
| <b>3.5</b>                              | <i>Protection of identities due to safety concerns</i>      | Add a new option for complainants and whistle-blowers to request protection of their identities from the concerned RSPO members to prevent subsequent harassment, intimidation or abuse. <i>[Notably, this is already provided in P&amp;C No. 6.3, but has not yet been implemented or further elaborated.]</i> Exercise of this option requires the complaints process (including provision of evidence) to otherwise proceed as usual. Third-party facilitators could be called upon to assist in such situations. | Medium-term | Number of complaints in which identity is protected upon request | RSPO Secretariat (Head of Impacts) | None (existing staff time)                        |
| <b>3.6</b>                              | <i>Substantive content to be included in a complaint</i>    | Add a new section to the Complaints Form after the current “A” (description of company) to request a clear and concise summary of the key facts, chronology of events, and alleged violations incurred (i.e. concerning  | Medium-term | Adoption of revised form   | RSPO Secretariat (Head of          | Existing staff time + proposed                    |

|            |   |  |             |   |   |  |
|------------|---|--|-------------|---|---|--|
|            | the P&C, Code of Conduct, Statutes, domestic legislation, or otherwise) , as well as the complainants’ objective or desired outcome, and their agreement to share the complaint with the RSPO member(s) concerned and to adhere to the Complaints Procedure and engage in good faith. |  |             | Impacts)  | Revamp Advisor  |  |
| <b>4</b>   | <b>Due diligence, verification and investigation</b>  |  |             |   |   |  |
| <b>4.1</b> | <i>Assistance with or independent verification</i>  | Identify situations in which additional technical, financial, or other forms of support are needed and should be provided independently in order to assist with verification of complaints (including, at minimum: alleged large-scale violations but complainants do not have the capacity or resources to provide all required evidence; disagreement between parties about key facts; lack of response, action, cooperation, or consent to action plan).<br><i>[Note the related Procedures Recommendation No. 2.5 above on innovative procedures.]</i> Adopt a procedure for RSPO to provide such support and share the burden of proof and associated costs, given the issues raised concern the organisation as a whole. <i>[Notably, this and the next three recommendations relate to RSPO’s review of intermediary organisations; any follow-up work planned under that should strive for complementarity.]</i> | Medium-term | Adoption of clear procedure                             | RSPO Secretariat (Head of Impacts) and Advisory Group | Short-term consultancy plus minimal travel costs (~RM 30,000)                        |
| <b>4.2</b> | <i>Lack of evidence</i>   | Of the complaints that have been delayed or closed due to lack of or insufficient evidence provided by the complainant, identify the reasons why and assess whether additional guidance or support could be provided to assist with provision of sufficient evidence.  | Medium-term | Reduction of such complaints                            | RSPO Secretariat (Head of Impacts)                    | Same consultancy as in 4.1 above   |
| <b>4.3</b> | <i>Long-standing complaints</i>   | In complaints extending beyond one year, investigate potential bottlenecks and assist the Secretariat’s Complaints Managers to facilitate more active follow-up and engagement between the complaints parties and other stakeholders. If local expertise is needed, this could involve appointing a third-party “Complaint Rapporteur” from the proposed roster of experts (see Procedures Recommendation No. 4.4 below).  | Medium-term | Resolution of long-standing complaints; reduced backlog | RSPO Secretariat (Head of Impacts)                    | Proposed Research & Advisory role + short-term consultancies (~RM 5,000-10,000 each) |
| <b>4.4</b> | <i>Roster of experts</i>  | Build a roster of in-country and region-based experts to assist the Secretariat on an ad hoc basis with innovative procedures, outreach, and follow-up with long-standing complaints. This should begin with development of clear ToRs and selection criteria. <i>[Note the related Recommendation No. 2.5 above on innovative procedures, among others.]</i>  | Longer-term | Global network of skilled experts                       | RSPO Secretariat (Head of Impacts)                    | Short-term consultancies plus minimal travel costs (~RM 5,000-20,000 each)           |

## Public Communications & Outreach: *Improving Accessibility and Transparency*

| No.      | Keywords                                       | Description of Recommendation  | Timeframe   | Indicator                    | In Charge                          | Costs  |
|----------|--|--|-------------|------------------------------|------------------------------------|--|
| <b>1</b> | <b>RSPO website and Case Tracker</b>           |  |             |                              |                                    |  |
| 1.1      | <i>Consistency in information and terms</i>    | Review all sections of the RSPO website concerning the Complaints System and address inconsistencies or inaccuracies in information and terms used (for example, the Complaints ToR and Procedure Flowchart refer to EB rather than BoG). The Secretariat also needs to ensure consistency between information provided by complainants, recorded in the internal database of complaints, and posted online in the Case Tracker.   | Short-term  | Correct info and terminology | RSPO Secretariat (Head of Impacts) | Proposed Comms & Outreach role                                     |
| 1.2      | <i>Time-bound Case Tracker updates</i>         | Provide regular and consistent updates to the online Case Tracker, including for any new developments and correspondence in individual complaints and for periodic updates on all complaints in the system. The dates of updates should be specified. <i>[Notably, the Secretariat has recently committed to updating the Case Tracker every Friday, unless there are no new developments. This is a significant improvement, but critiques remain about certain info not being published in a timely manner or at all.]</i>   | Short-term  | Regular and timely updates   | RSPO Secretariat (Head of Impacts) | Proposed Comms & Outreach role                                     |
| 1.3      | <i>Searchable database</i>                     | Revise the Case Tracker into a user-friendly database to enable searches by RSPO member, location, type, status, etc., and disaggregation of statistics such as closed for monitoring and closed complaints. The summary table in each complaint’s page in the Case Tracker should include additional information regarding the locations of the complaint and of the subsidiary and/or parent companies, and the category or categories of the complaint (i.e. not limited to only one). <i>[Notably, the revised RSPO website does include a search function for the Case Tracker. Additional searchable criteria could usefully be added to fully realise this recommendation.]</i> | Medium-term | User-friendly Case Tracker   | RSPO Secretariat (Head of Impacts) | Proposed Comms & Outreach role + existing Web Executive staff time |
| 1.4      | <i>Online system for submitting complaints</i> | Provide a user-friendly online system for submitting complaints, with checklists, templates, ready-to-fill sections, and options for linking to or attaching supporting documentation. This is an additional option and does not replace written or emailed complaints. This should also enable the Secretariat to more easily track complaints submitted and automatically input key details into the database.   | Medium-term | Option for online submission | RSPO Secretariat (Head of Impacts) | Proposed Comms & Outreach role + existing Web Executive staff time |
| <b>2</b> | <b>Public accessibility and engagement</b>     |  |             |                              |                                    |  |
| 2.1      | <i>Multiple languages</i>                      | Provide all information about the Complaints System (including the   | Medium-     | Info available               | RSPO                               | Short-term   |

|            |  |  |                       |  |   |  |
|------------|--|--|-----------------------|--|---|--|
|            | Complaints Form, Procedure Flowchart, and guidance about submitting complaints, when ready) online in multiple languages. This should include, at minimum, Bahasa Indonesia and Malaysia, French, Spanish, and Chinese. The first three should be prioritised. | term   | in 4+ other languages | Secretariat (Communications Director)                          | consultancies (translation and design) (~RM 30,000) |  |
| <b>2.2</b> | <i>Tailored outreach materials</i>   | Produce easy-to-understand and multimedia outreach materials on the Complaints System. This should include materials tailored to the interests and needs of specific stakeholders, particularly communities, intermediary organisations, growers, traders and retailers, and investors. Introductory materials should be provided to all complaints parties at the beginning of a complaint process. <i>[Notably, some materials will need to be developed after recommended changes are made to the Flowchart, Complaints Form, etc.]</i>   | Medium-term           | Production of materials  | RSPO Secretariat (Communications Director)          | Proposed Comms and Outreach role                                   |
| <b>2.3</b> | <i>Strategy for general communication and outreach</i>   | Develop a communications plan for more general outreach about the Complaints System (including improvements to the system, resolved complaints, lessons learned, etc.). Targeted audiences for outreach should include: past and present complaints parties; Complaints Panel members; RSPO members; the broader industry; and the general public.   | Medium-term           | Number and types of communication outputs                      | RSPO Secretariat (Communications Director)          | Proposed Comms and Outreach role                                   |
| <b>2.4</b> | <i>Official responses to external reports</i>  | Further develop and adopt a procedure for responding to external reports concerning RSPO or its members' alleged non-compliance. This should include direct engagement with the named RSPO members and, where possible, with the report authors (Impacts Unit) and issuance of a public statement or press release (Communications Managers). <i>[Notably, an informal procedure has already been utilised and shows promise, but it has not yet been formalised or tested extensively.]</i>   | Medium-term           | Number of official responses to external critiques             | RSPO Secretariat (Head of Impacts)                  | Proposed Comms & Outreach role                                     |
| <b>2.5</b> | <i>SMS and social media hotline</i>  | Develop a hotline accessible by SMS or social media for communities and local NGOs to alert and connect directly with the RSPO Secretariat about potential violations. The Secretariat should in turn inform any members operating in that area and connect the individual or group with supporting NGOs and experts who may be able to assist them with bilateral engagement or a complaint process, where appropriate. This could eventually include SMS or social media notifications from the Secretariat of NPPs. <i>[Notably, the Secretariat already receives some issues via its Facebook page, but there is not yet a clear procedure for engaging with the people raising the issues or the relevant RSPO members. This recommendation should be dovetailed with the reviews of the NPP and of intermediary organisations and outreach.]</i> | Longer-term           | Number of alerts raised directly by communities and local NGOs | RSPO Secretariat (Head of Impacts)                  | Proposed Comms & Outreach role + existing Web Executive staff time |

## Institutional Vitality: *Improving Continuous Learning and Engagement & Dialogue*

| No.        | Keywords   | Description of Recommendation   | Timeframe   | Indicator   | In Charge                          | Cost  |
|------------|--|---|-------------|---|------------------------------------|---|
| <b>1</b>   | <b>Documentation, analysis and review of experiences and lessons learned within RSPO</b> |   |             |   |                                    |   |
| <b>1.1</b> | <i>Summary reports of closed complaints</i>  | Produce a publicly available summary report of each closed complaint within one month of closure, with due regard for confidentiality. The content should include key substantive issues raised in the complaint, the procedure undertaken, rationale for decisions taken, next steps or commitments of the complaint parties, and lessons learned. For complaints already closed before November 2014, summary reports should be produced by the next Roundtable in 2015. <i>[Notably, this is already provided in P&amp;C No. 6.3, but has not yet been implemented or further elaborated.]</i>   | Medium-term | Production of timely and insightful reports       | RSPO Secretariat (Head of Impacts) | Proposed Research & Advisory role                     |
| <b>1.2</b> | <i>Lessons, guidance and recommendations</i>   | Document and issue wider lessons and guidance in the form of “general recommendations” to the RSPO membership on one particular aspect of the Complaints System at least once every six months. These should provide authoritative interpretation of issues affecting the Complaints System’s effectiveness (including Complaints Panel composition and procedures, and long-standing complaints), emerging issues (including compensation, complaints concerning RSPO members that sell liabilities or are suspended or expelled, and complaints with ongoing litigation or conflicts with domestic legislation), and use of innovative procedures. <i>[Notably, the Complaints Panel ToR already provides for capturing wider lessons, but has not yet been implemented or further elaborated.]</i> | Medium-term | Semi-annual production of general recommendations | Complaints Panel                   | Proposed Research & Advisory role                     |
| <b>1.3</b> | <i>Annual report of the Complaints System</i>  | Produce a publicly available annual report of the Complaints System as part of the RSPO Annual Impacts Report and in time for each year’s General Assembly. At minimum, this should summarise the number, types and distribution of complaints (cumulative and over the previous year); describe changes and improvements to the Complaints System; synthesise lessons learned; re-publish any guidance and recommendations issued; and analyse emerging issues and/or trajectory of the Complaints System.   | Medium-term | Annual production of detailed report              | RSPO Secretary-General             | Proposed Research & Advisory + Comms & Outreach roles |
| <b>1.4</b> | <i>Continual improvement of the Complaints System</i>                                    | Develop and implement a procedure for annual reviews of the Complaints System as a whole in order to provide updates, seek feedback, and identify opportunities for further improvement. This annual cycle in the next 2-3 years should include stakeholder dialogues and workshops, external reviews, and events at the annual Roundtables.  | Medium-term | Annually reviewed and updated system              | RSPO Secretary-General             | Proposed Revamp Advisor + stakeholder workshop        |

|  |  |   |             |  |                                    | (~RM 40,000)   |
|--|--|---|-------------|--|------------------------------------|--|
| <b>2 Opportunities for learning and collaboration within and beyond RSPO</b> |  |   |             |  |                                    |  |
| <b>2.1</b>   | <i>Training and exposure for Secretariat staff</i>     | Provide funds and time for professional development of Secretariat staff managing related components of the Complaints System (at minimum, NPP, Complaints, DSF, and Compensation). This should include training in practical skills, participation in relevant conferences and workshops, and exposure to other complaints mechanisms.   | Medium-term | Increased in-house skills, capacity and confidence | RSPO Secretariat (Head of Impacts) | Travel and registration fees per person per year (~RM 5-10,000 each) |
| <b>2.2</b>   | <i>Learning platforms for RSPO complaints parties</i>  | Facilitate the development of informal platforms for joint learning and experience-sharing within and between complainants and responding RSPO members on broader issues related to complaints (i.e. not necessarily for individual complaints currently underway). This could include hosting dialogues, informal meetings, and workshops to increase awareness and understanding of the Complaints System, practicalities of its procedures, and common challenges and opportunities for different complaints parties. <i>[Notably, the Secretariat informally connects different stakeholders in the context of ongoing individual complaints and this has proven quite useful.]</i> | Medium-term | Increased collaboration and sharing of lessons     | RSPO Secretariat (Head of Impacts) | Travel costs for up to 10 small events per year (~RM 50-100,000)     |
| <b>2.3</b>   | <i>Learning group with other complaints mechanisms</i> | Establish a multi-initiative learning group and hold meetings between commodity roundtables and other international, intergovernmental and regional complaints mechanisms to share and mutually develop good practices and innovative approaches. <i>[The ISEAL Alliance, of which RSPO is an Associate Member, is interested to contribute to this recommendation.]</i>  | Longer-term | Meetings and exchanges of inter-Secretariat group  | RSPO Secretary-General             | Travel and event costs for 1-2 meetings per year (~RM 20-30,000)     |

## ANNEX II. LIST OF PROPOSED CHANGES TO THE COMPLAINTS PROCEDURE

*This Annex is intended only as a summary of the proposed changes to the Procedure Flowchart set out in the recommendations (Annex I), which should be undertaken in early 2015. The revised version of the Flowchart should be subject to public consultation before adoption. The Flowchart and supplementary guidance will need to be revised again alongside the process of building an integrated Complaints System (Annexes IV and V). The Secretariat should refer to the full list of recommendations in Annex I for implementation, as there are additional recommendations concerning improvement of the complaints procedure but not pertaining to changes to the Flowchart itself.*

| Box                  | Recommended Changes to Flowchart  | Recommended Supplementary Guidance  |
|----------------------|---|---|
| <b>Cross-cutting</b> | <i>Timely updates (Procedures Recommendation No. 1.1):</i> In each complaint, provide the complainant(s) and responding RSPO member(s) with updates within 5 working days of all developments concerning their complaint, including publicly available versions of Complaints Panel meeting minutes, proposed action plans, proposed monitoring procedures, etc. The Secretariat should inform the complaints parties at the beginning of the process that the information shared throughout the process will be equal and consistent and will not give preferential treatment to any of the parties. | <i>Engaging in good faith (Procedures Recommendation No. 2.1):</i> Add a principle on the centrality of good faith engagement of all complaints parties throughout all stages of the complaints process. Adopt a procedure for identifying, monitoring, and taking action against complaints parties (both RSPO and non-RSPO members) who intentionally obstruct, unduly delay, or otherwise fail to engage in good faith (including by submitting spurious complaints or by failing to respond in a timely and effective manner to alleged complaints or proposed next steps).   |
| <b>Pre-Box A</b>     | <i>Bilateral engagement (Procedures Recommendation No. 1.2):</i> Add a new pre-complaint box requiring some form of recorded bilateral engagement before submission of a formal complaint (i.e. remove bilateral option from Box B). This could include a request for some form of basic facilitation or mediation by the Secretariat. Indicate the circumstances in which a formal complaint can or should be submitted.   |   |
| <b>Box A</b>         | <i>Provision of basic information to complaints parties (Procedures Recommendation No. 1.3):</i> In the current Box A, change the timeframe for Secretariat’s acknowledge of a complaint to 5 working days (instead of 10) and add a new point requiring the Secretariat to immediately provide basic information to the complaints parties about the process to be followed, including the Complaints System Components and ToR, Procedure Flowchart, the supplementary guidance recommended in Section 2 (when ready), and indication of the point person in the Secretariat for correspondence.    | <i>Evidence to trigger a response (Procedures Recommendation No. 2.2):</i> Provide more detailed guidance on the reasonable minimum amount and types of evidence that should be provided by complainants in order to trigger a response from the Secretariat and relevant RSPO member.<br><br><i>Interim measures (Procedures Recommendation No. 2.3):</i> Adopt clear criteria and procedures for the Secretariat to impose interim measures such as stop-work orders for alerts or complaints of violations that require urgent action (including clearance of HCV areas or peatlands). This should be dovetailed with an emphasis on improved monitoring of and compliance with NPP. |

|                     |   |   |
|---------------------|---|---|
| <p><b>Box B</b></p> | <p><i>Identification of potential violation (Procedures Recommendation No. 1.4):</i> Regarding the point that reads: “Secretariat determines complaint category”, add that there may be more than one relevant category and that the Secretariat should identify the potential violation raised by the complaint (i.e. the specific relevant part of the P&amp;C, Code of Conduct, Statutes, or otherwise).</p>   | <p><i>Definition of terms and criteria (Procedures Recommendation No. 2.4):</i> Adopt clear criteria for determining the need for mediation, additional investigation, and/or deliberation by the Panel.</p> <p><i>Innovative procedures (Procedures Recommendation No. 2.5):</i> Provide more detailed guidance on options for “additional investigations”, including in-person meetings between complaints parties and the Secretariat, on-site visits and fact-finding missions, and independent inquiries. These should be facilitated remotely by the Secretariat and physically undertaken by a roster of independent in-country and region-based experts to complement evidence and inputs provided by the complaints parties.</p>   |
| <p><b>Box C</b></p> | <p><i>Oral presentations by complaints parties (Procedures Recommendation No. 1.5):</i> Add a new option for complaints parties to present their cases to the Complaints Panel via conference call when it is first convened, while protecting the identities of Panel members. The latter can be done by having the Secretariat field questions from the Panel members over Skype. This option should be available to the complaints parties, but to ensure fairness, should only be allowed if both parties are able and have mutually agreed to present or have agreed that the other party can present without them if they do not wish to do so. The Complaints Panel should help define the scope and parameters for such presentations, including a maximum number of minutes for each party’s presentation and maximum number of questions from the Panel and subsequent responses.</p> | <p><i>Definition of terms and criteria (Procedures Recommendation No. 2.4):</i> Adopt clear criteria for determining what constitutes “legitimate”.</p> <p><i>Burden of proof (Procedures Recommendation No. 2.6):</i> Add an explanatory note specifying that once a legitimate and reasonably substantiated complaint has been raised by a complainant, the burden of proof shifts to the responding RSPO member and, where needed, shared with the RSPO Secretariat. Identify and implement a procedure, including monitoring indicators, for ensuring this takes place fairly and consistently in practice.</p> <p><i>Innovative procedures (Procedures Recommendation No. 2.5):</i> Provide more detailed guidance on options for “additional investigations”, including in-person meetings between complaints parties and the Secretariat, on-site visits and fact-finding missions, and independent inquiries. These should be facilitated remotely by the Secretariat and physically undertaken by a roster of independent in-country and region-based experts to complement evidence and inputs provided by the complaints parties.</p> <p><i>Interim measures (Procedures Recommendation No. 2.3):</i> Adopt clear criteria and procedures for the Panel to impose interim measures such as stop-work orders for alerts or complaints of violations that require urgent action (including clearance of HCV areas or peatlands). This should be dovetailed with an emphasis on improved monitoring of and compliance with NPP.</p> |
| <p><b>Box F</b></p> | <p><i>Agreement before closing a complaint (Procedures Recommendation No. 1.8):</i> In each complaint, the complainant(s) and responding RSPO member(s) must agree to proposed plans before final decisions are taken, particularly when the Panel is proposing to close the complaint for monitoring or for good.</p>  |   |
| <p><b>Box G</b></p> | <p><i>Sanctions for non-compliance (Procedures Recommendation No. 1.9):</i> Add a new element providing for sanctions for non-compliance with agreed action plans (i.e. suspension and termination).</p>  |   |
| <p><b>Box H</b></p> | <p><i>Summary reports of closed complaints (Institutional Vitality Recommendation No.</i></p>   |   |

|              |  |  |
|--------------|--|--|
|              | <p>1.1): Produce a publicly available summary report of each closed complaint within one month of closure, with due regard for confidentiality. The content should include key substantive issues raised in the complaint, the procedure undertaken, rationale for decisions taken, next steps or commitments of the complaint parties, and lessons learned.</p>   |  |
| <b>Box I</b> | <p><i>Resubmission (Procedures Recommendation No. 1.6):</i> Allow for more attempts at resubmission if needed by removing “only 1 attempt within 4 weeks” and by requiring complaints parties to indicate if and when they want to resubmit and what support they may need to do so. The Secretariat should provide guidance and logistical support in response, within reason.</p>  |  |
| <b>Box K</b> | <p><i>Suspension after first non-response or non-action (Procedures Recommendation No. 1.7):</i> Add another element after the first line stating that the member will be suspended if there is no response or no action within the prescribed 4 weeks. A second notification and request to respond within another 4 weeks should then be issued, with a clear warning that membership will be terminated (Box L) if there is still no response or action.</p>      |  |
| <b>Box L</b> | <p><i>Involvement of BoG in complaints procedure (Governance Recommendation No. 1.1):</i> Limit BoG involvement strictly to receiving information, including of sanctions to be implemented.</p>   | <p><i>Sanctions and penalties (Procedures Recommendation No. 2.7):</i> Identify and adopt criteria and procedures for imposing sanctions and penalties upon RSPO members for lack of response, action, cooperation, or compliance and lack of genuine commitment to improvement, with particular emphasis on suspension before expulsion. This should be dovetailed with improved reporting and monitoring in the auditing and certification system.</p>   |
| <b>Box N</b> | <p><i>Involvement of BoG in complaints procedure (Governance Recommendation No. 1.1):</i> Limit BoG involvement strictly to receiving information, including of sanctions to be implemented.</p>   | <p><i>Sanctions and penalties (Procedures Recommendation No. 2.7):</i> As above.</p>   |
| <b>Box O</b> | <p><i>Resubmission (Procedures Recommendation No. 1.6):</i> Allow for more attempts at resubmission if needed by removing “only 1 attempt within 4 weeks” and requiring complaints parties to indicate if and when they want to resubmit and what support they may need to do so. The Secretariat should provide guidance and logistical support in response, within reason. In Box O, it should read “Resubmission of action plan”, not “Resubmission of case”.</p> |  |
| <b>Box P</b> | <p><i>Involvement of BoG in complaints procedure (Governance Recommendation No. 1.1):</i> Remove decision-making powers of the BoG in appeals and limit BoG involvement strictly to receiving information.</p>   | <p><i>Independent appeal mechanism (Governance Recommendation No. 1.5):</i> Alongside implementation of the short-term and medium-term recommendations, conduct a review in 2015 to identify concrete options for an independent, third-party recourse and appeal mechanism, drawing from experiences and lessons learned from a range of different sectors. Facilitate an inclusive process of stakeholder consultation and engagement to identify and adopt clear ToRs and procedures that would best suit RSPO.</p> |

### ANNEX III. ILLUSTRATION OF PROPOSED COMPLAINTS FORM

A possible revised version of the Complaints Form is set out below on the basis of Procedural Recommendations Nos. 3.1-3.6 (see **Annex I**) and recommendations concerning supplementary guidance for the Procedure Flowchart (particularly No. 2.1). This should be open to further inputs and improvements. A revised Form should be subject to public consultation alongside the revised Complaints Procedure Flowchart (see **Annex II**). The Secretariat should refer to the full list of recommendations in **Annex I** for additional details.

| Information about the individual(s) or organisation(s) submitting the complaint <sup>41</sup> :   |   |
|---|---|
| Name of individual or organisation  |   |
| Organisation's contact person   |   |
| Postal address  | <i>[Include street and number, city, province/state, area code, and country]</i>  |
| Email address   |   |
| Phone number  | <i>[Specify if mobile or landline]</i>  |
| Fax number  |   |
| Website   |   |
| Are you a member of RSPO or any of its voluntary groups?  | <i>[If yes, please specify which category or group(s)]</i>  |
| Are you submitting this complaint on behalf of someone else?  | <i>[If yes, please specify who and why]</i>   |
| If you are submitting this with other individuals or organisations, what is your particular role in the complaint?                                | <i>[Please specify what role you will play, for example, liaising with communities, technical assistance, etc.]</i>   |
| Do you need any particular forms of support in the complaint process (please specify at right and provide additional information as appropriate)? | <input type="checkbox"/> Translation and interpretation<br><input type="checkbox"/> Communication with female staff<br><input type="checkbox"/> Protection of identity from RSPO member (in the case of safety concerns)<br><input type="checkbox"/> Assistance with verification |
| Signature or thumbprint <sup>42</sup>   |   |

| Information about the RSPO member(s) against which the complaint is submitted (if not known by the complainants, the Secretariat should add): |  |
|---|--|
| Name of member  |  |
| Member's contact person   |  |
| Postal address  | <i>[Include street and number, city, province/state, area code, and country]</i> |
| Email address   |  |
| Phone number  |  |
| Fax number  |  |
| Website   |  |
| Date of certification (if any)  |  |
| Is the complaint concerning a subsidiary or parent company of this RSPO member?   | <i>[If yes, please specify]</i>  |

<sup>41</sup> Please complete for each co-complainant and specify who will be the point person for correspondence with the Secretariat. State "N/A" if not applicable or available.  
<sup>42</sup> If one or more of the complainants is illiterate, the supporting organization(s) should explain the process they undertook to discuss the complaint and the individual's free, prior and informed consent to participate in the complaints process.

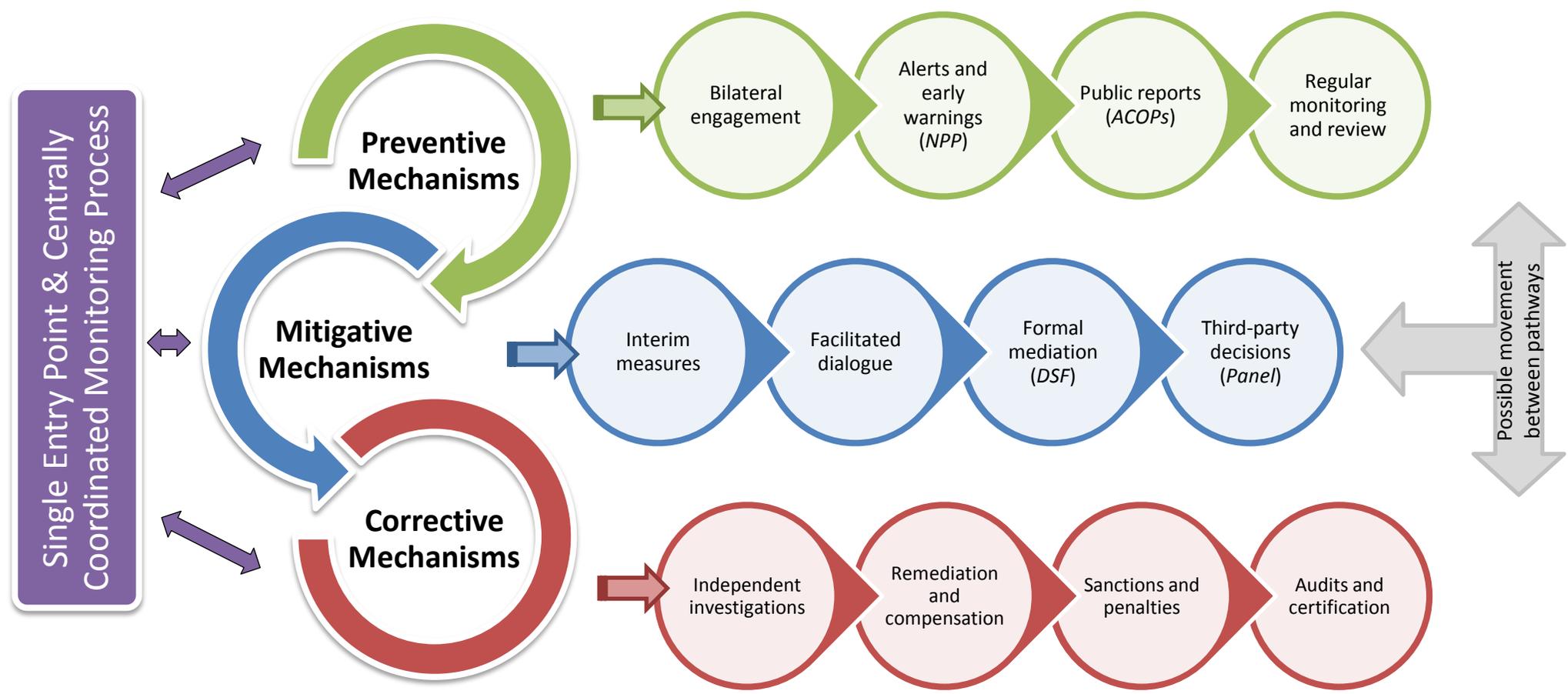
| Information about the complaint:  | Suggested supplementary information:   |
|---|--|
| Date of submission  | <i>[Specify date]</i>  |
| Location of the complaint   | <i>[Provide map and/or GPS coordinates, if possible]</i>   |
| Key facts and issues  | <i>[Provide concise summary of the complaint]</i>  |
| Chronology of events to date  | <i>[Provide timeline of issues and events that led to the complaint, indicating specific dates, locations, and people present, where applicable]</i> |
| Alleged violations incurred   | <i>[Specify which parts of the P&amp;C, Code of Conduct, domestic legislation, or otherwise you feel have been violated]</i>                         |
| Other companies, organisations, or individuals involved aside from those listed above | <i>[List names and indicate what role each has played in the issues and events to date]</i>  |
| Background documentation and evidence of alleged violations                           | <i>[Attach maps, photos, videos, oral recordings specifying dates and location, civil society reports, etc.]</i>                                     |
| Steps taken to resolve the complaint to date  | <i>[Provide timeline of steps taken to date, if any, indicating specific dates, locations, and people present, responses received, etc.]</i>         |
| Objective or desired outcome of the complaint   | <i>[Specify what you hope to achieve through the complaint process]</i>  |
| Any other information   | <i>[Specify what other information is provided, if any]</i>  |

In submitting this complaint, I/we:

- Understand and agree that the RSPO Secretariat will handle the complaint in accordance with the Complaints System’s components and Terms of Reference, as well as the Complaints Procedure Flowchart [and supplementary guidance];
- Agree to have the Secretariat share the complaint with the RSPO member(s) concerned (pending the request for protection of identity); and
- Agree to engage in the complaints process in good faith and in accordance with the Complaints Procedure Flowchart [and supplementary guidance].

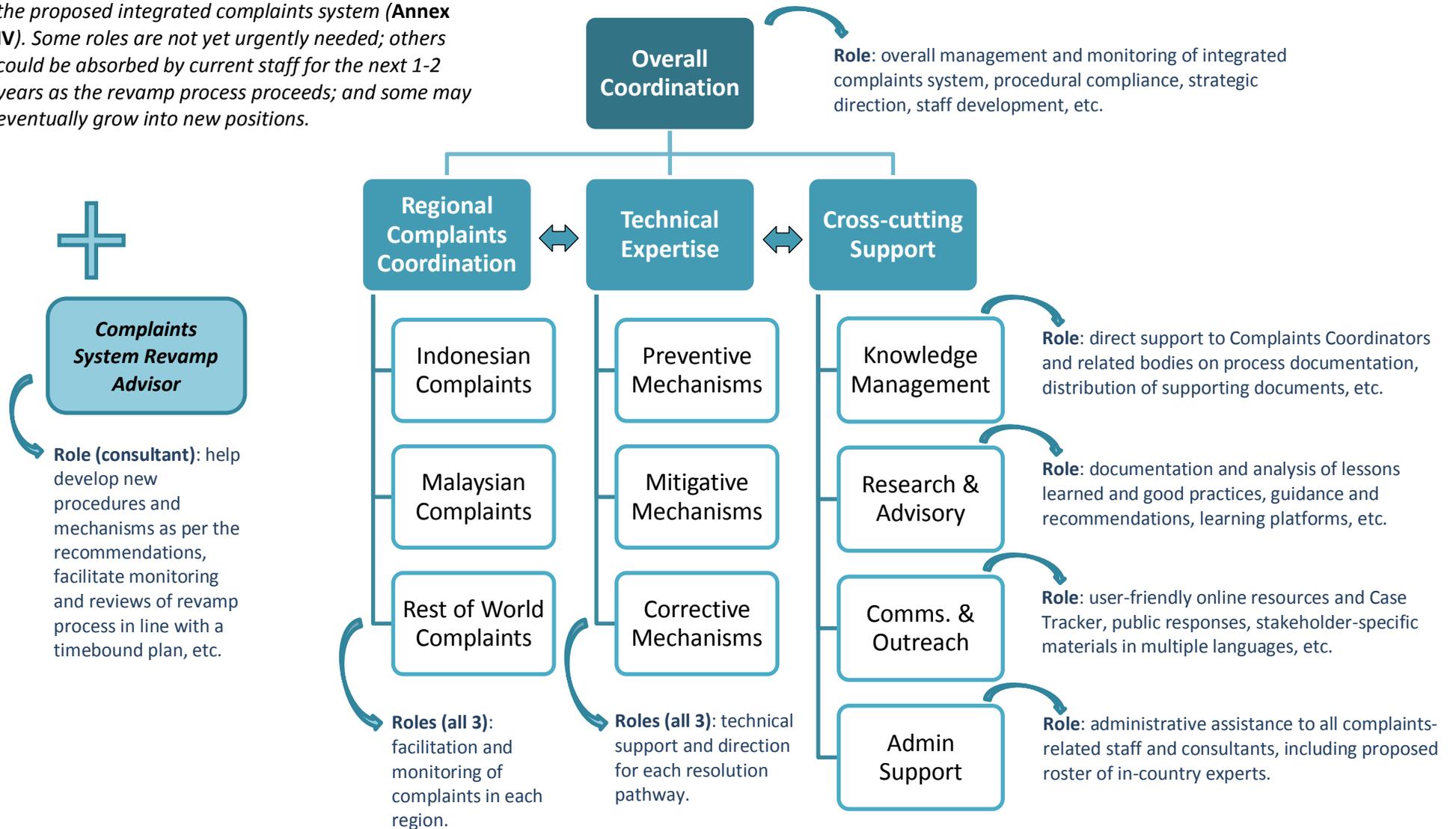
## ANNEX IV. ILLUSTRATION OF PROPOSED INTEGRATED COMPLAINTS SYSTEM

An integrated Complaints System should have a single entry point and centrally coordinated monitoring process for all complaints. It should include options for different resolution pathways, including through mechanisms for prevention, mitigation, and correction, which should bring under their remit existing mechanisms such as NPP, DSF, and compensation. Each pathway and mechanism, as well as responsible Secretariat staff and related voluntary bodies, should have clear mandates and procedures to ensure transparency, independence, seamless transitions and coordination, and effective follow-up, reporting, and monitoring. An integrated Complaints System could greatly assist in both elevating and streamlining the complaints mechanism across RSPO.



## ANNEX V. ILLUSTRATION OF STAFFING NEEDS AND ROLES IN THE INTEGRATED COMPLAINTS SYSTEM

This diagram illustrates what roles and tasks may be needed in the Secretariat from 2015-2018 to support the proposed integrated complaints system (Annex IV). Some roles are not yet urgently needed; others could be absorbed by current staff for the next 1-2 years as the revamp process proceeds; and some may eventually grow into new positions.



## ANNEX VI. LIST OF REFERENCES

*This is a list of key publications referenced in this report. It does not include the procedural documents and instruments referenced in Sections 3 and 4, or the full bibliography consulted in the course of the entire review. Please contact the author for any further information.*

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