



CONFLICT PREVENTION PLATFORM (CPP)



OBJECTIVE

The objective of this paper is to explore and achieve the possibility of establishing a more accessible platform for the purposes of preventing or de-escalating conflicts within the palm oil industry. The proposed platform is intended to be accessible to stakeholders at large with dissatisfactions towards members of the Roundtable on Sustainable Palm Oil (RSPO)¹. The ultimate aim of this flexible approach is to de-escalate potential conflicts at an early stage (through non-adversarial methods) hence reducing formal complaints from being lodged through the RSPO's complaints system.²

It is proposed that this Conflict Prevention Platform ("CPP") be first established as a pilot project to only deal with potential conflicts arising in the South East Asian region (namely Indonesia, Malaysia, and Thailand). The effectiveness of this CPP is to be monitored for a specified duration before recommendations are then made for a permanent implementation of the CPP at a larger scale while taking into consideration the relevant cultural peculiarities and intensity of the activities of RSPO members in those countries and regions.

¹ "The RSPO is a not-for-profit that unites stakeholders from the 7 sectors of the palm oil industry: oil palm producers, processors or traders, consumer goods manufacturers, retailers, banks/investors, and environmental and social non-governmental organisations (NGOs), to develop and implement global standards for sustainable palm oil." <https://rspo.org/about>

² <https://askrspo.force.com/Complaint/s/>

WHY A CONFLICT PREVENTION PLATFORM (CPP) IS THE WAY FORWARD

The palm-oil industry is no stranger to conflicts arising as a result of different views among stakeholders. In the spirit of dealing with and resolving these conflicts, certification schemes such as the RSPO introduced the complaints system. While the complaints system remains as an avenue for stakeholders to ventilate their grievances, more often than not, the complaints lodged have evolved into intense conflicts with minimal room for an amicable resolution. In such circumstances, parties are often faced with having to rely on the Complaints Panel (“CP”) or Appeals Panel (“AP”) (where applicable) for a decision to be delivered. Parties are also subjected to the strict provisions

within the Complaints and Appeals Procedures 2017 (“CAP”) in ensuring a fair, transparent, and impartial process.³ Though significant improvements have been made as to the duration of the complaints process, some stakeholders still find the process under the governance of the CAP to be protracted.

While it is acknowledged that the aforementioned strict provisions and lengthy duration are necessary in dealing with sensitive human rights related allegations or complex complaints, the CPP however wishes to now explore the possibility of establishing a flexible alternative for stakeholders and RSPO members **to prevent such conflicts from transforming into**

³ https://rspo.org/library/lib_files/preview/964

complaints. Other general factors which have also been observed to be potential supporting reasons for the establishment of the CPP include but are not limited to:-

- a) the misconception by some stakeholders that accessing a grievance system would require technical knowledge and is time-consuming;
- b) the lack of awareness by some stakeholders of the existence of grievance systems; and
- c) lack of trust and/or fear of repercussions when accessing a grievance system.

In light of the foregoing, the CPP is intended to enable stakeholders and RSPO members to avail themselves to a less formalistic mechanism in the spirit of holding discussions and negotiations to prevent conflicts from escalating into intense complaints. This however does not mean that the CPP prevents stakeholders from exercising their right to access the complaints system or to be heard by the CP. These rights are preserved and stakeholders are free to lodge a formal complaint (as a final resort) and only if non adversarial methods employed at the CPP fails to de-escalate the conflict.



PROPOSED STRUCTURE OF THE CONFLICT PREVENTION PLATFORM (CPP)

While much thought must be given to the structure of the platform, which might inevitably involve a proposal to amend the CAP as well as changes to the current structure of the Secretariat, it is nevertheless proposed that the RSPO Secretariat remains the custodian of the CPP. This will be elaborated further as this paper progresses.

The RSPO complaints system through the governance of the CAP provides for three main methods of resolving complaints. The most common is by way of a written decision delivered by either the CP or the AP. This method is adversarial in nature with both the Complainants and Respondents having to argue their respective positions with supporting documents and submissions to either substantiate the allegations raised or defend against them. This independent process is facilitated by the Complaints Desk of the RSPO Secretariat with oversight from the CP. The remaining two (2) non adversarial methods are referred to as Bilateral Engagement (“BE”)⁴ and mediation through the Dispute Settlement Facility mechanism (“DSF”)⁵. In BE and DSF, the

Complaints Desk observes these processes with periodical updates furnished to the CP on its progress.

While the CAP was introduced in 2017 to ensure effective management of complaints (which it has achieved), there is no denying that there is still room for improvement. For example, the CAP in its present form insists on the lodging and formal acceptance of a complaint before Complainants and Respondents are granted access to either BE or DSF as non-adversarial methods of resolving complaints.⁶ Users of the RSPO complaints system are therefore left with no other choice but to first lodge a complaint, have it formally accepted and only then explore non adversarial methods of resolution with the RSPO member. Unfortunately, this not only removes any possibility of conflict

⁴ Complaints and Appeals Procedures, Section 2.4, “*Bilateral Engagement: is a general descriptor for any process by which the Parties to a Complaint attempt to resolve their differences through direct discussions (i.e. without involving a third party as mediator). Bilateral engagement may involve, but is not limited to, accessing a company’s own complaints handling procedures as a means of attempting to resolve the complaint*”. https://rspo.org/library/lib_files/preview/964

⁵ Ibid at Section 2.12, “*Dispute Settlement Facility (DSF): a mechanism within RSPO that facilitates mediation between mutually consenting Parties to resolve disputes*” https://rspo.org/library/lib_files/preview/964

⁶ Ibid at Section 5.7.

prevention but also positions both Complainants and Respondents as adversaries. Respondents may perceive the Complainants' action of lodging a complaint as their refusal to hold amicable discussions. Some Respondents may also perceive the lodging of a complaint as an attempt by Complainants to attack their reputation (as details of complaints formally accepted are publicly made available on the RSPO case tracker).⁷ This is counterproductive. Instead, a practical approach would have been to make it mandatory for parties with potential conflict(s) to first explore prevention or de-escalation through negotiations and mediation and for a formal complaint to only be lodged as a final resort when all else fails.

In light of the foregoing, this paper proposes for the CPP to be established as a potential remedy to the aforementioned flaw in the system (and subject to its success rate) for the CPP to be subsequently recognised as a permanent complementary mechanism to the RSPO complaints system and CP. It is envisioned that the CPP under the auspices of the RSPO will encourage conflict prevention through negotiations and mediation (i.e. through the “good offices” of the RSPO Secretariat).

Depending on the applicable context, the definition of “good offices” may vary. For instance, good offices in international law refers to the participation of states in encouraging negotiations⁸ to resolve disputes and may exclude mediation (due to the active

⁷ <https://askrspo.force.com/Complaint/s/casetracker>

⁸ “A technique of peaceful settlement of an international dispute, in which a third party, acting with the consent of the disputing states, serves as a friendly intermediary in an effort to persuade them to negotiate between themselves without necessarily offering the disputing states substantive suggestions towards achieving a settlement. See also conciliation; mediation.” <https://www.oxfordreference.com/view/10.1093/oj/authority.20110803095859859>

involvement of a third party mediator). Ultimately, the term good offices refers to the most modest involvement of a third party in encouraging negotiations between disputing parties or to bring disputing parties together. In applying the concept of good offices to the current scenario, stakeholders can therefore approach the CPP raising their dissatisfaction towards an RSPO member and the RSPO Secretariat as the custodian of the CPP will exercise its good offices to encourage parties to attempt either negotiations or mediation as a means of conflict prevention. It is envisioned that negotiations and the mediation process within the CPP will be closely observed by the RSPO Secretariat (to ensure a process free of duress, oppression, reprisal, bias, or threat). The RSPO Secretariat is to maintain minimal participation in the processes and intervention will only be required when conflict prevention methods



prove futile and the governance of the CAP is required to maintain order. Dissatisfied stakeholders will only be advised to lodge a formal complaint under the governance of the CAP when the concept of good offices is unable to de-escalate the conflict at the CPP level.

At the CPP, stakeholders will be encouraged to commence direct discussions or negotiations amongst themselves or alternatively, dissatisfied stakeholders can also choose to access the internal grievance mechanisms of RSPO members (i.e. an existing requirement under the Principles and Criteria (P & C) 2018)⁹. The aforementioned standard calls for the establishment of a mutually agreed and comprehensible system which is open to all affected

parties (including the illiterate) for the purposes of resolving disputes. Internal grievance mechanism of members are expected to allow access to independent legal and technical advice, the ability for Complainants to choose individuals or groups to support them and/or act as observers, as well as the option of a third-party mediator.¹⁰ While it is understood that the P & C 2018 is limited to only mills (with the exception of independent mills) and growers (with the exception of Independent Smallholders)¹¹, it is expected that RSPO members from other sectors will have in place an internal grievance mechanism by virtue of section 3.2 of the Code of Conduct of Members¹² which reads as follows:-

“Members to whom the P&C do not apply directly will implement

⁹RSPO, Principles and Criteria for the production of sustainable palm oil 2018, Criteria 4.2, “There is a mutually agreed and documented system for dealing with complaints and grievances, which is implemented and accepted by all affected parties”. https://rspo.org/library/lib_files/preview/1079

¹⁰ Ibid, Indicators 4.2.1, 4.2.2, 4.2.3, & 4.2.4

¹¹ Ibid at page 6.

¹² Code of Conduct for Members of the Roundtable on Sustainable Palm Oil https://rspo.org/library/lib_files/preview/60



parallel standards relevant to their own organisation, which cannot be lower than those set out in the P&C.”

Further, through the good offices of the RSPO Secretariat, parties who are willing to mediate their disagreements can do so by engaging private mediators either independently or with the assistance of the Secretariat. It is envisioned that by encouraging stakeholders to access the internal grievance mechanism of members, the CPP would therefore also compel RSPO

members to have in place a functioning internal grievance mechanism in adherence to the P & C 2018 and the Code of Conduct of Members. Through the CPP, RSPO members may also be motivated to improve and promote the use of their own internal grievance mechanisms as a means of preventing dissatisfactions from being escalated and lodged as a formal complaint through the RSPO complaints system. In addition, dissatisfied stakeholders no longer need to worry about facing

intimidation or bias while accessing these internal grievance mechanisms of RSPO members, as the process will be closely observed by the RSPO Secretariat as part of its good offices.

methods of conflict prevention under the purview of the CPP. A provision is to be introduced in the amended CAP to make it **compulsory** for stakeholders with dissatisfaction towards RSPO



Should the above concept prove to be desirable and effective, the long term vision would then involve a proposal to amend the CAP removing both the BE and DSF processes from its governance. The BE and DSF processes will then be repositioned as mandatory

members to first attempt resolving their dissatisfaction(s) at the CPP before accessing the RSPO Complaints System. As such, post amendment of the CAP, the term Bilateral Engagement under the CPP will refer to all methods of discussions and negotiations

(including accessing the internal grievance mechanisms of members) while DSF will be an available method of conflict prevention within the CPP offering the services of a panel of DSF mediators for mediation. The RSPO Secretariat as the custodian of the CPP will exercise its good offices to spread awareness and encourage the use of conflict prevention methods. The provisions of the CAP will only be exclusively applicable for the management of complaints before the CP or the AP.

In the long run, the CPP is expected to not only exist as a platform to

prevent conflicts in the sustainable palm oil industry but it is envisioned to also function as an effective filter system for issues referred to and processed through the CAP. The CPP is also expected to improve the stakeholder engagement process and uphold the true spirit of a “roundtable” for the production of sustainable palm oil. In fact, it is envisioned that in the future RSPO members can also approach the CPP requesting the Secretariat to exercise its good offices in assisting members with their conflicts.



RSPO AS CUSTODIAN OF THE CONFLICT PREVENTION PLATFORM (CPP)

As the CPP is established with the intention of preventing or de-escalating conflicts between stakeholders and RSPO members, it is therefore only practical to propose that the RSPO Secretariat through its trusted personnel act as the custodian of the platform. However, as the CPP is in the long run expected to be a permanent complementary mechanism to the RSPO complaints system, **it is imperative that strict adherence to the principle of preventing any conflict of interest is observed.**

The RSPO Complaints system places a substantial amount of weight on the importance of preventing a situation of conflicted interest. For instance, the CAP

specifically defines conflict of interest as follows:-

“Situation in which, because of other activities or relationships impartiality in performing a function or investigation is or could be compromised.”¹³ (Emphasis provided)

Prior to accepting an appointment, the CAP also requires prospective CP members to make written declarations¹⁴ that they do not have any professional, financial or personal relationship with the parties to a complaint, their subsidiaries or personnel which would result in bias or prejudice or otherwise impact their judgment. The CAP also requires for the immediate declaration of such

¹³ Complaints and Appeals Procedures, Section 2.10 https://rspo.org/library/lib_files/preview/964

¹⁴ Terms of Reference of the Complaints and Appeals Panel and Associated Declarations<
https://rspo.org/library/lib_files/preview/807>

conflict of interest (should it arise) to the Secretariat.¹⁵

In addition, to ensure independence of the complaints process and to prevent any conflict of interest, strict separation of functions and powers between the RSPO Board of Governors (BOG) and the CP were introduced and codified in the RSPO Statutes.¹⁶

The above are various safeguards established by the RSPO through its Key Documents and ancillary documents to prevent a conflict of interest and to uphold the sanctity of the complaints system. Similarly, in order for the CPP to maintain its credibility, effectively prevent or de-escalate conflicts, and eventually act as a supporting mechanism to the complaints system, it too must be free of

conflict of interest or the perception of a conflict of interest.

It is therefore proposed that the CPP is managed by only the respective Heads and/or Representatives of Countries/Regions from the Secretariat (referred to as “custodians”). Under the CPP, stakeholders with dissatisfaction towards an RSPO member can approach these custodians requesting them to exercise their good offices to prevent or de-escalate a potential conflict. These custodians will then create a safe space for stakeholders to narrate/ventilate to them their dissatisfaction(s). As the CPP is meant to be a flexible approach, dissatisfied stakeholders should be given the option of deciding on whether or not they intend to submit supporting documents

¹⁵ Complaints and Appeals Procedures, Section 6.6 https://rspo.org/library/lib_files/preview/964

¹⁶ The Statutes of the Roundtable on Sustainable Palm Oil, Endorsed by the RSPO General Assembly GA17, on 25th November 2020, Article 14 (b) “*The Complaints and Appeals Panels shall ensure fairness and impartiality in handling complaints, and there shall be strict separation of functions and powers of the panels from that of the Board of Governors. It is the responsibility of the members of the Complaints and Appeals Panels to disclose any conflict of interest that would render them unsuitable to hear a complaint.*” https://rspo.org/library/lib_files/preview/878

with respect to their dissatisfaction (though the custodians should encourage stakeholders to do so). Once a narration of the dissatisfaction together with any supporting documents have been obtained by the custodians, the same shall then be reviewed and the situation assessed before the RSPO member is approached by the custodians alerting them of the issue(s) at hand. During this period, the custodians are allowed to have direct communications with **only** the Head of the Grievance Unit (within the RSPO Secretariat) to obtain advice on the best course of action in preventing or de-escalating conflict(s). The custodians shall then propose to parties to either hold discussions/negotiations, to access the existing internal grievance mechanisms of RSPO members, or instead attempt mediation. The CPP method as mutually agreed between the parties is then observed closely by these

custodians to ensure a process free of duress, oppression, reprisal, bias, or threat. Custodians are expected to remain impartial and provide their encouragement and support to the parties throughout the process but ensure minimal direct participation in the negotiations, discussions, or mediation process itself. The ultimate goal of these custodians is to have parties achieve an amicable resolution through their good offices. In fact, in the long run, to ensure the continuous effectiveness of the CPP, the rate of prevention and de-escalation of conflicts at the CPP level in specific countries and regions should be incorporated into the KPI's of these custodians as a performance evaluator.



STRUCTURE FOR SUCCESS

As set out earlier on in this paper, should good offices prove futile at the CPP level, the custodians will then advise parties on accessing the complaints system under the governance of the CAP. At this stage, the custodians will notify the Head of the Grievance Unit of the unsuccessful outcome at the CPP. The Head of the Grievance Unit will then assign a case manager from the Complaints Desk to approach parties to brief them on the requirements of the CAP with respect to lodging a formal

complaint. To maintain the independence of the process and to prevent any conflict of interest, should the CPP be established as a permanent complementary arm to the complaints system, it is proposed that the Head of Grievance Unit no longer manages active complaints before the CP and that such tasks are left solely to the case managers. This would therefore allow the Head of the Grievance Unit to maintain a healthy and unbiased flow of communication between the

custodians and the case managers.

It has to be borne in mind that the current structure of having the Grievance Unit report to a Director in either one of the existing departments/pillars is in itself a conflict of interest. This is due to the fact that these Directors in one way or another either report to or update one of the four (4) permanent Standing Committees as follows:-

- a) Standard Standing Committee (SSC);
- b) Assurance Standing Committee (ASC);
- c) Market Development Standing Committee; and
- d) Smallholders Standing Committee.¹⁷

The above mentioned permanent Standing Committees ultimately report to/support the BOG¹⁸. In addition, the BOG delegates specific functions to these Standing Committees and receive reports.¹⁹ Some members of the BOG also sit on these Standing Committees. In light of the foregoing, to have Directors who report or update Standing Committees (which perform specific functions as delegated by the BOG) to also oversee/or supervise the Grievance Unit which services the CP through the Complaints Desk would inevitably create a perception of conflicted interest as these Directors are now made to oversee two functions or powers which are clearly intended to be separate and independent of each other.²⁰

¹⁷ <https://rspo.org/about/supporting-bodies#assurance-standing-committee>

¹⁸ <https://rspo.org/about/our-organisation#board-of-governors>

¹⁹ Ibid.

²⁰ The Statutes of the Roundtable on Sustainable Palm Oil, Endorsed by the RSPO General Assembly GA17, on 25th November 2020, Article 14 (b) "The Complaints and Appeals Panels shall ensure fairness and impartiality in handling complaints, and there shall be strict separation of functions and powers of the panels from that of the Board of Governors. It is the responsibility of the members of the Complaints and Appeals Panels to disclose any conflict of interest that would render them unsuitable to hear a complaint." https://rspo.org/library/lib_files/preview/878



Hence, to ensure the credibility of both the CPP and the complaints system that it is connected to, it is proposed that the Grievance Unit be recognised as an independent unit but with administrative governance by the Secretariat. However, should the notion of establishing the Grievance Unit as an independent unit prove to be a challenge to implement, it would then be a wiser alternative to reposition the Grievance Unit under departments with the least conflicted interest. This therefore immediately excludes both the Assurance and Standards Departments respectively. It is

pertinent to note that both the ASC (to which the Assurance Department reports to and/or updates) and SSC (to which the Standards Department reports to and/or updates) are tasked with overseeing the development and implementation of the RSPO standards. These are reflected in the Terms of Reference (ToR) of both the ASC²¹ & SCC^{22,23}. The CP on the other hand is tasked with deciding on potential breaches and the sanctioning of members for breaches of these standards. In such circumstances, to position the Grievance Unit (which actively deals with the CP) within

²¹ Assurance Standing Committee Terms of Reference https://rspo.org/library/lib_files/preview/1107

²² Terms of Reference Standard Standing Committee (SSC) https://rspo.org/library/lib_files/preview/1237

²³ At the time of the drafting of this paper, the above mandate as set out in the Terms of Reference (ToR) of the ASC is still reflected as “draft” on the RSPO website.

departments reporting to and/or updating Standing Committees involved in the development and implementation of these standards would be in contravention of the intention of the CAP and the RSPO Statutes on the doctrine of separation of powers. A department involved in the development and/or implementation of standards cannot be deemed to also be the department overseeing the process which determines the breaches of those standards. To put in simpler terms, there is therefore no separation of powers

and a perception of bias is likely to occur. This perception will inevitably be attached to the CPP as a result of the flow of communication between the custodians and the Head of the Grievance Unit and also as a result of its proposed future establishment as a supporting mechanism for the complaints process. As such, the repositioning of the Grievance Unit as either an independent unit or within a less conflicted department is vital to ensure the credibility of the CPP is upheld.



CONCLUSION

As a result of the existing gaps and possible flaws, it is proposed that the CPP be established to improve the existing complaints process within the RSPO system. The CPP is envisioned to be a platform which brings the RSPO fraternity together in the true spirit of a roundtable for the purposes of preventing and de-escalating conflicts within the palm oil industry. The CPP is also expected to be a filter system for the CAP process. Its proposed formation is to encourage the use of non-adversarial methods through the good offices of the RSPO Secretariat. The CPP is therefore intended to be free of conflicted interests and ultimately be a flexible, accessible and supportive platform for the RSPO complaints process and for the production of sustainable palm oil.

PROPOSED STRUCTURE OF THE CONFLICT PREVENTION PLATFORM (CPP)

