

# Beyond Certification

Reforming RSPO's Complaints System  
to meet stakeholder expectation



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# Table of Contents

<b>Summary</b> .....	<b>ii</b>
<b>Introduction</b> .....	<b>1</b>
<b>1. Research methodology</b> .....	<b>2</b>
1.1 Scope .....	2
1.2 Desk review .....	2
1.3 Questionnaire survey .....	2
1.4 Field survey.....	3
1.5 Workshop with key stakeholders .....	3
1.6 Basis and structure of analysis .....	4
<b>2. Grievance mechanisms</b> .....	<b>6</b>
<b>3. RSPO’s Complaints System</b> .....	<b>8</b>
3.1 Origins.....	8
3.2 Role and objectives .....	8
3.3 Evolution of the system.....	10
3.4 Current Complaints System (September 2013).....	10
3.5 Current Dispute Settlement Facility (September 2013) .....	11
<b>4. Key issues and problems with RSPO’s Complaints System</b> .....	<b>13</b>
4.1 General observations .....	13
4.2 Root problems .....	14
4.3 Mandate issues.....	20
4.4 System issues.....	23
4.5 Capacity issues.....	26
<b>5. Key reforms and changes to RSPO’s Complaints System</b> .....	<b>28</b>
5.1 Mandate reforms .....	28
5.2 System reforms.....	29
5.3 Capacity reforms .....	30
<b>6. Conclusion</b> .....	<b>31</b>
<b>Annexes</b> .....	<b>34</b>
Annex 1: List of workshop participants .....	34
Annex 2: Questionnaire survey template.....	35

## Summary

The Roundtable on Sustainable Palm Oil (RSPO) is a multi-stakeholder organisation that aims to promote the production and use of sustainable palm oil through developing a standard that is used for certifying palm oil. The RSPO Complaints System (CS) is a check-and-balance mechanism to certification. A fair, transparent and impartial Complaints System is a bottom line requirement for many NGOs to participate in and support RSPO in its vision to promote sustainable palm oil. From its inception, various NGOs (both RSPO members and non-members) have filed documented complaints to test the CS, both in view of seeing their specific grievances addressed and to help improve the CS.

By splitting the grievance mechanism into 3 parts, this report has analysed the contents of the CS its operations, track-record, actions, consistency and impact. It has sought to get a broad range of experiences to assist in a stakeholder intervention to further the efforts of communities, NGOs, supporters and RSPO members in finding justice through RSPO's Complaints System. A short project timeframe and targets for an intervention meant research reduced inclusiveness and comprehensive consultation. It should be noted that those participating in the research represent a core of directly relevant stakeholders, i.e. all have direct experience via involvement in complaints cases lodged with RSPO. While the goals, recommendations and planned RSPO General Assembly Resolution are driven by NGO inputs and participation, the study through project partners consulted with key producers in South East Asia that included 2 direct participants in the survey.

The issues identified in this report cover a broad range of experiences from stakeholders, complainants and defendants. The issues are organised to reflect the different levels of authority and decision-making, in addition to identifying macro and micro level problems. The following is a list of the issues identified.

### General observations

Observation 1: Backlog of complaint cases filed with RSPO

Observation 2: Very low success rate of resolving cases demonstrated

Observation 3: Very long delays experienced in moving cases forward

Observation 4: Perceived lack of transparency in the entire RSPO Complaints System

Observation 5: Loss of trust by users of the RSPO Complaints System.

### Root problems

- a) Poor quality of certification audits and checks, and other supporting systems
- b) Lack of transparency demonstrated by RSPO
- c) Delays or poor responsiveness from RSPO
- d) Cherry-picking issues and cases
- e) Looking into weaknesses of complainants, NGOs and communities

### Mandate issues

- a) Dilemma of the conflicts of interest within the RSPO Executive Board
- b) Not following the rules
- c) Operating system that is not integrated through formalisation

### System issues

- a) Gaps to the existing system
  - Case categorisation and protocol for different case types
  - Guidance for initial screening
  - Poorly formulated complaints form
  - No repercussions for unproven complaints
  - No systematic approach to consultation and public announcements

- b) Flaws in the existing system
  - Forces bilateral solutions
  - Dilutes complainants demands and lowers existing standards
  - Causes the RSPO Secretariat to be unaccountable to complainants
  - RSPO dodges responsibility to carry out ground work
  - The CS is not addressing emerging issues

### **Capacity issues**

- a) Gaps in Secretariat authority and resources
- b) General inability to communicate properly, effectively and clearly

This report hopes to generate substantive discussions on the 7 recommended reforms. The overarching goal for this project is beneficial to all stakeholders who are committed to the ideals that RSPO has. A strong system needs to be anchored in the right mandate as well as having adequate capacity. The recommendations cover all aspects of the CS; starting with providing clear mandate to the Complaints Panel that is separated from the EB. The trickle-down effect would be effective, consistent, fair, transparent and impartial implementation of the RSPO Complaints System. System changes proposed aim to gear up the existing infrastructure to operating in its full capacity while capacity recommendations identify areas for internal (RSPO) and external implementation. The following is a list of recommendations that RSPO needs to implement.

### **Mandate reforms**

- I. Have a Complaints Panel and System that is independent of the RSPO Executive Board
- II. Formalise and institutionalise the RSPO CS through appropriate Articles into RSPO's laws and rules
- III. Provide leadership and responsibility to manage complaints backlog and adhere to procedures

### **System reforms**

- I. Fixing gaps and addressing issues in the current system
- II. Increase transparency in the current system

### **Capacity reforms**

- I. Internal capacity
- II. External capacity

The need to adopt the recommendations proposed here is urgently needed. While RSPO has performed well in bringing its grievance mechanism to an advanced stage in 9 years, the pressures from large-scale social conflict affecting its members presently mean RSPO must be decisive and act now. The reasons are made clear if we review the opening of RSPO's introduction to the Complaints System:

*The RSPO Complaints System aims to address the effectiveness criteria for non-judicial grievance mechanisms provided by Prof. Ruggie in his "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework".<sup>1</sup>*

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<sup>1</sup> See Section 1.1 (Background) of the "Complaints System Introduction"  
[http://www.rspo.org/en/complaints\\_system\\_introduction](http://www.rspo.org/en/complaints_system_introduction)

## Introduction

The Roundtable on Sustainable Palm Oil (RSPO) was established in 2004 through the Swiss Civil Code as a non-profit organisation with the goal of promoting “the production and use of sustainable palm oil for People, Planet, and Prosperity.”<sup>2</sup> It aims to achieve this goal through the development of a set of standards that are organised in a hierarchical order that would be translatable into measurable parameters for assessing the performance of palm oil production. Palm oil production is then audited against this standard and where conformance is determined it is then awarded a certificate that is used for commercial gain.

RSPO is a membership-based organisation that is grounded on ensuring multi-stakeholder participation and ownership of the certification scheme. The two key membership groups are palm oil producers and NGOs. Each group has 25% representation on the governing Executive Board (EB), although NGOs are divided equally between social and environmental groups. The EB’s Governance is broadly consensus-based and seeks to build decisions that balance interests. The delivery mechanism used is Third-Party Auditing and RSPO’s standards were developed along internationally acceptable norms for standards development and practice, aligning itself with ISO Guide 65/66 and ISEAL’s Code of Good Practice.

RSPO’s Complaints System (CS) was incorporated in RSPO’s Certification Systems document of June 2007 and has evolved over the period since to include expanded services, notably the Dispute Settlement Facility (DSF). The procedure was occasionally adjusted by EB members. The current grievance mechanism is named the Complaints System. The RSPO CS was created to address “complaints against RSPO and its members in a manner that is reflective of the nature, mission and goals of RSPO”<sup>3</sup>.

A fair, transparent and impartial Complaints System is a bottom line requirement for many NGOs to participate in and support RSPO in its vision to promote sustainable palm oil. From its inception, various NGOs (both RSPO members and non-members) have filed documented complaints to test the CS, both in view of seeing their specific grievances addressed and to help improve the CS.

After 5 years, the experience with a range of complaint cases provided the basis for an independent evaluation to identify the impacts and functioning of the CS, and to identify its core strengths and weaknesses.

Increasing frustration has led these groups and individuals to discuss and document their collective experiences. The group also feels strongly that there remains only a small and closing gap for RSPO to salvage its credibility amongst civil society as a global platform for ensuring the sustainable production of palm oil. If RSPO prioritises implementing the reforms recommended in this report in a comprehensive manner, there is hope for re-establishing public trust in the RSPO and its certification scheme.

This report is the result of a project funded by the Institute of International Education's Global Travel and Learning Fund (GTLF) to a coalition of 3 partner organisations; Sawit Watch (Indonesia), Aidenvironment (Indonesia, The Netherlands) and Grassroots (Malaysia). The objective is to constructively facilitate the discussion of experiences by concerned stakeholders (RSPO members and non-members) in a common effort to ensure that RSPO can and does have a fair, transparent and impartial CS in place.

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<sup>2</sup> Source: [http://www.rspo.org/file/IG-1%20\(Low%20Res\).pdf](http://www.rspo.org/file/IG-1%20(Low%20Res).pdf)

<sup>3</sup> Source: [http://www.rspo.org/en/complaints\\_system\\_introduction](http://www.rspo.org/en/complaints_system_introduction)

# 1. Research methodology

## 1.1 Scope

The project focused on key stakeholders in the RSPO Complaints System (CS), including:

- a) complainants, defendants, facilitators and decision makers;
- b) local communities, conservationists, environmentalists, companies (RSPO members and non-members) and the RSPO secretariat.<sup>4</sup>

Due to time, resource, logistical and budgetary constraints, this project was unable to consult with the entire RSPO membership. However, the project incorporated feedback and views from a broad range of non-RSPO members who were involved as complainants.

It is important to note that comments are not attributed to individuals and organisations in this report as a general rule because a majority of participants providing comments had on-going cases or were otherwise engaging RSPO or RSPO's Secretariat. The points raised are made without prejudice towards RSPO or RSPO's Secretariat.

The information presented in this report is based on 4 types of inputs:

## 1.2 Desk review

Research was conducted on grievance mechanism best practices on business-human rights, the mechanisms as applied by other multi-stakeholder initiatives, and benchmark standards for grievance mechanisms.

The RSPO Complaints System (CS), publicly available documentation on individual cases and RSPO Executive Board minutes were studied extensively. Further consultation based on preliminary inputs from document research and the workshop was verified through a meeting and discussion with the RSPO Secretariat on 26 September 2013 in Kuala Lumpur.

## 1.3 Questionnaire survey

A questionnaire survey was conducted between 9 and 25 September 2013. Furthermore, a field survey was conducted by Sawit Watch that focussed on acquiring feedback from selected communities that were involved in grievance submissions to RSPO.

The questionnaires<sup>5</sup> sought to get the views of the targeted groups and individuals on their experience dealing with the RSPO CS. Separate versions were provided for complainants and defendants in both English and Bahasa Indonesia.

Questionnaires were delivered to individuals, companies, company contacts / representatives, organisations and civil society representatives that were either direct complainants, defendants or involved in 22 cases posted on RSPO's website as of end August 2013. Questionnaires were sent to

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<sup>4</sup> The list of participating organisations at the workshop is listed down in **Annex 1**.

<sup>5</sup> The questionnaire survey template is provided in **Annex 2**.

individuals and groups involved in an additional 5 grievance cases that were not listed on the RSPO website. This includes cases that were not accepted by RSPO as official complaints.

A total of 15 responses were received, including 13 from stakeholder groups (complainants) and 2 from companies (defendants). One complainant and one defendant declined to participate in the survey stating that the exercise was not officially endorsed by RSPO. It is noted that some complainants and defendants provided feedback on multiple cases since they are actively involved in more than one case. In conclusion, response was received from individuals and organizations involved in 18 out of a total of 27 individual cases (67%) identified for the purpose of this research:

- 1) Genting Plantations Berhad
- 2) Collingwood Plantation Private Ltd / Kuala Lumpur Kepong Bhd
- 3) PT Ladang Sawit Mas (a subsidiary of RSPO member Bumitama Gunajaya Agro)
- 4) PT Nabatindo Karya Utama (a subsidiary of RSPO member Bumitama Gunajaya Agro)
- 5) PT Salim Ivomas Pratama Tbk ( a subsidiary of Indofood Agri Resources Ltd)
- 6) PT Mekar Bumi Andalas (a subsidiary of RSPO member Wilmar International Limited)
- 7) BIASE Plantation Limited (Ibiae Estate) /Wilmar International
- 8) PT Borneo Surya Mining Jaya (a subsidiary of RSPO member First Resources Limited)
- 9) PT Sisirau ( PT Ibris Palm)
- 10) Golden Veroleum Liberia
- 11) PT Agronusa Investama (Wilmar)
- 12) PT Asiatic Persada (Wilmar)
- 13) IOI
- 14) Duta Palma Nusantara
- 15) PT Tri Bakti Sarimas
- 16) PT Lonsum Pergulaan
- 17) PT Buana Artha Sejahtera (SMART)
- 18) Citra Riau Sarana (Wilmar)

## 1.4 Field survey

Sawit Watch (SW) conducted field surveys at 3 case study sites in Indonesia. The base for the surveys was the Bahasa Indonesia version of the questionnaire. Field trips were carried out by SW from 9 to 19 September 2013. During these visits, surveys were conducted with affected communities, grassroots NGOs, companies (defendants) and other supporting NGOs. The case studies contributed by SW include:

- 1) PT Buana Artha Sejahtera (PT BAS – owned by PT SMART) conflict with community of Biru Maju, Central Kalimantan, Indonesia, over land rights
- 2) PT London Sumatra (LonSum) conflict with community of Desa Pergulaan, Indonesia, over land rights
- 3) Duta Palm Group Tbk (Duta Palma) conflict with community of Desa Kaliau, West Kalimantan, Indonesia, over land rights

## 1.5 Workshop with key stakeholders

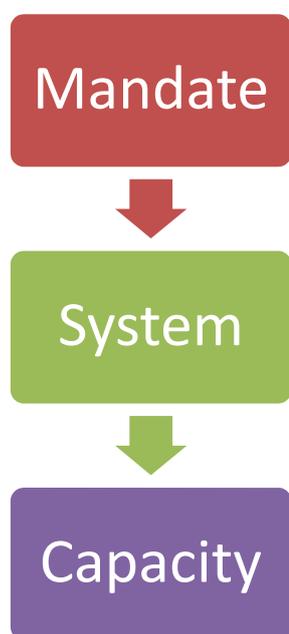
A workshop was organised by project partner Aidenvironment from 23 to 24 September 2013 in Puncak, Indonesia. The workshop invited RSPO complainants, affected community representatives and supporting NGOs as participants while also extending invitations to some RSPO producer Members to contribute their experience as well as 3 RSPO Secretariat staff as observers. A list of organisations

present at the workshop is provided in **Annex 1**. The workshop was structured to discuss the RSPO CS along three key components: mandate, system and capacity.

## 1.6 Basis and structure of analysis

The RSPO Complaints System (CS) has been evolving and expanding since its inception in 2006. In 2012, significant changes to the system were made. The basis of this report is the publically accessible version of RSPO's CS document that is found on the RSPO webpage<sup>6</sup> during September / October 2013.

The review and analysis of RSPO's CS is based on measuring its performance against feedback from those with direct experience using the system. These comments are then weighed and assessed on whether they fall into one or more of the 3 core components necessary for an effective grievance system; 1) Mandate; 2) System; and 3) Capacity. The relationship between the 3 components can be viewed as hierarchical where mandate determines the system used while the system determines the capacity needed (see **Diagram 1** below).



**Diagram 1:** Components of a grievance mechanism.

For the establishment of a grievance mechanism, the endowment / authorisation /commission of specific authority, power and ability to conduct certain actions encompasses the definition of **mandate**. The mandate of the CS on paper can be described as the following:

- a) It is RSPO's framework for addressing complaints
- b) It is RSPO's body to ensure that there is fair, transparent and impartial resolution of conflicts arising from allegations of breaches of RSPO's laws, standards and codes
- c) It is the protector of RSPO's integrity

These roles<sup>7</sup> dictate the various functions and resources necessary to fulfil its mandate. These roles are then developed in a manner that should deliver the goals and becomes the **system**. The system is

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<sup>6</sup> RSPO webpage on the Complaints System: [http://www.rspo.org/en/complaints\\_system](http://www.rspo.org/en/complaints_system)

<sup>7</sup> The 3 key objectives that define the mandate are found under item 1.3 of RSPO's Introduction to the Complaints System, source: [http://www.rspo.org/en/complaints\\_system\\_introduction](http://www.rspo.org/en/complaints_system_introduction)

supposed to deliver the objectives and mandate given. In the RSPO, there are 4 main system components<sup>8</sup> identified; RSPO Secretariat, Dispute Settlement Facility, Complaints Panel and Certification System. Though not listed as a component, the RSPO Executive Board (EB) is the primary oversight and decision making body of the Complaints System.

The final part of the system is the process / procedure by which it operates and adheres to. Based on the specific mandate, the system should aim to ensure the realisation of all 3 objectives. RSPO has a process flow that is provided on its website, as well as a schematic drawing to aid understanding of the CS.

**Capacity** is defined as the various human and other resources necessary for the system to function and discharge its duty based on the mandate given. The RSPO CS places the overall management and running of the CS under the responsibility of the Secretariat. The main CS and DSF co-ordinator is part of the RSPO Secretariat structure. Recent news of restructuring to streamline RSPO's efforts on a range of stakeholder-driven issues, including an "Impact Unit" that includes the CS<sup>9</sup>, demonstrates the continued efforts to adapt to changing situations and adjusting resources to better cope with trends.

As opposed to being the functionary body, the Complaints Panel (CP) is carefully drawn up to reflect the RSPO's identity (targeting objective c above [protect RSPO credibility]), acts as the body that deliberates and decides on cases. The role broadly encompasses assessment and establishing a *prima facie* case, recommends the pathway for case resolution, suggested actions and will listen to cases if other routes are exhausted. The CP may suggest binding advice but ultimately needs sanction from the EB.

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<sup>8</sup> Source: [http://www.rspo.org/en/system\\_components\\_and\\_terms\\_of\\_reference](http://www.rspo.org/en/system_components_and_terms_of_reference)

<sup>9</sup> The creation of an Impact Unit was confirmed by the RSPO Secretariat during discussions at the meeting held with the RSPO Secretariat.

## 2. Grievance mechanisms

Publicly-accessible grievance mechanisms are incorporated into various sectors to varying degrees of intensity and resource dedication. Grievance mechanisms are used in government as a focal point for public feedback on policies and implementation. They are also used in service-related matters, whether government or private sector service providers, as a way for public redress and gathering feedback. Many multi-national enterprises have grievance mechanisms in place to help ensure an avenue exists for getting public feedback or to manage disputes. RSPO members are required to have grievance mechanisms in place, as specified in the RSPO Principles and Criteria i.e. Criterion 6.3: There is a mutually agreed and documented system for dealing with complaints and grievances, which is implemented and accepted by all affected parties.

Third-party certification is widely seen as a tool to offer the most credible assurance system for verifying product or service claims. The key elements of such schemes include:

- a) the existence of a central standard that is used for conformance auditing by a third-party group,
- b) the issuance of a conformity certificate, and,
- c) use of the certificate in products or as purchasing requirements
- d) mechanisms to challenge certification decisions and other forms of remedy

The growth of multi-stakeholder initiatives is now being tested since many civil society groups see their systems as a way for addressing social and environmental ills caused by the contentious industries they represent. The decreased regulatory role of government and globalisation of trade has further contributed to the proliferation of certification labels and standards. The standard logic for certification is rooted in applying market economics to shift global patterns of consumption, thus impoverishing the bad actors in the market while dangling the carrot of market premiums to drive improved practices. The formative and initial phases of these schemes focus on defining its role through the promulgation of a set of standards. The vehicle of delivery is commonly through certification. As theory becomes practice, consolidation becomes the natural next-step with focus shifting to auditing, marketing and gaining market-share. The area of developing and operating an effective system for grievance management may not be an area of priority because a stringent grievance mechanism may negatively affect its attraction to producers or supply chain members.

Such an observation is in line with Huijstee's guide for civil society engagement of multi-stakeholder initiatives:

*To date, grievance mechanisms within Multi-Stakeholder Initiatives (MSIs) have generally received less attention than many other elements, such as code development and social auditing. There is, however, an increasing recognition that grievance mechanisms form a crucial element for effective MSIs, coming in part from the increasing recognition of the inherent limitations of social auditing.*<sup>10</sup>

Scheme owners like RSPO in particular have received a large volume of complaints owing to the recognition that traditional options for redress are resource draining or require broader alliances to become effective. These methods do not include mitigating problems as integral to the outcomes.

While steps in the right direction, engagement of stakeholders impacted by business practices cannot be tackled by certification alone. There are responsibilities inherent upon corporate actors to adopt and

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<sup>10</sup> Source: Huijstee, M v. Multi-stakeholder initiatives: A strategic guide for civil society organizations. March 2012. Stichting Onderzoek Multinationale Ondernemingen, Amsterdam,

apply principles of socio-environmental stewardship as well as corporate governance in their operations. In addition, stakeholder engagement requires continued channels for dialogue and feedback of views or concerns to corporations. The role of a grievance mechanism that is available to stakeholders, which is viewed as credible or fair, becomes an essential component. The reason why a robust and trustable mechanism is necessary is underscored by the Corporate Social Responsibility Initiative of the John F. Kennedy School of Government, Harvard University:

*...a key touchstone for a thorough understanding and analysis of how a company's stakeholders are being impacted and how best to address those impacts must be precisely those constituencies affected. It is perhaps only through robust grievance mechanisms providing constant point of recourse that this crucial source of information can be reached. They are the bottom-up mechanisms that need to complement the much more prevalent top-down systems (i.e. audit and certification) with which most companies are familiar.<sup>11</sup>*

On June 16, 2011, the United Nations Human Rights Council unanimously endorsed the Guiding Principles for Business and Human Rights (UNGPs), a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. Its core provisions on the corporate responsibility to respect human rights were also incorporated into a new human rights chapter in the OECD Guidelines for Multinational Enterprises, ISO 26000, the new Sustainability Policy of the International Finance Corporation, and the European Union's new Corporate Social Responsibility Strategy and more recently also by RSPO's latest Complaints System documentation. The Guiding Principles enjoy the strong support of international businesses and civil society organizations.

In Ruggie's report to the UN, specific attention was placed upon multi-stakeholder initiatives having credible and working grievance-addressing mechanisms, either at the organisational or individual company level. In fact, Ruggie views the need for credible grievance mechanisms as fundamental, stating that the "legitimacy of such initiatives may be put at risk if they do not provide for such mechanisms". The further application of Ruggie's Principles by RSPO is further elaborated in **Section 3.2: The role and objectives of the RSPO Complaints System.**

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<sup>11</sup> Source: Corporate Social Responsibility Initiative. 2008. "Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders." Corporate Social Responsibility Initiative Working Paper No. 41. Cambridge, MA.: John F. Kennedy School of Government, Harvard University.

## 3. RSPO's Complaints System

### 3.1 Origins

The RSPO developed its grievance mechanism in late 2006 to address complaints made against RSPO or RSPO Members. Reference to this Grievance Procedure (GP) is specifically found in the RSPO Code of Conduct for Members under Article 5.3. It is also found in the RSPO Code of Conduct for Supply Chain Associates, Article 5.3. Prior to the establishment of the GP, there already was an internal mechanism within the RSPO Executive Board (EB) that would be triggered upon a complaint, grievance or disagreement being registered with the EB named the Arbitration Panel.

The very first case handled by the original Grievance Panel (composed of EB members and one non-EB member) in 2007 was a complaint brought forth by Friends of the Earth Netherlands, KONTAK Borneo and Lembaga Gemawan against Wilmar International Ltd. Since then, RSPO has continued to receive cases through various channels. Prior to the commencement of the GP, the EB handled a grievance involving its then EB member, PT Musim Mas, in 2005.<sup>12</sup>

### 3.2 Role and objectives

The RSPO Complaints System (CS) was created to address “complaints against RSPO and its members in a manner that is reflective of the nature, mission and goals of RSPO”<sup>13</sup>. The CS acts as the focal point for any grievance submitted against RSPO or its members, and the main body for ensuring resolution of non-conformance of RSPO's own rules and regulations<sup>14</sup> as brought forth by complainants.

RSPO describes the CS as a way to ensure a “fair, transparent and impartial process to duly handle and address complaints against RSPO members or against the RSPO system itself”<sup>15</sup>. The RSPO Secretariat is responsible for the management, administration and running of the CS<sup>16</sup>, including managing complaints as they arrive as well as monitoring its own competence and performance managing the CS. Oversight is by the EB. It is important to note that requirements for a grievance mechanism exist in ISEAL's (of which RSPO is a member of) own Standard-Setting Code (see **Box 1**). RSPO's current CS meets and exceeds ISEAL's general code on resolving complaints.

The RSPO also sets out that its own reference for developing a grievance mechanism are those set out in the United Nations "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework"<sup>17</sup>(UNGP). Specifically RSPO's CS references Principle 31 of the UNGP (Effectiveness Criteria for Non-Judicial Grievance Mechanisms), which forms part of the UNGP's Principles on “Non-State-Based Grievance Mechanisms”. Principles 28 -31 form this section of the UNGP and are provided in **Box 2**.

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<sup>12</sup> Source: <http://asianfoodworker.net/indonesia/060213musimmas.htm>

<sup>13</sup> Source: [http://www.rspo.org/en/complaints\\_system\\_introduction](http://www.rspo.org/en/complaints_system_introduction)

<sup>14</sup> The rules and regulations stated on RSPO's complaints system webpages include RSPO Statutes, By-laws, motions approved by the General Assembly, or any other approved articles, including the Principles & Criteria for Sustainable Palm Oil Production, National Interpretations of the P&C, New Plantings Procedure, Certification System, Trade and Traceability and for Communication and Claims rules and RSPO Code of Conduct.

<sup>15</sup> Source: [http://www.rspo.org/en/complaints\\_system\\_introduction](http://www.rspo.org/en/complaints_system_introduction)

<sup>16</sup> Specific tasks and details of the scope of the Secretariat's role is provided in the Terms of Reference and can be found under Section 2.1 of the RSPO website here:

[http://www.rspo.org/en/system\\_components\\_and\\_terms\\_of\\_reference](http://www.rspo.org/en/system_components_and_terms_of_reference)

<sup>17</sup> Source: [http://www.rspo.org/en/complaints\\_system\\_introduction](http://www.rspo.org/en/complaints_system_introduction)

## BOX 1: ISEAL Code of Good Practice for Setting Social and Environmental Standards (Standard-Setting Code)<sup>18</sup>

### 4.4 Resolving Complaints

4.4.1 Standard-setting organisations shall have in place a complaints resolution mechanism for the impartial handling of procedural complaints. Interested parties shall have access to this complaints resolution mechanism.

4.4.2 Standard-setting organisations shall make impartial and documented efforts to resolve complaints, based on their publicly documented complaints resolution mechanism. Decisions taken on complaints shall be disclosed at least to the affected parties.

*The two elements of complaints resolution that make it credible are that it is impartial and that it is documented. Impartial means that it is based on a consistent procedure that does not favour one party over another. A documented effort means that the decision-making process and resulting decision are written down and made available to all those who request them.*

*A distinction between substantive and procedural complaints is necessary to avoid frivolous complaints. Substantive complaints relate to the content of the standard and should be dealt with through the standard development or revision process. Procedural complaints relate to the way in which the standard was developed. These can include complaints about the process for deciding on the content of the standard, but not about the content of the standard itself*

## BOX 2: UNGP's Effectiveness criteria for non-judicial grievance mechanisms

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;
- (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;
- (c) **Predictable:** providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (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;
- (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;
- (f) **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognized 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;

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.

<sup>18</sup> Source: Setting Social and Environmental Standards v5.0: ISEAL Code of Good Practice, as found on <http://www.isealalliance.org/sites/default/files/Standard-Setting-Code-v5.0.pdf>

### 3.3 Evolution of the system

Since its inception as the RSPO Grievance Procedure (GP) in 2007, the Complaints System (CS) has evolved and expanded in line with the growth and evolution of the RSPO itself. By 2010, RSPO had started to communicate publicly about some grievance cases brought against its members. In addition, specialised capacity to manage grievances in the RSPO Secretariat was also started in 2010. In 2011, RSPO started attaching a Dispute Settlement Facility (DSF) to the functions of the Secretariat. As a facility, the DSF aims to promote dialogue and mediated negotiations through providing a support structure that is relatively neutral to the disputing parties. Emphasis was originally at addressing land-related conflicts between local communities and companies<sup>19</sup>. It may be viewed as RSPO's recognition of the volume, complexity and resource needs of cases involving land disputes between local communities and RSPO producer members.

By 2012, RSPO had expanded and elaborated on the original GP model into the current CS as published on the RSPO website. Information on the general workings of the CS, its components, timelines, a flow-chart, terms of reference for the Complaints Panel, a complaints form, and active complaints case updates is currently provided on a dedicated RSPO webpage<sup>20</sup>.

### 3.4 Current Complaints System (September 2013)

The RSPO Secretariat is the primary functionary of the Complaints System (CS), managing the system and Complaints Panel (CP). It is “the body that is responsible for coordination, administration, and communications for all aspects of the RSPO system, including the Complaints System”.<sup>21</sup> The Secretariat maintains a primarily administrative and process management role in the CS. The Secretariat is the gateway for any grievances to enter the RSPO CS. It acts as the point-of-contact with members and external stakeholders and receives any complaints. It also acts as the first stage for assessing the validity of any case.

The CP is the decision-making body of the RSPO CS<sup>22</sup>. The CP is tasked with deliberating, investigating and determining the course of action, culpability and strength of arguments put forth in any given case. Its composition shares a similar philosophy to that applied for the RSPO EB. The RSPO designed the panel as a 5-person body with balanced representation from the key chambers. The CP is composed of 4 EB members and 1 affiliate member only<sup>23</sup>. Conflicts of interest are “reviewed” while alternates are invited at the Panel's discretion. Reviews on conflicts of interest would be tricky as supply-chain relationships or commercial ties are not uncommon between downstream panellists and upstream defendants.

A complaints submission needs to refer to specific RSPO laws, specific grievance, expected action / outcome and other details as provided on the RSPO website<sup>24</sup> as conditions for submission. Based upon

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<sup>19</sup> Source: Chao, Sophie. 2013. The Roundtable on Sustainable Palm Oil (RSPO) and complaint resolution: Guidance on submitting a complaint for civil society organisations and local communities. Forest Peoples Programme, United Kingdom. Page-14. As found on:

[http://www.rspo.org/file/The%20RSPO%20%20Complaint%20Resolution\\_Guidance%20for%20Civil%20Society%20Organisations%20%20Local%20Communities.pdf](http://www.rspo.org/file/The%20RSPO%20%20Complaint%20Resolution_Guidance%20for%20Civil%20Society%20Organisations%20%20Local%20Communities.pdf)

<sup>20</sup> RSPO webpage on the Complaints System: [http://www.rspo.org/en/complaints\\_system](http://www.rspo.org/en/complaints_system)

<sup>21</sup> Source: [http://www.rspo.org/en/system\\_components\\_and\\_terms\\_of\\_reference](http://www.rspo.org/en/system_components_and_terms_of_reference)

<sup>22</sup> See section 2.4.1: Purpose. Source: [http://www.rspo.org/en/system\\_components\\_and\\_terms\\_of\\_reference](http://www.rspo.org/en/system_components_and_terms_of_reference)

<sup>23</sup> See section 2.3.2: Composition. Source:

[http://www.rspo.org/en/system\\_components\\_and\\_terms\\_of\\_reference](http://www.rspo.org/en/system_components_and_terms_of_reference)

<sup>24</sup> Sources: [http://www.rspo.org/en/complaints\\_system\\_introduction](http://www.rspo.org/en/complaints_system_introduction) See section 1.4 - Basis. See also [http://www.rspo.org/en/process\\_flow](http://www.rspo.org/en/process_flow) for further requirements and narrative explanation of the processing scenario.

information publicly available through RSPO, the following briefly describes the CS. After first screening by the Secretariat, a case would be presented to the CP, which would “assign” it to 4 potential pathways. It is important to note that RSPO requires that attempts at bilateral dialogue and negotiations be exhausted before the complainant approaches RSPO. If that and other conditions as referenced here are met then they are submitted to the CP. The potential pathways include:

- a) DSF: It may be deemed a case for DSF mediation procedures or that is the sought outcome.
- b) Certification Body: Complaints against a certificate are channelled through available Audit company grievance mechanisms. Further recourse may be sought through Accreditation Systems International (ASI).
- c) Recommendation that one-on-one negotiations be carried out to resolve matter.
- d) CP makes a decision on the merits of evidence, and if there is basis then the case escalates according to the CS flow-chart<sup>25</sup>.

The ultimate sanction against an RSPO Member may be expulsion from membership due to a complaint. In RSPO’s history, only Duta Palma Nusantara had its RSPO Membership terminated owing to a grievance filed against them<sup>26</sup>. That case took 4 years before it was closed.

The RSPO has uploaded a new feature, a Complaints Form<sup>27</sup>, which encourages potential complainants to use a standardised format that helps expedite responses from the Secretariat but does not seek complainants’ input for resolution. More recently, the Secretariat has notified the participants of the workshop of the intention of RSPO to “expand and diversify membership of the Complaints Panel”. This move to further reduce potential conflicts of interest and the invitation to stakeholder representatives to become a member of the Panel is favourable and evidence of another step RSPO is taking to try to address concerns over the integrity and credibility of its CS.

### 3.5 Current Dispute Settlement Facility (September 2013)

The DSF is an RSPO mechanism that has its beginnings with the RSPO Task Force on Smallholders (STF). The establishment of the DSF is evidence of the large volume of conflict cases involving social stakeholders and land issues that require a mediated solution. The DSF is a branch of the Complaints System (CS). Its stated goals are twofold:

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

The appreciation of the most prevalent issues facing RSPO’s implementation of its system amongst producers; i.e. illegality, land claims, ensuring Free, Prior and Informed Consent (FPIC), and respect for land rights, is the motivation for the forming of the DSF. The types of conflicts that the DSF is applicable are listed yet there is provision for virtually any type of conflict to be brought to the DSF for mediation assistance<sup>28</sup>. Like the CS, the DSF is directly under the EB’s oversight while the Secretariat administers

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<sup>25</sup> For a proper elaboration of the process-flow, consult this page: [http://www.rspo.org/en/process\\_flow](http://www.rspo.org/en/process_flow) Further information is provided in the link to a PDF document showing the schematics of the process flow.

<sup>26</sup> Source: [http://www.rspo.org/file/Letter\\_to\\_Dutapalma\\_NusantaraTermination\\_9May2013CPRKFinal.pdf](http://www.rspo.org/file/Letter_to_Dutapalma_NusantaraTermination_9May2013CPRKFinal.pdf)

<sup>27</sup> Downloadable form provided through link on this source: [http://www.rspo.org/en/complaints\\_form](http://www.rspo.org/en/complaints_form)

<sup>28</sup> For more elaboration of the DSF, read: <http://www.rspo.org/en/Framework>

and manages the Facility. Further support and advice is provided through a Dispute Settlement Facility Steering Committee<sup>29</sup> and a guidance group.

Hallmarks of the DSF include requiring both parties' consent on mediator appointments and actual mediation while costs are to be shared between both disputants. Negotiators / mediators are selected from a pool provided by RSPO and these third-party actors report directly to the Secretariat. Negotiations are not surprisingly confidential. The DSF may also recommend bilateral discussions depending on specific conditions of cases.

The DSF also performs other tasks and holds responsibility for ensuring mediated or other "sponsored" processes are running accordingly. Some of the other parts of the DSF include<sup>30</sup>:

- a) Capacity building to support better mediated negotiations
- b) Maintaining and publishing an approved list of mediators based on the DSF requirements
- c) Housing and management of confidential or sensitive information that pertains to negotiations done through the DSF.
- d) Some general monitoring of the performance of the DSF.

The detailed procedure of the DSF is publicly available on the RSPO website<sup>31</sup>.

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<sup>29</sup> Source: [http://www.rspo.org/en/terms\\_of\\_reference](http://www.rspo.org/en/terms_of_reference)

<sup>30</sup> For more details on the other functions of RSPO read Section C – F here: [http://www.rspo.org/en/terms\\_of\\_reference](http://www.rspo.org/en/terms_of_reference)

<sup>31</sup> Source: <http://www.rspo.org/en/protocol>. For more details on the specific steps read this page, and schematic in PDF of process is also linked to this source.

## 4. Key issues and problems with RSPO's Complaints System

*Poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.*<sup>32</sup>

- Prof. John Ruggie

Handling complaints will be the biggest, most pressing priority for RSPO in the coming years. For instance, it was revealed at the workshop that in Central Kalimantan alone, potentially over 200 individual land-rights based cases of conflict are active, including RSPO producers<sup>33</sup>. A functional grievance mechanism must be integrated into the certification scheme's functions and roles. In order to do that it needs to have a clear role (i.e. at the core it is a feedback mechanism and check against the issuance of certificates of conformity) while key elements need to be in place that supports the effective and successful operation of a grievance mechanism.

### 4.1 General observations

Observations made in this section are based upon feedback received through all research channels utilised. The observations of RSPO's Complaints System (CS) provide the overarching symptoms that are a result of weaknesses of the CS.

#### **Observation 1: Backlog of complaints cases filed with RSPO**

As of end-September 2013, it was confirmed that RSPO has received over 50 complaints cases since it became operational in 2007<sup>34</sup>. However, only 22 cases are currently officially listed on the RSPO Complaints website as of late August 2013. Twenty complaints cases, even dating back to 2009, remain open cases.

The 22 cases do not include all other complaints submitted to the RSPO that were never posted on to the RSPO website. While it is possible some complaints were rejected on clear grounds, there is no clarity of what has happened to these "missing" complaints.

#### **Observation 2: Very low success rate of resolving complaints cases demonstrated**

Of the 22 listed cases on RSPO's website, only 2 have been formally closed by RSPO:

- a) Duta Palm Nusantara<sup>35</sup>, and
- b) PT Agronusa Investama (subsidiary of Wilmar)<sup>36</sup>

Taken as a percentage, successful closure of cases was only achieved in less than 10% of all cases posted (and recognised) by RSPO (22), or less than 5% of all cases submitted to RSPO (50+).

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<sup>32</sup> Source: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

<sup>33</sup> This point was made by Kalimantan based NGO Save our Borneo (SOB) at the workshop.

<sup>34</sup> Total cases confirmed by RSPO's Complaints Co-ordinator at the workshop were to be at over 50 cases.

<sup>35</sup> The decision made by the EB was to terminate membership as provided in the last update on RSPO's case-tracking page for Duta Palma. Source:

[http://www.rspo.org/file/Letter\\_to\\_Dutapalma\\_NusantaraTermination\\_9May2013CPRKFinal.pdf](http://www.rspo.org/file/Letter_to_Dutapalma_NusantaraTermination_9May2013CPRKFinal.pdf)

<sup>36</sup> The decision to close the case as satisfactory was made by RSPO through a public letter posted on RSPO's case tracking page for PT AI. Source: [http://www.rspo.org/file/PT\\_Agronusa\\_Investama-Wilmar\\_Closure22Mar2013.pdf](http://www.rspo.org/file/PT_Agronusa_Investama-Wilmar_Closure22Mar2013.pdf)

### **Observation 3: Very long delays experienced in moving cases forward**

Cases brought to RSPO for adjudication and resolution are time-sensitive and information provided often evolves in cases as the fluidity of the situation at ground level alters in a conflict scenario. For example, timely intervention from RSPO is crucial in cases where there are allegations of clearance of HCV areas to facilitate investigation into the facts and to immediately halt further damage. Cases have experienced long turnaround times, while attempting to monitor progress via RSPO's case-tracking via the Status of Complaints webpage does not inform on whether progress follows a time-bound action plan. Some cases remain open for years, including the following:

- a) Golden Agri Resources (GAR – since 2010), including PT Kresna Duta Agro Indo (2011).
- b) PT Asiatic Persada (2011) that has since been sold by Wilmar.
- c) IOI Plantations (2010)
- d) PT PP London Sumatra (2009)

### **Observation 4: Perceived lack of transparency in the entire RSPO Complaints System**

Transparency is the cornerstone of a credible and effective grievance mechanism. It is also a principle that is applicable throughout the system. Instances of lack of transparency demonstrated can be seen in all aspects of RSPO's CS. Specific areas of concern are identified further in the discussion on "Lack of Transparency Demonstrated by RSPO" in **Section 4.2: Root Problems**.

### **Observation 5: Loss of trust by users of the RSPO Complaints System**

The 4 previous observations have led to several respondents to the survey and workshop participants expressing their deep disappointment with RSPO and its CS, and subsequently loss of trust in RSPO. Both RSPO's NGO and Producer members made these comments.

## **4.2 Root Problems**

Issues or problems caused by factors outside of the RSPO CS are categorised here as they play a fundamental, over-arching or root role. They essentially underpin or provide the foundation for the CS to operate.

### **Poor Quality of Certification Audits & Checks, and other Supporting Systems**

A majority of the subject matter for cases submitted to RSPO involve environmental (biodiversity conservation, High Conservation Values) and/or social (land rights, Free Prior & Informed Consent, social conflict) issues that are expressed as criteria for RSPO Members to comply to. Concepts like Free, Prior & Informed Consent (FPIC) and High Conservation Values (HCVs) are understood as essential elements of the RSPO Principles & Criteria (P&C).

Examples of gaps mentioned by research participants include the need for better HCV 5 & 6 guidelines for company implementation. A survey participant cited how the current wait for the adoption of a functional compensation mechanism will only serve to drag cases along because there is no official guidance at the moment (September 2013).

Grievances have also been brought forth against RSPO certificates. These complaints, though not part of this study, are important to recognise as it is indicative of the level of quality and performance certifying bodies are at in terms of assessing social and environmental criteria.

Increasingly CBs that are familiar with a particular company through their audits of that company are being engaged to provide definitive opinions on their performance. Seemingly innocuous and impartial, such practices have come under scrutiny and questions over their impartiality and conflict of interest have been raised by stakeholders and complainants. For example SGS's New Plantings Procedure report on IOI's subsidiaries in Ketapang raised questions on the impartiality and credibility of their

“independent” assessment. Conflicts of interest are already apparent, since CBs are forced to provide an opinion regarding a complaint against a company for whom they have certified (and were paid for by the company)<sup>37</sup>.

### **Lack of transparency demonstrated by RSPO**

On paper RSPO aims to operate in a transparent manner. It is the first Principle in RSPO’s P&C. It is included in the Code of Conduct as Principle 2. Transparency is a pillar for ensuring the credibility of RSPO to consumers and stakeholders alike.

Within the RSPO CS, two instances were reported where, only when requested, RSPO provided complainants with essential correspondence from case defendants. However, information was provided under strict conditions of confidentiality<sup>38</sup> – an untenable position considering that complainants would need to consult their respective constituents and affected parties to reach agreements. While confidentiality is recognised as necessary for mediated negotiations, the prevailing approach to be transparent should be expected.

### **Delays or Poor Responsiveness from RSPO**

On paper, the current RSPO CS sets clear deadlines as well as articulates the role of the Secretariat in managing cases<sup>39</sup>. However in practice, there is little demonstrable evidence that this is adhered to strictly or consistently while experience from stakeholders makes the case that the Secretariat takes a passive role in managing complaints cases; where they constantly need to be pushed and asked beyond deadlines for information on case progress or providing a defendants’ response letter.

80% of questionnaire survey respondents (including 100% of defendants) expressed “a lack of, delay in or non-satisfactory communications in general” on the part of RSPO. In addition, 53% of respondents felt there was a “lack of updates on case developments provided” by RSPO. A further 93% of survey respondents claimed that “no/lack of clear timelines/deadlines were provided/followed” by RSPO during the handling of their cases (see **Box 3**). These sentiments were similarly echoed by the majority of workshop participants.

Such delays in handling highly urgent matters are clearly and negatively impacting the situation on the ground. Cases are also fluid in nature (see **Box 4**) and time is of the essence for many stakeholders’ struggles.

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<sup>37</sup> Such observations by complainants are corroborated by research from academic studies. Source: Rees, Caroline. 2008. “Grievance Mechanisms for Business and Human Rights: Weaknesses and Gaps.” Corporate Social Responsibility Initiative, Working paper No. 40. Cambridge, MA: John F. Kennedy School of Government, Harvard University.

<sup>38</sup> Conditions of confidentiality were initially imposed on Environmental Investigation Agency (EIA) for their complaint against First Resources Ltd. Source: <http://www.eia-international.org/our-work/ecosystems-and-biodiversity/forest-loss/muara-tae> see entry for 25th January 2013.

<sup>39</sup> Current RSPO CS guidelines as shown in the “Complaints procedure flowchart” state timelines for steps in each step that requires a follow-up action. The flowchart can be accessed here: <http://www.rspo.org/file/Flowchart%20complaints%20procedure.pdf>

### BOX 3: What the people are saying

#### Survey to gather feedback on RSPO's Complaints System

A total of 15 completed questionnaires were received, including 13 from complainants and 2 from defendants. It is noted that some complainants and defendants provided feedback on multiple cases since they are actively involved in more than one case. In conclusion, feedback/responses were received from individuals and organizations involved in 18 out of a total of 27 individual cases (67%) identified for the purpose of this research.

#### Survey results

Survey results presented below demonstrate stakeholder sentiments on several issues related to their experience with RSPO's Complaints System in order of highest frequency to lowest:

**93%** felt that no/lack of clear timelines/deadlines were provided/followed by RSPO

**80%** experienced a lack of, delay in or non-satisfactory communications in general on the part of RSPO

**67%** perceived a lack of capacity/resources from RSPO in general and especially for ground investigations

**60%** perceived that the RSPO, especially the Secretariat, was not professional/fair in the handling of their cases

**53%** felt there was a lack of updates on case developments provided by RSPO

### BOX 4: Too little, too late

Time-sensitive cases involving critical biodiversity issues, like those that typify the 2 complaints lodged by the Sumateran Orangutan Society (SOS) and International Animal Rescue (IAR) concerning orangutan habitat destruction, require swift and decisive stop forest clearance orders to prevent potentially irreversible forest clearance of orangutan habitat (a High Conservation Value area under RSPO's requirements) that cannot be mitigated. Instead, RSPO's failure to grasp the urgency of the issues raised and to apply its own minimum standards in these cases has now resulted in irreversible biodiversity loss and a further strain on NGOs limited resources to mitigate environmental damages inflicted by its own members.

#### Complaint on PT Sisirau (PT Ibris Palm)

A complaint was submitted by SOS against RSPO Member PT Sisirau (PT Ibris Palm) and filed by RSPO in October 2012. The allegations are that PT Sisirau cleared forest land on their concession in Aceh, Sumatra, Indonesia, which was supporting a population of critically endangered orangutans, leading to starvation of the primates. Due to the presence of orangutans in the area, it is considered as High Conservation Value forest, and must be protected, according to the Indonesian interpretation of the HCV toolkit and the RSPO P&C. Specifically, the company is alleged to have breached RSPO Principle 5: Environmental Responsibility & Conservation of Natural Resources and Biodiversity<sup>40</sup>.

Seven orangutans were evacuated from the concession between February and September 2012 by SOS, and a central point of their complaint is that the company continued forest clearing and operations despite knowing that there was a population of a critically endangered species present within their concession. No HCV assessment to determine the extent of the population or the most appropriate management interventions to address the problem was carried out.

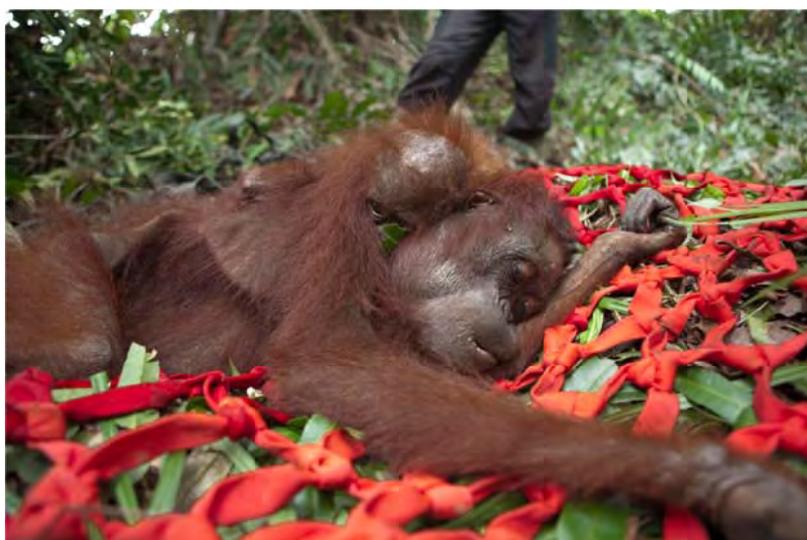
SOS felt that RSPO has been a passive actor. The main action proposed by RSPO is for an assessor go into the plantation to perform an HCV survey. However, for the complainant, a survey at this point will not undo the damage and/or help conserve the orangutans. In addition, it took 10 months from the submission of SOS' complaint for the RSPO to engage this third party assessor – an unacceptably long time.

<sup>40</sup> Source: [http://www.rspo.org/en/status\\_of\\_complaint&cpid=22](http://www.rspo.org/en/status_of_complaint&cpid=22)

### **Complaint on PT Ladang Sawit Mas (a subsidiary of RSPO member Bumitama Gunajaya Agro)**

Friends of Borneo and IAR jointly submitted a complaint against RSPO member Bumitama Gunajaya Agro (BGA), which was filed by RSPO on 8 April 2013. The allegations are PT Ladang Sawit Mas (LSM) has cleared HCV forest containing orangutans in Ketapang, West Kalimantan, Indonesia, thus breaching Principle 5: Environmental Responsibility & Conservation of Natural Resources and Biodiversity and Principle 7: Responsible development of new plantings<sup>41</sup>.

LSM's concession is located within a forest buffer next to Gunung Palung National Park, an area that hosts one of the largest populations of Central Bornean orangutan (*Pongo pygmaeus wurmbii*) in West Kalimantan. As of April 2013, IAR and government conservation staff rescued four orangutans, including a pregnant adult and a baby, from the concession. Karnele Llano Sanchez, Executive Director of IAR Indonesia Foundation, said: "We were appalled to see the condition of these rescued orangutans. All of them had gone through long periods of starvation before we rescued them, as the area where they were found, since the company had cleared most of the forest, was too small to provide them with enough food."<sup>42</sup>



An adult female orangutan who was rescued with her baby by IAR Indonesia in Ketapang, March 2013<sup>43</sup>.

RSPO and BGA's latest joint statement released on 24 September 2013<sup>44</sup> (6 months after RSPO accepted the case), states that agreed actions include conduct a land use change analysis, submit a time bound plan, monitor remaining orangutans and comply with RSPO's New Planting Procedure. The action plan does not address the core of the complaint. The situation on the ground is reflective of actions that are "too little, too late". According to IAR, delays with RSPO's Complaints System, specifically citing the burden of proof placed on IAR despite submission of detailed evidence, and RSPO's subsequent failure to take the urgent action to immediately stop forest clearance by its member have resulted in only 26 hectares of forest left in 5 disconnected patches, an impossible situation for survival of orangutans. A straightforward demand for BGA to stop forest clearance followed by firm enforcement of that demand by RSPO would have avoided an environmental disaster of this magnitude.

In addition, the IAR team is currently facing difficulties to relocate any remaining orangutans due to the animals' stressed conditions as well as IAR's own resource limitations. IAR feels that they are unfairly pressured to have to source for additional funds to "fix the company's problems".

More recently, in September 2013, a joint statement by the defendant and RSPO was publically released on the case without prior consultation or notification to the complainants.

<sup>41</sup> Source: [http://www.rspo.org/en/status\\_of\\_complaint&cpid=31](http://www.rspo.org/en/status_of_complaint&cpid=31)

<sup>42</sup> Source: <http://www.eia-international.org/conservationists-urge-rspo-member-to-cease-rainforest-destruction-after-starving-orangutans-rescued-from-concession>

<sup>43</sup> Source: <http://www.eia-international.org/wp-content/uploads/Ketapang-1-300x200.jpeg>

<sup>44</sup> Source: [http://www.rspo.org/file/PTLSM\\_Joint-statement\\_24Sept2013.pdf](http://www.rspo.org/file/PTLSM_Joint-statement_24Sept2013.pdf)

### Cherry-Picking Issues & Cases

Most complaints that arrive at RSPO contain more than 1 complaint subject. Often these issues may be inter-related as alleged actions of defendants breach across different P&C Criteria and/or Code of Conduct or other relevant laws. For example, land rights cases typically contain 2 key demands that are sought through RSPO; a) redress or compensation for loss of land and livelihood; and, b) sanction against the accused for breaching RSPO's rules. The first demands mediation while the second is adjudication. Alternatively, each complaint item may be inter-linked with other issues, such that all issues raised in the complaint needs to be comprehensively addressed to achieve a sustainable solution. In at least 3 cases, complainants claim that RSPO had chosen to selectively address a few issues but not the entire complaint as a whole. If these issues not addressed by RSPO were deemed invalid, this was not relayed to the complainants. In one example, the defendant has had its RSPO certificates reinstated on the promise to move ahead on mediated negotiations, but the other complaints points raised, including repatriation of remains of undocumented workers and rehabilitation of the community's sole water source, have never been addressed by RSPO (see **Box 5**).

Some experiences recorded by complainants having overseen or submitted multiple complaints observed that RSPO would accept some submissions while others were rejected with no adequate explanation or reason provided. This was raised specifically by one survey respondent that registered dissatisfaction by the lack of a proper explanation on why 2 of 3 cases filed have never been accepted.

#### BOX 5: Getting away scot-free

##### Complaint on IOI Corporation

In November 2010 a formal complaint was submitted to RSPO by the community of Long Teran Kanan (LTK), Sarawak, Malaysia against IOI Plantations. The case raised non-compliance by IOI on Art. 2.3 Code of Conduct (Engagement) and Art 4.2.4 Certification Systems (Partial Certification). The issues involved land rights, compliance with laws, HCV clearance, workers' rights and failure to meet agreed actions. The case was moved to the DSF but over the time taken community mandate was lost.

Outstanding issues over protecting HCVs (water source, burial grounds) and conditions that IOI suspend its legal appeals were not complied or enforced, leaving complainants with an untenable position. RSPO has remained silent on complainants demands that IOI be compelled to adhere to legally binding recommendations from the Environmental Impact Assessment (EIA) that included specifics on land ownership parcelling for communities in the disputed area<sup>45</sup>.

During the case, IOI remained an EB member. This gave IOI unparalleled access to the RSPO Complaints Panel and created a sense that the case was prejudiced from onset amongst complainants and external observers. Whether true or not, the perception of partiality and undue influencing is unavoidable. The action plan focussed on mediation and negotiations, a low hanging-fruit solution that negates the need for the EB to investigate its own member and pass judgement. The EB took on additional roles when the DSF was used – the EB was now mediator and negotiator as well. A back-door deal in which IOI would fund mediation without prior consultation with LTK further entrenched stakeholder perceptions of the conflict of interest within the EB.

LTK has now lost all legal avenues and IOI upholds its injunction against 11 villagers which, if pursued, would completely impoverish the community. RSPO's Complaints System and DSF are now the community's only remaining hope.

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<sup>45</sup> The issue was raised by complainants to RSPO for explanation in 2012 as part of their reiteration of their commitment to negotiate with IOI on fair terms. See bullet 3 from here: [http://www.onegrassroots.org/POMI\\_files/23%20Aug%202012%20Complainants%20Letter%20to%20RSPO%20GP%20%26%20DSF.pdf](http://www.onegrassroots.org/POMI_files/23%20Aug%202012%20Complainants%20Letter%20to%20RSPO%20GP%20%26%20DSF.pdf)



The Long Teran Kanan community continue asserting their native customary land rights in July 2013. Banner reads: Assembly to protest the actions of the Land Custody and Development Authority (LCDA) and IOI Pelita of trespassing on Native Customary Rights (NCR) land in Long Teran Kanan, Tinjar, Baram, Miri Division, Sarawak. Source: Philemon Mallang Jok, LTK community.

### **Weaknesses of Complainants, NGOs and Communities**

RSPO is one potential avenue for stakeholders to seek redress in the context of the palm oil sector. Other avenues may offer more solidity (e.g. legal route) but are usually too resource and time consuming. As such, some complainants and defendants' responses raised the issue of unrealistic or mismatched expectations of stakeholders to what can be achieved through the RSPO CS.

A key issue raised by defendants is the role of NGOs in general of not being constructive to the process. This may well be linked to the expectations of groups being raised to unrealistic levels due to lack of information and/or awareness.

Finally, NGO representatives for complainants or communities often act as proxy for local communities to help articulate and establish cases for RSPO's attention and action. However they often face the challenge of trying to maintain their mandate from the community or constituents during the course of negotiations prior to any direct dialogue or formulation of actions plans by the CP. Causes for this include changes to community views (that may also occur if cases drag on for a lengthy period) and difficulty in accessing and deliberating proposals with communities (this can be either a physical challenge, resource or capacity related issue). If RSPO does not handle the case as laid down in its own procedures, it becomes impossible for these NGOs to explain RSPO's inconsistencies to the communities they support and are accountable to.

### 4.3 Mandate Issues

Having the right mandate in the right places is a critical precondition for any effective and equitable grievance system. Using Ruggie’s Principles as a guide, 2 key criteria stand-out as highly reflective of an effective mandate:

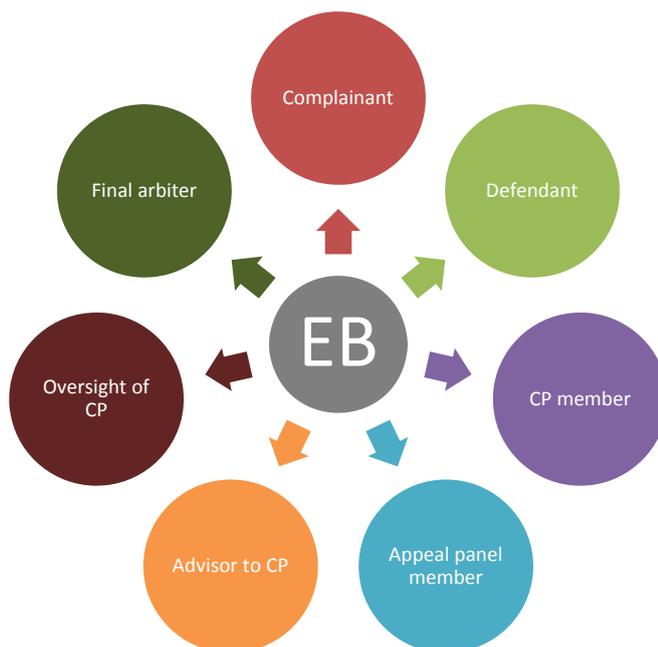
- a) It must ensure that it holds legitimacy with stakeholders. This would then translate into other systemic criteria being fulfilled. They include predictability, equitable approach, serve the credibility of the RSPO and effectively implement operational elements.
- b) Transparency to ensure greater belief in the system, while effectively learning and adapting.

The key issues identified by this report focus on the role of decision-making and political will. These are fundamental findings and can be considered as root issues when discussing the key issues and problems with RSPO’s Complaints System (CS). The effect of the mandate given will be reflected in how well the CS operates and capacity functions in meeting its objectives or role.

#### **Dilemma of the conflicts of interest within the RSPO Executive Board**

The RSPO is established in a model close to those of a parliamentary democracy. The government or governance is elected from its members through voting within each of the constituted interest groups. The RSPO Executive Board (EB) is the main governance body of RSPO. As such it is the key policy maker, including that for the CS. Its mandate is to ensure that the organisation runs smoothly and is aligned with RSPO’s vision, mission, rules, codes and binding policies. EB members represent their constituent interests and the culminating outcomes through negotiations results in policies that reflect the balance of interests. A relevant reflection of democratic institutions is the separation of the executive from judiciary powers. It is vital for ensuring check-and-balances to the CS and ensures there is recourse for breaches to the commonly agreed rules.

RSPO’s current structure has no clear delineation of roles, resulting in a corruption of the executive branch as the EB has to also shoulder responsibility for adjudication. The RSPO Executive Board, in its current structure, can simultaneously fulfil all of the following conflicting roles: Complainant, Defendant, Membership of the Complaints Panel, Appeal Panel, Advisor to the Complaints Panel, Oversight Body of the Complaints Panel, and Final Arbiter to determine ultimate sanctions (see **Diagram 2**).



**Diagram 2:** Roles of the RSPO Executive Board in the Complaints System.

The potential conflicts of interest are evident. Complainants and defendants to cases have expressed concern over the multiple roles of the EB, including switching roles during the course of a case, while the structure of the CP itself builds conflict of interest inherently into the structure – as all RSPO members are intrinsically supply-chain related.

For example, the EB filed its own complaint against PT Jatim Jaya Perkasa (PT JJP)<sup>46</sup>; the complaints panel would comprise of 4 EB members and an RSPO Affiliate Member. If PT JJP wanted to appeal the CP's decision, it would again face a panel comprising mainly EB members.

In addition, it must be highlighted that the RSPO's EB is made up of individuals from organisations that have other tasks and corporate duties to balance. It is not efficient for EB members to have to assume the intense and time-consuming undertaking for arbitration, mediation, adjudication and enforcement that is demanded by large numbers of complaints cases.

### **Not following the rules**

The rules of the CS provide the foundation for which complainants and defendants are able to act. It also spells out the roles, boundaries and conditions by which the Secretariat, CP, DSF and other CS-related parts function. It provides predictability, consistency and transparency to the CS, which translates to credibility with stakeholders and belief from RSPO Members.

Lack of separated and independent mandates in ensuring that the CP and Secretariat follow the rules is resulting in unpredictable procedures, arbitrary actions and unclear motives, leading to the perceived mistrust of the CS by complainants and defendants (both include RSPO Members) and loss of credibility.

Symptoms that have been identified include:

- a) The raising of a case from the EB without need for formal complaints as well as a perceived notion that those cases were expedited due to the EB (See **Box 6**).
- b) The inconsistent application of the CS adjudicating role to sanction Duta Palma Nusantara (expulsion<sup>47</sup>), not requested by complainants, yet not applied to other cases of similar recalcitrance, transgression or seriousness.

In many instances throughout the RSPO's existence, the common refrain from the EB has been "the RSPO is not the palm oil police"<sup>48</sup> in reference to the role and limitations of RSPO in managing grievances and providing redress to affected parties. It was stated to reflect the reality that RSPO has limited abilities to tackle every case, as well as limitations to what it can do to impose the RSPO rules upon its members. The RSPO Secretariat cited costs and resource issues as being the most critical challenge and cause of the minimal investigative role taken by the CP in many cases<sup>49</sup>. In addition, the CP relies heavily on the Secretariat to provide information relevant for either determining the validity of complaints or formulating any action plan. It should be noted that in spite of these limitations, when the RSPO Secretary General was recently asked if the RSPO's function is to mediate conflicts amongst stakeholders, the response was emphatic: "This is our biggest role."<sup>50</sup>

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<sup>46</sup> Source: [http://www.rspo.org/en/status\\_of\\_complaint&cpid=35](http://www.rspo.org/en/status_of_complaint&cpid=35)

<sup>47</sup> Source: <http://www.palmoilhq.com/PalmOilNews/rsपो-expels-indonesias-darmex-agro-for-violating-planting-rules/>

<sup>48</sup> Source: November 2008 EB meeting minutes (<http://www.rspo.org/en/file/EB0405-2008.pdf>) and February 2013 EB meeting minutes ([http://www.rspo.org/file/EBMinutesofMeeting\\_01-13.pdf](http://www.rspo.org/file/EBMinutesofMeeting_01-13.pdf))

<sup>49</sup> This was stated by RSPO Secretariat, at the meeting in September 2013. The key challenges were in costs of investigation, especially to sites that are physically far from the Secretariat. Expertise in local contexts was also cited as another major challenge for the RSPO to carry out proper and accurate investigations.

<sup>50</sup> Source: The 'Big Boys' Must Commit To Sustainable Palm Oil Production, Tempo, August 19-25, 2013

## BOX 6: Operating above the law

### Complaint on Golden Agri Resources

In December 2009, Unilever announced that it was suspending purchases from PT SMART (and hence also Golden Agri Resources) on account of a report from Greenpeace that linked massive deforestation in Indonesia attributed to SMART/Global Agri Resources (GAR)/Sinar Mas to plantations supplying Unilever<sup>51</sup>. While lauded by stakeholder groups for holding SMART accountable, Sinar Mas and GAPKI protested the action “of making a unilateral move to suspend purchases based on the report”<sup>52</sup>. The basis for the producers’ grievance can be traced to RSPO’s Code of Conduct (COC) Art. 5.1 and 5.3 that outlines the approach that RSPO Members should use in addressing conflicts or breaches to the COC.

In addition, a case was then brought against GAR in July 2010 through the RSPO CS<sup>53</sup> (even though GAR’s official RSPO membership only started in 2011<sup>54</sup>), which set a new precedent for “public domain” information to be admissible as a trigger for a complaint. The need to provide a *prima facie* case against SMART was also circumvented. Specifically, the source of the complaint (i.e. the Greenpeace report) was never shown to have been verified by Unilever or RSPO prior to a case being publicly announced.

This scenario was repeated in July 2013 with a case being brought against PT Jatim Jaya Perkasa by the EB<sup>55</sup>.

### Operational system that is not integrated through formalisation

RSPO’s CS is not mentioned within the language of RSPO’s By-laws and Statutes. The main references are to a grievance procedure as mentioned in the Code of Conduct and elsewhere. As it is not formally instituted or integrated into RSPO’s laws, it falls under the purview and responsibility of the EB. The lack of formalisation affects transparency, predictability and guidance. As it stands, the arrangement and relationship between the CS and EB creates further conflict of interest.

A structure as powerful as the RSPO CS lies outside the decision-making powers of the regular RSPO membership (i.e. the General Assembly). Currently, the EB is not accountable to the RSPO membership for its amendments to the CS. This contributes to confusion over which version of the CS is applied, where the changes have been made and with minimal, non-transparent public consultation. In the course of researching this project has discovered that there exists 2 versions of the CS: a) the webpages<sup>56</sup> and, b) as a downloadable PDF version from the RSPO website<sup>57</sup>.

As is, recent attempts by the EB to introduce broadening of the CP to “non-EB Members” as a way to address conflicts of interest appear to be a piecemeal attempt to correct larger systemic and mandate problems<sup>58</sup>.

Institutionalisation through RSPO’s laws would ground actions and ensure responsibility for ensuring the mandate of the Complaints Panel and System is able to meet its objectives.

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<sup>51</sup> Source:

<http://www.unilever.com/mediacentre/pressreleases/2009/Unilevertakesstanceagainstdeforestation.aspx>

<sup>52</sup> Source: <http://www.palmoilhq.com/PalmOilNews/indonesia-cpo-body-protests-as-unilever-stops-buys-from-member/>

<sup>53</sup> Source: [http://www.rspo.org/en/status\\_of\\_complaint&cpid=3](http://www.rspo.org/en/status_of_complaint&cpid=3)

<sup>54</sup> Source: <http://www.rspo.org/en/member/719/golden-agri-resources-ltd>

<sup>55</sup> Source: [http://www.rspo.org/en/status\\_of\\_complaint&cpid=35](http://www.rspo.org/en/status_of_complaint&cpid=35)

<sup>56</sup> RSPO webpage on Complaints System: [http://www.rspo.org/en/complaints\\_system](http://www.rspo.org/en/complaints_system)

<sup>57</sup> Source: [http://www.rspo.org/file/RSPO%20Complaints%20System%20-%20public%20consultation%20version15\\_June\\_2012\(1\).pdf](http://www.rspo.org/file/RSPO%20Complaints%20System%20-%20public%20consultation%20version15_June_2012(1).pdf)

<sup>58</sup> This announcement was made by a letter from RSPO’s Secretariat following the completion of the workshop dated 26 September 2013.

## 4.4 System Issues

*The role of mechanisms that focus on providing judgments, authoritative opinions etc. whether judicial or non-judicial, is important. But these must necessarily be situated at least one step removed from all of the parties, including the company.*<sup>59</sup>

- Corporate Social Responsibility Initiative, John F. Kennedy School of Government, Harvard University

### Gaps

Experience in engaging the Complaints System have led to observations from some complainants and defendants over where RSPO needs to address weaknesses, gaps or loopholes to its existing system (or structure of its operating procedure). They include managing the system as well as operational aspects.

The main gaps identified are as follows:

- a) **Case categorisation and protocol** for how different case types (based on categorisation) are managed need improvements by way of more details and actions, especially for those complaints to be resolved through a second party process (No. 2) and other complaints (No. 7) as listed on RSPO's 'Treatment of Cases' webpage<sup>60</sup>. The role of RSPO is not clear where a second or third party is already involved in some form of grievance resolution (e.g. the IFC-CAO process).
- b) A rationale and guidance for how **initial screening of cases** and determining the validity of cases, categorisation of cases to a specific resolution stream and guidelines on category specific immediate actions is lacking, leading to occurrences of misrepresentation of complaints or defendants not receiving prior alerts from RSPO before public announcements. It is especially necessary if there are parallel or third-party processes simultaneously occurring.
- c) A poorly formulated **complaints form** that does not clearly explain where to itemise / articulate specific issues, which RSPO rules are referenced. The complaint form does not ask complainants to outline what they expect and RSPO offers stakeholders no insight in what they can expect.
- d) No clearly set out **repercussions against complainants** found to have not made a valid case.
- e) No systematic approach to **consultation and public announcement of changes to the Complaints System**. For example and the purpose of this report, it is unclear if there have been modifications to the CS since the 2012 version was uploaded as RSPO does not systematically publish information on any changes it carries out to the CS.

### Flaws

This sub-section specifically identifies missing components vital to a functioning system, or existing protocol of the CS that has been applied but has resulted in the CS process creating further barriers to resolution. Each specific issue is identified and elaborated below:

- a) **"Forces" bilateral solutions:** RSPO's current CS conditions for eligibility insist that bilateral attempts at resolution be exhausted before approaching RSPO. While this helps isolate RSPO from frivolous complaints and forces its members to be more equipped and prepared to engage stakeholders, in reality it affects complainants who are often pressed for time and short on

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<sup>59</sup> Source: Corporate Social Responsibility Initiative. 2008. "Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders." Corporate Social Responsibility Initiative Working Paper No. 41. Cambridge, MA: John F. Kennedy School of Government, Harvard University.

<sup>60</sup> The categorization and explanation for RSPO cases is provided in the RSPO CS Process Flow ([http://www.rspo.org/en/process\\_flow](http://www.rspo.org/en/process_flow))

resources negatively as they have to go through the same process twice. In addition a company based system may not provide adequate impartiality.

- b) **Dilutes complainant demands and lowers existing standards:** As mentioned above, the RSPO CS leans on mediation and dialogue as its primary vehicle for achieving resolution. While this approach is perfectly suited for the goals of the DSF, it leads to dilution of demands and lowering of RSPO's own standards when adjudicative matters (e.g. illegality, deforestation) are forced to go through a dialogue process (see **Box 7**). Some cases (e.g. breach of New Plantings Procedure or illegal operations) seek an authoritative and unbiased opinion from the CP on the validity of allegations where dialogue serves no purpose. Complainants also felt that where the cases sought adjudication but was instead forced into a negotiation by RSPO, the RSPO member was then subsequently held to a much weaker sanction than required by RSPO's own rules and standards.

This is a loophole that is created by attempting to push as many cases through a dialogue-based process without careful consideration for what demands are being made or outcomes are being sought initially.

- c) **Causes the RSPO Secretariat to be unaccountable to complainants:** It is unclear how the Secretariat, which is the administrator of the CS and CP, reports to the RSPO membership on its performance<sup>61</sup>, incorporates feedback from affected stakeholders especially those that use the system as complainant or defendant as well as what lessons are learnt to help the Secretariat improve its performance. For example, a workshop participant with an active complaint provided credible allegations that the RSPO Secretariat engaged in improper behaviour that is colluding with defendants, including evidence of the Secretariat approaching and asking the defendant how it should respond to a complaint, is a serious issue that underscores the need for proper oversight of the Secretariat's actions. In another complaint, the RSPO posted that the complainant had received and responded to the defendant's initial correspondence in the case tracker when in fact the defendant's letter was neither received nor responded to<sup>62</sup>. The September 2013 joint statement between PT Ladang Sawit Mas (Bumitama Gunajaya Agro)<sup>63</sup> without consultation with or notification to complainants reinforces stakeholder perception that RSPO's impartiality is compromised. 60% of questionnaire survey respondents perceived that the RSPO Secretariat was not professional/fair in the handling of their cases (see **Box 3**).
- d) **Dodges the responsibility to carry out ground work:** As is, the CS is essentially a paper-based exercise whilst fact finding in cases is required – essentially at every stage. The resulting back-and-forth corresponding fails to move beyond allegations. This has led to RSPO's Secretariat being seen by the majority of survey respondents and workshop participants as being a "postman" rather than attempting to facilitate direct dialogue between disputing parties. There is a huge chasm in the existing capacity and resources at the Secretariat for it to complete its task as the administrator of the CS, namely: (To) Commission suitable expertise (whether they are Secretariat staff, working groups, or consultants) as needed to support fact-finding, mediation, and to inform decisions of the Complaints Panel.<sup>64</sup>

Specifically RSPO lacks capacity to carry out field or ground-level investigation, monitoring, verification and enforcement of any conditions and recommendations placed by the CP on RSPO

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<sup>61</sup> See 2.1e in "System Components & Terms of Reference" which states that the Secretariat self-monitors its performance; source: [http://www.rspo.org/en/system\\_components\\_and\\_terms\\_of\\_reference](http://www.rspo.org/en/system_components_and_terms_of_reference)

<sup>62</sup> This allegation was made by a questionnaire participant that also raised the fact that RSPO had written to the wrong organization as the primary complainant and addressed the complainant by a different name when pressed to address the posting on the case tracking webpage.

<sup>63</sup> Source: [http://www.rspo.org/file/PTLSM\\_Joint-statement\\_24Sept2013.pdf](http://www.rspo.org/file/PTLSM_Joint-statement_24Sept2013.pdf)

<sup>64</sup> Task no.C under Section 2.1. 'RSPO Secretariat'. Source: [http://www.rspo.org/en/system\\_components\\_and\\_terms\\_of\\_reference](http://www.rspo.org/en/system_components_and_terms_of_reference)

Members. The lack of capacity has pushed burden for substantiation on complainants, who are required to constantly re-submit and substantiate evidence to RSPO. This is supported by 67% of questionnaire survey respondents who perceived a lack of capacity/resources from RSPO in general and especially for ground investigations (see **Box 3**).

- e) **Does not address emerging issues:** Recent precedence set by the case involving PT Asia Persada (see **Box 8**) in which the RSPO Member sold off the plantation where an active case was present to another company appears to have severely curtailed RSPO's options in addressing the complaint raised, including whether the case remains with the first defendant (Wilmar) or otherwise. Such trends show that the CS needs to be actively keeping abreast of new trends.

#### BOX 7: Lowering the bar

##### **Complaint on PT Borneo Surya Mining Jaya (First Resources Ltd)**

In October 2012, Environmental Investigation Agency (EIA) filed a complaint against RSPO Member First Resources Ltd. For breaching RSPO's New Plantings Procedure (NPP) and P&C (P&C 2.2, 2.3, 7.5 and 7.6) by their operations at Muara Tae, East Kalimantan, Indonesia. The complaint lists that the company clear land, including primary forest and community land prior to conducting an NPP study, did not get the Free Prior & Informed Consent of Muara Tae communities and has not compensated the communities. The NPP study was also criticised as being "fundamentally flawed" and ignoring the Muara Tae community in its study. EIA requested RSPO to compel First Resources to stop clearance, investigate allegations against the company, comply with RSPO standards for community consultation, investigate and addressing the glaring omission of the primary social stakeholders (Muara Tae community), and institute a compensation process. In the course of the case deliberations, First Resources has ignored or unilaterally modified core CP requirements (e.g. First Resources informed RSPO that it would continue activities on disputed areas inspite of RSPO's order to "cease all development of this said piece of land, pending satisfactory completion of [the 6 action plan items]").

EIA has been firm on their stance that First Resources cannot assume they may "resume operational activities of the respective lands" as stated in the most recent update on RSPO's case tracker<sup>65</sup>. The root problem for complainants comes from First Resources continued operations in contravention of RSPO's own rules, especially land operations that are at the heart of the matter. While EIA has gone to great length in underscoring the matter with RSPO, it appears the magnitude of the land issue is not fully understood and not reflected as a root issue RSPO needs to insist First Resources complies with. Suspension of land-clearing activities must be the first and primary condition imposed against First Resources to allow for the action plan's implementation. Therefore it is debatable whether implementation of the action plans would hold First Resources accountable to adhering to RSPO standards and laws like the NPP. The precedent set undermines the application of RPO's NPP rules, P&C and authority of the Complaints Panel.

#### BOX 8: Selling off liabilities

##### **Complaint on PT Asiatic Persada (Wilmar)**

The affected communities of Sungai Beruang and Pinang Tinggi in Jambi, Sumatra, Indonesia, together with Forest Peoples Programme (FPP) filed a complaint with RSPO (accepted on February 2011) against PT Asiatic Persada alleging infringement of Principle 2: Compliance with Applicable Laws and Regulations. Specifically, the complaint revolves around ongoing land conflicts between PT Asiatic Persada and indigenous/local communities<sup>66</sup>.

During case resolution, International Finance Corporation-Compliance Advisor/Ombudsman (IFC-CAO) was invited to provide services to mediate the case. In April 2013, while IFC-CAO mediation is still ongoing, the sale agreement of PT Asiatic Persada by Wilmar to non-RSPO and non-IFC funded companies Prima Fortune International Ltd and PT Agro Mandiri Semesta, was made known to the complainants.

<sup>65</sup> Source: [http://www.rspo.org/file/Reply\\_on\\_BSMJ\\_Complaint\\_24April2013.pdf](http://www.rspo.org/file/Reply_on_BSMJ_Complaint_24April2013.pdf)

<sup>66</sup> Source: [http://www.rspo.org/en/status\\_of\\_complaint&cpid=1](http://www.rspo.org/en/status_of_complaint&cpid=1)

Complainants felt that there was a general lack of information-sharing and consultations with them prior to the sale of PT Asiatic Persada. As a result, this handover, and uncertainties over its terms and implications for the mediation process, have had serious impacts on the morale of the communities, and created significant anxiety as to how the progress achieved through IFC-CAO mediation will be sustained and enhanced. Wilmar has to date failed to inform the complainants on whether and how it will continue to assume any responsibility in ensuring that the conflicts in PT Asiatic Persada are fully resolved. To date, complainants have received no reply from RSPO regarding Wilmar's sale of PT Asiatic Persada during the mediation process<sup>67</sup>.

A glaring weakness of the RSPO was exposed in this case whereby it does not have criteria or guidance related to the obligations of RSPO member companies where concessions are sold to non-RSPO companies, particularly where conflicts and conflict resolution processes are still underway. Complainants feel that this case also raises a huge concern about the value of RSPO standards. If companies can evade their responsibilities just by selling off those holdings where they have been caught out, then the standards are of questionable value.

## 4.5 Capacity Issues

Capacity in the right fields and to a functional level are two primary issues for human resources, while the mandate should indicate what resources will need to be available. Capacity and resources should be separated from the oversight of the Executive branch of the organisation, namely the Executive Board. Externally there is the need to build capacity amongst stakeholders and communities to more effectively engage the CS as well as RSPO Members.

### Gaps in Secretariat authority and resources

As the administrator and functionary body for the RSPO Complaints System, the Secretariat should be mandated to carry out the tasks as articulated in the CS, including discharging work to support the functioning of the CP and DSF. Many issues identified here stem from a weak mandate or distortion of the role of the Secretariat from what it is supposed to do according to the Terms of Reference for the Complaints System<sup>68</sup>. Based on feedback received from stakeholders, gaps in Secretariat capacity have resulted in the following problems:

- a) **Inability to set and honour timelines** dictated by the RSPO CS as demonstrated by long processing times and further supported by complainants criticism of RSPO's inertia at responding to emails. A large majority of survey participants highlighted the long turnaround time and disregard for set timelines in the RSPO protocol (see **Box 3**).
- b) **Case tracking and documentation is poor**, inconsistent and does not provide any useful information for external tracking when accessing publicly available information on RSPO's website on complaints cases.
- c) **A reactive or passive rather than proactive approach towards addressing complaints**, which has led to complainants having to reach out to the Secretariat repeatedly in order to get updates on progress or even documents from defendants (that were posted on RSPO's website without prior notice to complainants).
- d) **Human resource-related issues:**
  - Poor subject knowledge leading to misinterpretation of cases and failure to understand core issues of complaints raised by stakeholders. For example in one case, the wrong

<sup>67</sup> Source: <http://www.forestpeoples.org/topics/palm-oil-rspo/publication/2013/complaint-regarding-wilmar-group-s-sale-agreement-pt-asiatic-p>

<sup>68</sup> Source: [http://www.rspo.org/en/system\\_components\\_and\\_terms\\_of\\_reference](http://www.rspo.org/en/system_components_and_terms_of_reference)

interpretation of the allegations made against the defendant led to the case being reposted after protest from both complainants and defendants. In another case, complainants have found that RSPO has repeatedly failed to understand what the core issues of the complaint are leading to delays and wrong solutions being promoted by RSPO.

- Inadequate manpower assigned to manage complaints when considering the total number of cases and volume of backlog.
- Perceived lack of mediation skills and knowledge by stakeholders.

### **General inability to communicate properly, effectively and clearly**

Capacity to communicate properly, effectively and clearly is essential for ensuring that any feedback mechanism or stakeholder engagement process can achieve its goals. Communications includes various aspects of how stakeholders interact or engage the CS, how the RSPO engages stakeholders, how cases are handled and relayed to observers, the approach or attitude taken in communications and what steps are taken to protect the credibility of RSPO. Below are the key communications weaknesses, gaps and issues:

- Lack of outreach and poor understanding of stakeholders by RSPO.** While it must be said that RSPO has collaborated with an array of different environmental and social groups to develop key areas of the CS and DSF, there is a pressing need for RSPO itself to play a direct and visible role engaging with stakeholders, NGOs and communities through outreach programmes that are built around explaining RSPO's Complaints System. Working through proxies like consultants or NGO partners does not aid current sentiments regarding RSPO nor build a better appreciation of stakeholder concerns. Similarly RSPO should conduct similar exercises with industry or producer members.
- Mismatched expectations of stakeholders due to poor understanding of RSPO's CS.** This is related to the need for outreach to stakeholders. RSPO must review methods and strategies for how it wants to interact and engage stakeholders. The fact that many NGO complainants believe that they had mismatched expectations of what was possible through RSPO's CS shows that currently, there is:
  - Low awareness of the roles, limitations and potential of using RSPO's CS.
  - Little knowledge on how to effectively file a complaint with RSPO.
- Overall poor quality communications from the Secretariat.** Feedback from complainants, defendants and other parties that have engaged RSPO's CS describe the overall communications performance as passive, piecemeal and ad hoc. The present RSPO website (on Complaints as reviewed by this project) is poorly organised and not accessible to a vast majority of key audiences, namely communities and grassroots NGOs, because it is internet-based and only available in English. 80% of survey respondents also pointed out their dissatisfaction with how RSPO has communicated during a complaints process (see **Box 3**). Specific examples include:
  - Addressing the wrong complainant to a particular case.
  - Addressing complainants wrongly.
  - Omitting some complainants from correspondence.
  - Addressing NGOs representing communities rather than directly with communities.
  - Using casual language in official correspondence with complainants.
- Loss of trust in RSPO's Complaints System.** Expectation management has been wholly lacking while outreach has not penetrated key sectors including some stakeholders and producers. The combination of poor execution and communication skills now leaves complainants with grounds to believe their complaints cases are not taken seriously by RSPO.

## 5. Key reforms and changes to RSPO's Complaints System

*A grievance mechanism can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it.*<sup>69</sup>

- Prof. John Ruggie

The RSPO has demonstrated that it is serious and committed towards engaging stakeholders through a feedback system that also works as a check on the certification process. In just under 10-years since inception, RSPO has created a grievance mechanism that is functional and fairly transparent on paper. In theory the system would allow for due process, resolution of conflict, the tools necessary, and a relatively fair and equitable process. The issues facing RSPO with the complaints mechanism are a natural evolutionary flow of moving from standards development to certification to feedback. In addition, the RSPO has a track-record of achieving very challenging tasks; not least is in developing a fully-traceable supply-chain for certified RSPO palm – in the face of overwhelming belief that it is impossible<sup>70</sup>. The system is nonetheless open to undue influence, affecting impartiality.

In order for RSPO to take the next step forward and meet the emerging challenge to its credibility and legitimacy, there is an urgent need for a pragmatic, comprehensive, transparent and constructive review of what is needed to ensure that the Complaints System:

- a) Provides a level-playing field: a grievance mechanism that is a transparent process, credible to broader stakeholders, provides due process in a fair, transparent and impartial manner;
- b) Is accessible, provides timely resolution and builds sustainable solutions; and,
- c) Has duly separated roles and functions in order to gain a reputation of independence, authority and trustworthiness

The challenge for RSPO is to remain relevant as there is serious discontentment and disillusionment over the Complaints System. Many stakeholders and industry representatives who have used the Complaints System explicitly stated that they no longer believed that RSPO is able to resolve cases. This directly relates to Objective c. of the Complaints System: To protect RSPO's integrity<sup>71</sup>. A multi-stakeholder initiative needs to balance the interests of all stakeholders to ensure buy-in and credibility.

### 5.1 Mandate reforms

The mandate is the primary starting point as it sets the direction and is the reference for what system and capacity is needed to achieve the objectives set out in the mandate. In order for RSPO to address the issues it faces (as described in **Section 4.3: Mandate Issues**) there needs to be a fundamental shift in approach: moving from centralised authority to decentralisation of checks and balances out of the central sphere. It is evolutionarily necessary for this shift to occur. The core must be the setting of the

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<sup>69</sup> Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

<sup>70</sup> In the period up to the development of RSPO's Certification Systems in 2006, broad skepticism was prevalent within the palm oil producing community that full traceability for Crude Palm Oil (CPO) or Palm Kernel Oil (PKO) and other derivatives would be prohibitive owing to segregation costs. Practical barriers raised by producers include the difficulty in tracing liquid products. Such comments were common amongst Malaysian Palm Oil Association (MPOA) and Gabungan Pengusaha Kelapa Sawit Indonesia (GAPKI) members (comment attributable to Ng. A – former RSPO Secretary General).

<sup>71</sup> Source: Section 1.3 Objectives of Complaint System, point c. Source:

[http://www.rspo.org/en/complaints\\_system\\_introduction](http://www.rspo.org/en/complaints_system_introduction)

right mandate for each role and element of the Complaints System. Key recommendations for activating mandate are as follows:

**I. Have a Complaints Panel and System that is independent of the RSPO Executive Board**

Separation of the Executive from Judicial branches of governance cannot be over-emphasised in the road to setting a credible grievance mechanism that guarantees RSPO's members and other stakeholders a fair, transparent and impartial process, i.e. a level playing field. The key reforms should include:

- a) Having a Complaints System that is independent of RSPO's Executive Board. The Complaints Panel needs to be drawn from a pool of relevant experts that are independent.
- b) To support the functions of an independent CS, the CP should maintain its own Secretariat to administrate the System.
- c) The CS would follow best practices and have oversight of the Complaints Panel and CS Secretariat by a joint stakeholder / EB panel. Final decision-making may still be left to the EB's prerogative.
- d) An independent appeal body should also be a priority for RSPO to explore moving forward as a joint appellate structure, possibly with other certification scheme owners.

**II. Formalise and Institutionalise the RSPO CS through appropriate Articles into RSPO's laws and rules**

This ensures greater responsibility on the part of RSPO's membership to actively participate in governance and implementing their RSPO commitments.

**III. Provide Leadership and Responsibility to manage complaints backlog and adhere to procedure**

There is a serious backlog of cases that urgently needs attention while more cases are continuing to enter the system. RSPO should prioritise tackling the backlog and ensuring that these cases are urgently handled in a fair, transparent and impartial manner that is in line with the CS process. Procedures for processing cases in a fair, transparent and impartial manner should be strictly followed in clearing the backlog and in all future cases. Ensure that time-bound steps are adhered to, and where such is not possible, that it is clearly noted in case updates.

## 5.2 System reforms

RSPO's Complaints System sets out a fairly complete process that has built in checks and balances at operational level, and clear wording on the exact procedures at certain stages. The recommendations on System recognise that core elements and procedures already exist. The recommendations serve to address issues of gaps in the System and flaws that are hindering its effective application.

**I. Fixing Gaps and Addressing Issues in the Current System.**

The following recommendations address filling gaps and addressing issues that are critically needed to make the system function better and address key issues identified:

- a) Develop a more comprehensive protocol for handling cases based on case categorisation.
- b) Develop a case screening guidance or protocol.
- c) Improve complaints form with specific fields for complainants to articulate the nature of complaint, expected actions and make it accessible to stakeholders and communities (e.g. translation into key languages).
- d) Develop protocol for addressing repercussions from unsubstantiated or unfounded cases

- e) Re-assess the need for pre-condition of having complainants and defendants exhaust bilateral negotiations before activating RSPO's CS.
- f) Ensure existing standards are upheld by providing safeguards in case processing.
- g) Provide proper oversight of the CS administrator
- h) Develop and adopt new rules to address emerging scenarios (e.g. RSPO Members selling off companies with ongoing cases)

## II. Increase Transparency in the Current System

Operating transparently and according to the rule of law ensures that the System operates at its most efficient and credible levels. Having clear mandate, including an independent CS directly increases transparency performance. Improve reporting of complaints cases and Complaints System performance:

- a) Case tracking to provide more relevant information for external monitoring and observers, including complainants' submission, alleged breaches, complainant demands, and updates based on timelines for each case.
- b) Implementation of an inclusive and systematic approach for consulting stakeholders and publically announcing any changes to the CS
- c) Reporting of the activities, performance, effectiveness and lessons learnt should be provided at least annually to RSPO's membership.

## 5.3 Capacity reforms

Current capacity at RSPO's Secretariat charged with handling the CS on a fulltime bases is officially 1 staff member (as of September 2013). There are plans for the creation of a new Impact Unit that would include management of the RSPO CS<sup>72</sup>. While a portion of comments from complainants and defendants focused on the role, performance and credibility of the Secretariat, it should be noted that often the mandate given directly correlates with the Secretariat's ability to discharge duties effectively and correctly. Capacity is also a critical need for stakeholders, affected parties to disputes and producers.

### I. Internal Capacity

Areas for improvement include increasing manpower and skills to manage cases and the CS in line with the volume of cases; improving professionalism and time-keeping; adding specific skills and capacity of the Secretariat in frontline management, subject knowledge; case tracking & documentation, investigation / monitoring / verification / enforcement, regional / field capacity; and mediation skills. Outreach capacity in the Secretariat should be built in collaboration with NGOs to increase awareness of various tools, processes, support organisations and experts in regions that are available to stakeholders and companies. Communications capacity must be a priority especially for improving engagement, taking a more proactive approach, case updates and serving the RSPO membership.

### II. External Capacity

Stakeholder and company engagement of the CS can be enhanced to improve the overall experience of all parties while safeguarding RSPO's integrity. Outreach directly by RSPO (especially the Secretariat) to producers, stakeholders and grassroots groups is a critical area needing improvement while the focus of outreach activities should be on capacity building on the CS and expectation management. For mediation, there is need for RSPO to ramp up training and awareness-building with complainants in the fields of negotiation and mediated discussion. It should be comprehensive and include pre-mediation skills e.g. applying FPIC and choosing a representative. Subject training in RSPO- related subjects should also be offered to help build contextual understanding amongst mediators.

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<sup>72</sup> Source: pers. comm. Audrey Lee, Head of Impact, RSPO. September 2013.

## 6. Conclusion

### Benchmarking the RSPO Complaints System against the UN Guiding Principles on Business and Human Rights

RSPO's Complaints System references the UN Guiding Principles on Business and Human Rights (UNGPs) or Ruggie Principles as the source of guidance for the CS. It forms the best benchmark to measure RSPO's achievements and performance against Principle 31 of the UNGPs. The benchmarking is done against the criteria found in Principle 31 as well as commentary notes that articulate what each criterion should cater for or fulfil. The assessment is done in **Table 1** below.

**Table 1:** Assessment of RSPO Complaints System against the UN Guiding Principles on Business and Human Rights.

No.	Criteria & Commentary (Italicised)	Assessment
a	<p><b>Legitimate:</b> enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes</p> <p><i>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</i></p>	<p>Fundamental perception that serious conflicts of interest exist at mandate level by stakeholders. Stakeholder confidence dropping in face of inconsistencies, lack of accountability for decisions and sheer backlog of cases as well as very poor case resolution track record.</p> <p><b>Not fulfilled.</b></p>
b	<p><b>Accessible:</b> 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</p> <p><i>Barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location and fears of reprisal</i></p>	<p>Complainants reflect that they have different expectations from what RSPO can actually offer affected stakeholders. RSPO information sharing is poor, especially for case tracking. Long case processing times make it difficult for sustained grassroots-level participation in cases. Lack of outreach activities to familiarize stakeholders and RSPO members with Complaints System. No assistance or capacity-building provided to stakeholders facing barriers to access.</p> <p><b>Partially fulfilled.</b></p>
c	<p><b>Predictable:</b> 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</p> <p><i>In order for a mechanism to be trusted and used, it should provide public information about the procedure it offers. Time frames for each stage should be respected wherever possible, while allowing that flexibility may sometimes be needed</i></p>	<p>Published flowchart provides clear information. However, no clear procedural requirements are published for monitoring implementation of these procedures. Stakeholders have not received responses in a timely or appropriate manner while delays owing to various complications (legitimate or unsubstantiated) occur. Details are also lacking in terms of categorising grievance cases leading to</p>

		<p>unpredictability of the system. There is also an underlying expectation by the Secretariat for stakeholders to be proactive in familiarising themselves with the system rather than the Secretariat providing clear timelines and actions at each stage of the procedure. Clarity on the types of possible outcomes is also absent.</p> <p><b>Partially fulfilled.</b></p>
<b>d</b>	<p><b>Equitable:</b> 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</p> <p><i>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</i></p>	<p>RSPO expects complainants to contribute towards any mediation and sometimes for other exercises. RSPO also has a track record of utilising defendant funds to carry out 3<sup>rd</sup> party assessments and mediations. Expertise in mediation is being supported by RSPO while other areas still lacking. There is also a lack of proactive effort by RSPO to build sufficient capacity amongst aggrieved parties to ensure a level playing field in the grievance process.</p> <p><b>Not fulfilled.</b></p>
<b>e</b>	<p><b>Transparent:</b> 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</p> <p><i>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</i></p>	<p>Communications during management of complaints cases is a serious weakness; complainants perceives the Secretariat to be too passive, lacks professionalism and does not provide timely updates on case developments/progress. There are also allegations of inappropriate contact with defendants to withhold information from complainants. RSPO has never reported publicly or to its membership about the performance and achievements of its grievance mechanism.</p> <p><b>Not fulfilled.</b></p>
<b>f</b>	<p><b>Rights-compatible:</b> ensuring that outcomes and remedies accord with internationally recognized human rights</p> <p><i>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</i></p>	<p>Instances of dilution of standards (especially on meeting minimum legal requirements), and a substantial amount of cases involving violation of human-rights that are pending or not resolved suggests that prioritising human-rights in RSPO is not at a very high level. The inclusion of important</p>

	<p><i>ensure that they are in line with internationally recognized human rights</i></p>	<p>tools, concepts and requirements that purposely serve to uphold human-rights and international standards within RSPO's P&amp;C are laudable.</p> <p><b>Partially fulfilled.</b></p>
g	<p><b>A source of continuous learning:</b> drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms</p> <p><i>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</i></p>	<p>RSPO does not report on the performance of the CS. However, there is evidence in the progression of RSPO's CS into its present form, system and performance over time to suggest that there is effort to learn lessons and adapt. The creation of the DSF to cater for the large number of cases requiring mediation also supports this.</p> <p><b>Partially fulfilled.</b></p>
h	<p><b>Operational-level mechanisms:</b> 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</p> <p><i>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</i></p>	<p>While designed well and able to meet a majority of requirements in these UNGP criteria, RSPO's system has been hampered by poor mandate and inadequate resources for effective implementation. For the most recent iteration, RSPO conducted an online public consultation of the CS document in mid-2012. Unfortunately this would have meant a majority of potential participants from rural areas or non-English speaking places would be unable to access it. There was also little awareness of the consultation overall. The system does not have a legitimate, independent third-party mechanism for adjudication.</p> <p><b>Not fulfilled.</b></p>

## Annexes

### Annex 1: List of workshop participants

1. Aidenvironment
2. Centre for Orang Utan Protection (COP)
3. Desa Kaliau community, Sambas, West Kalimantan, Indonesia
4. Forest Peoples Programme (FPP)
5. Friends of the Orangutans
6. Grassroots
7. Greenpeace Indonesia
8. LINKS
9. Orang Utan Land Trust
10. Riau community, Sumatra, Indonesia
11. RSPO (observer)
12. Save our Borneo
13. Sawit Watch
14. Serikat Petani Kelapa Sawit (SPKS)
15. Solidaridad
16. Telapak
17. Wetlands International Indonesia Programme
18. Yayasan International Animal Rescue (IAR) Indonesia
19. Yayasan SETARA Jambi

## Annex 2: Questionnaire survey template

<p><b>1. Basic information</b></p> <p>Case background.</p>
<p>1.1 Date of acceptance of case as official complaint: <i>Also indicate if the case has not been posted on RSPO's website</i></p>
<p>1.2 Summary of complaint/issues: <i>Please provide a very quick summary of the conflict</i></p>
<p>1.3 What is the last status of the complaint: <i>What is the latest position/decision of RSPO on the complaint; still discussing, initial stages (info gathering), etc.</i></p>
<p><b>2. RSPO's response to complaint</b></p> <p>As a complainant who has the responsibility for presenting a case for a complaint/grievance against an RSPO member, the onus of RSPO is to respond to the complaint.</p>
<p>2.1 Did RSPO acknowledge the complaint in a timely and professional manner? <i>Was RSPO professional/respectful/impartial in its initial receipt to your complaint?</i></p>
<p>2.2 Did RSPO provide a timeline for responding? <i>When a case is submitted RSPO must provide "initial determination of what category of complaint this is, and the next step(s) to be taken to address it" which should include deadlines for responses from the other party.</i></p>
<p>2.3 Did complainants find the initial response of the RSPO impartial/fair? What were the deficiencies, if any? <i>Was RSPO professional/respectful/impartial in its response to your complaint?</i></p>
<p><b>3. Communicating with all parties</b></p> <p>RSPO's Complaints system requires timely communications with all parties as well as ensuring that the views and responses to parties to the dispute are carried out properly.</p>
<p>3.1 Has the RSPO acted in a way that can be considered fair towards all parties?</p>
<p>3.2 Did RSPO provide a timeline for case decision-making? <i>This timeline should be provided to complainants and accused at /after RSPO accepts cases.</i></p>
<p>3.3 Was the defendant provided sufficient time to provide a response to the complaint?</p>
<p>3.4 Was the response from the defendant to the initial complaint shared with the complainant? Did it address the issues raised? <i>RSPO protocol calls for a response from the company to allegations, and then decides if a complaint should be brought forward based on it. Please indicate if the response from the company or RSPO properly answered or addressed all the issues raised in the complaint.</i></p>
<p>3.5 Were all parties further consulted to elaborate/testify/defend their specific accusations? <i>Based on response and communications from RSPO, please provide your opinion on whether you felt RSPO gave you fair treatment in allowing for your case to be heard and understood. If there were points</i></p>

<i>that RSPO ignored or refused to acknowledge without satisfactorily justifying to you, please elaborate</i>
<b>3.6 Was the decision made/proposed way forward towards resolution satisfactory?</b>
<i>Has the RSPO provided adequate consideration of the details and specifics of the case in their assessment and decision-making?</i>

<b>4. Complaint resolution processing and RSPO conduct</b>
Responsibility for assessing a complaint and drawing out a plan of action lies with the Complaints Panel and Secretariat. They must ensure that a pathway is set for resolution of the case brought forth.
<b>4.1 Has RSPO acted in an impartial way throughout the process?</b>
<i>Reflect whether RSPO has fulfilled its stated function to “Providing a fair, transparent and impartial process to duly handle and address complaints against RSPO members or against the RSPO system itself”</i>
<b>4.2 Did RSPO ensure professional conduct and sufficient capacity in handling cases?</b>
<i>Has the appointed Complaints Coordinator, EB representative(s) or other RSPO appointed liaison been professional in how they deal with you? Has RSPO demonstrated sufficient resources and capacity to handle cases? Please give examples</i>
<b>4.3 Did RSPO ensure proper documentation, filing and communication of this information during case resolution?</b>
<b>4.4 Has mediation been satisfactory in the view of the involved parties? Is it impartial?</b>
<i>RSPO states that entry into a mediated process should be voluntary, your opinion on how free and informed you were in entering into any mediation is sought. For communities, does it ensure that the community is represented by their own appointments? Describe how comfortable you are with any proposed mediation, whether it is fair and addresses all the issues central to the complaint. Has RSPO sought more details, investigated and what is your opinion of their attempts at this?</i>

<b>5. What other problems exist, or issues faced by the complainant to be highlighted (list of problems): (e.g.) not responding to complainants but someone else</b>
1.
2.

<b>6. Internal assessment</b>
<b>6.1 How did other community, NGOs, partners and other players add value or obstruct the success of this case</b>
<i>Give your opinion on what were the key factors impacting the case. Also address whether expectations were realistic</i>
<b>6.2 Based on your experience with the case, what can you suggest to improve the RSPO Complaints Procedure, DSF, Secretariat’s role or other aspects?</b>