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Assurance Standing Committee & Complaints Panel

2nd Joint Meeting (via Zoom)

Minutes of Meeting

Venue: Zoom Meeting (<https://zoom.us/j/91923843600>)

Date and time: 5 May 2021 at 4.00 pm – 6.00 pm KL time

ASC Members Attendance:

Growers		
Name	Organisation	Group Representation
Agus Purnomo (Co-chair)	Golden Agri Resources (GAR)	Indonesian Growers (IGC)
Lee Kuan Yee	Kuala Lumpur Kepong (KLK) Berhad	Malaysian Growers (MPOA)
Laszlo Mathé	New Britain Palm Oil Limited (NBPOL)	Growers RoW
Vacant	n/a	Smallholders Group
NGOs		
Name	Organisation	Group Representation
Michael Guindon (Co-chair)	WWF Singapore	E-NGO
Paula den Hartog	Rainforest Alliance	E-NGO
Paul Wolvekamp	Both ENDS	S-NGO
Marcus Colchester	Forest Peoples Programme	S-NGO
Supply Chain Sector / Downstream / Others		
Name	Organisation	Group Representation
Kuan-Chun Lee	P&G	CGM (alternate)
Emily Kunen	Nestlé	CGM
Hugo Byrnes	Royal Ahold Delhaize N.V	Retailers
Olivier Tichit	Musim Mas Holdings	P&T
Michael Zrust	Lestari Capital	Financial

CP Members Attendance

Full Name	Organisation / Company	Position
Dato' Henry Barlow (DHB)	Sime Darby Plantation Berhad	CP Chairperson
Lim Sian Choo (LSC)	Bumitama	CP Co-Chair
Jose Den Toom	Independent	CP member
Matthias Diemer (MD)	Independent	CP member
Michelle Desilets	Orangutan Land Trust	CP member
Peter van der Werf (PvdW)	Robeco International Asset Management	CP member
Marieke Leegwater	Solidaridad	CP member

RSPO Secretariat Attendance:

Name	Position
Tiur Rumondang (TR)	Director of Assurance
Wan Muqtadir Wan Abdul Fatah (WM)	Sr. Manager, Assurance Integrity Unit
Freda binti Abd Manan	Consultant, Assurance Integrity Unit
Sarsongko Wachyutomo (SW)	Grievance Manager (Indonesia)
Izzati Rahman (IR)	Grievance Manager
Aryo Gustomo	Deputy Director, Compliance
Hazman Naim	Senior Executive, Grievance
Lee See Lung	Senior Executive, Grievance

Other Attendance:

Name	Organisation	Role
Neil Judd (NJ)	Proforest	Lead Facilitator
Shinta Puspitasari	Proforest	Facilitation support

Item	Description	Action Points
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<p>1.0</p>	<p>Introduction</p> <p>NJ welcomed everyone and noted that this is a positive opportunity to share views and ideas on common objectives on improved assurance across the RSPO system. NJ continued that this meeting is not to discuss specific cases but focus on the generic system.</p> <p>AP welcomed the CP Co-chairs and members to this meeting which will continue productive dialogue to support each other's work to improve the assurance system in RSPO.</p> <p>DHB welcomed the group and thanked the ASC for inviting them to the joint meeting. DHB first raised a question on whether ASI is attending the meeting. TR responded that ASI is not invited as this is intended as an internal meeting with the Secretariat. Any follow up actions with external partners can be taken forward after the meeting. NJ added that ASI has been present in the last 2 ASC meetings and there's active interaction with them. DHB also asked if minutes will be produced for this meeting. NJ confirmed that the meeting will be recorded to produce minutes of the meeting for all attendees. LSC looked forward to the meeting to improve both the assurance and grievance systems in RSPO.</p> <p>NJ shared the agenda for today's meeting.</p> <p>RSPO Antitrust Guidelines</p> <p>NJ reminded the members of the RSPO Antitrust Guidelines.</p> <p>Declaration of Conflict of Interest</p> <p>NJ highlighted the ASC Col obligations: if ASC members have a conflict of interest under any agenda items, they should excuse themselves to enable an objective discussion. No Col was declared at this meeting.</p>
<p>2.0</p>	<p>Current Updates</p> <p>Complaints Data</p> <p>LSC started the update by sharing that the CP received 161 complaints from 2009-2021, of which 123 cases (76.4%) have been closed and 38 (23.6%) are still open. In 2019 & 2020, the number of cases closed exceeded the number of cases received. The CP is now equipped with a clear SOP and procedures for the complaints desk in order to move forward. The CP aimed to bring the complaints numbers down and to better manage the complaints.</p> <p>LSC continued to show the average number of working days needed to close a complaint. Over the whole period from 2009 to 2021, the CP average elapsed time was 560 working days. However, from the introduction of CAP in 2017, the average number of days has reduced to 229. This demonstrates the focus and certainty of CAP in guiding the CP in what must be done for both the complaints desk as well as the CP.</p> <p>LSC shared the key trends in the nature of complaints. Labour issues are increasing in the last 2-3 years, while environmental issues are reduced but still significant. Out of all the open complaints, 14 out of 38 are related</p>



	<p>to certified management units. This raises the question as to what more can be done to ensure that certification procedures are done properly and the CBs are well trained.</p> <p>Member asked for the definition of closing a complaint and whether it means the respondents are compliant with the relevant RSPO standard. LSC explained that when the complainant and the respondent entered bilateral engagement and reached agreement, the case is considered closed. Also with dispute settlement, if it's settled under the procedure, the case is also considered closed. If both parties opted to go through CAP for special investigation, the respondent and complainant are given the opportunity to give comments and critiques on the special investigation. Once it's completed, the CP will look at the issues raised and check whether satisfactory answers have been given and the respondent has complied. If they have, the case is considered closed. There's an appeal period during which a case can be reopened.</p> <p>Member further highlighted that it could be worrying if resolution through bilateral agreement leads to a respondent not being compliant with the relevant RSPO standard. For example it is possible for a community in a very difficult situation to settle for something below RSPO requirements and similarly with dispute settlements. Additionally, this could mean that the CP signs off sub-standard resolutions and we need to reflect on that.</p> <p>LSC responded that at the beginning of a bilateral engagement and dispute settlement, the CP encourages both the respondent and the complainant to understand their rights, and the need to fulfil the RSPO standards. All complaints issues also need to be included in CB checks during the certification process.</p> <p>Member noted that prior to the meeting he had circulated by email a detailed listing of the matters that needed to be addressed in the CAP review and asked that these be taken into account.</p> <p>Member commented that there are still questions on the overall process and how much time is spent between the cases being received and then considered open. Member also raised issues on the number of complaints that applied to certified units and was interested on the percentages for certified members. LSC further explained that what was presented are active cases against certified units.</p> <p>Member asked if the CP tracked how many complaints led to decertification. In other words, how many units lose certification after the complaints are closed. LSC responded that the CP hasn't tracked this information. If the ASC is interested, the CP will start to track this number.</p> <p>Member highlighted that the number of active complaints against certified units shared by the CP is less than 5% of the total, which is low. Member continued that the RSPO standard is complex and increasingly so, which can cause more dissatisfied stakeholders.</p>	<p>CP will track information on how many certified units maintain and lose their certification after complaints are closed.</p>
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	<p>Updates from The Select Committee on The Increase of Complaints from Indonesia to The RSPO Complaints System</p> <p>TR explained that this exercise was a response to BoG directives back in November 2017 to discuss the high number of complaints coming from Indonesia. TR further explained that the methodology of the study was through desk review and interviews with relevant stakeholders in Indonesia.</p> <p>TR continued with the highlights of the report. One of the external enabling factors that causes the increase of complaints is the differences between the RSPO standards with the national law. The argument is that RSPO standards are more focused on sustainable palm oil development and operations, while Indonesian national law covers more generic issues on agricultural industry. Another external factor is that as people increasingly accept palm oil operations in their region, they would like to see benefits from it. The last external factor is on limited effective mechanisms for resolving conflicts, especially provided by courts. In terms of internal enabling factors, TR noted that RSPO provides access to the complaints system and it is free. RSPO also protects complainants' identities. Another internal factor is RSPO's decision is deemed to set a precedent and to set a framework to resolve similar cases in different communities.</p> <p>TR continued with the report's recommendations. She highlighted conducting regular dialogues with the Government of Indonesia, which has already been explored. TR highlighted other recommendations on initial diagnosis, specifically on case screening and classification, and the strengthening of the internal grievance procedures of RSPO members, which have often not been fully implemented. It was also recommended to conduct periodic case reviews providing lessons learned, the potential for more closely integrating the RSPO Complaints System with the Internal Grievance Procedures of RSPO members., and application of precedent to develop 'RSPO Jurisprudence' supporting sustainable palm oil production.</p> <p>Member asked about the recommendation point on integration of the RSPO Complaints System with Internal Grievance Procedures of RSPO members. There have been concerns as to where the role of the internal grievance procedure lies if it is not seen as the primary route for complaints. But at the same time, we have the CAP as the back stop if the internal system doesn't function. How might these 2 systems better communicate and function? TR responded that the internal grievance procedure of RSPO members should be the front gate for any potential conflicts. This also means that there is a need to build internal capacity. If this system failed to function, then complainants can go to the RSPO Complaints System. Some interviewees in the study raised questions on how to promote internal grievance procedures more to external stakeholders.</p> <p>Member added that the internal grievance procedures are an important aspect of the overall RSPO Complaints System. The concerns are if</p>	
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	<p>there's no trust between the two systems and how the functions should be structured. LSC suggested we continue to offer 2 options. Although it is mandatory for members to have an internal grievance procedure, the complainants should have a choice either to come directly to RSPO or to use the internal grievance procedures.</p> <p>LSC also asked on the recommendation to build a roster of experts and investigators (pool of experts), in terms of where this will be placed and whether this will support the complaints unit or form part of the assurance. TR responded that on the pool of experts, this is still under discussion and no decision has been made.</p>	
<p>3.0</p>	<p>Assurance Root-Cause Analysis</p> <p>WM explained the 2 objectives of the root-cause analysis. Firstly, it is to undertake a systematic approach to strengthening the RSPO Assurance System, with guidance from the ASC. Secondly it is to pursue systematic measures for building a trusted and credible Assurance System. With the 2 objectives in mind, the Secretariat aims to build and implement a structure that integrates Assurance in one system, streamlining Certification, Compliance, and Grievance, based on the principles of Risk Management and Monitoring, Evaluation & Learning (MEL), in line with the RSPO's Theory of Change.</p> <p>WM explained briefly on methodology which included review of 10 external reports from 2017 to present. All necessary information from these reports was reviewed and compiled. The information will be discussed in the ASC members workshop, which is scheduled for 10 May 2021. WM further explained that information from external reports was clustered into 3 main sections: standard setting and interpretation, certification and compliance. From these reports, the Secretariat also identified main areas of weakness surrounding RSPO assurance implementation: labour conditions, deforestation and land rights, and the effectiveness of cross-cutting assurance systems.</p> <p>When analysing the potential root causes of weakness, the issues were grouped into these three themes: on labour and human rights, the identified potential root causes were: the certification process is too focused on documentation rather than field verification, certification systems are not designed to detect labour non-compliances, lack of expertise in CBs and assessors, lack of robust sanctions by the accreditation body, and insufficient independence of CBs. Underlying sectoral challenges were also identified including the use of migrant labourers, who are more vulnerable to exploitation, the legacy of poor practices across the sector and poor access to grievance and resolution processes.</p> <p>The second theme is on deforestation and land conflict. The potential root causes are the effectiveness of NPP implementation for preventing deforestation and land conflict (through FPIC), including 'evasion' of NPP requirements by not declaring new plantings, CB weakness in carrying</p>	



	<p>out NPP verification and/or evaluation of new planting during the certification process, inadequate role of ASI in identifying CB failings and taking action against CBs, weak HCV assessments, mainly relating to pre-HCV assessor licensing scheme, and questionable robustness of enforcement of partial certification requirements and RaCP processes.</p> <p>On the cross-cutting assurance theme, the potential root cause analysis listed: inadequate staffing of assurance, lack of communication from the Secretariat, lack of monitoring of the Accreditation Body, inadequate mechanisms for CB performance review, assessor independence and training and capacity levels inadequate across the key actors.</p> <p>Moving forward, WM continued that RSPO focuses its workplan into 3 groups: (1) Governance of Assurance, looking at the certification system; actors, roles and capacities; the existence of different mechanisms to support the Assurance System; (2) Quality of the Standard, Guidelines and BMP (RSPO Standard Development); (3) Secretariat Operation & Function - Assurance Division, looking at units and integration, expert resources and secretariat manpower, data integration and infrastructure. WM briefly also shared the current gaps in implementation of the wider grievance systems that need to be addressed.</p> <p>NJ added that ASC members will have an opportunity to look at the analysis in detail during the workshop on 10 May.</p> <p>Member commented that the analysis covers mostly external factors and he was wondering if it also looked at the working of the Secretariat and potential conflicts of interest. Member also reminded the group of the external report on ATF. WM responded that the ATF report and internal factors were both taken into consideration including the above-mentioned elements of Secretariat operation and function.</p> <p>NJ suggested that the presentation could be circulated to share more details on the analysis.</p> <p>DHB asked who is responsible for monitoring CBs' performance, is the responsibility of ASI or some other body, and who is responsible for training and monitoring of CBs. TR responded that CBs should be independent and separate from the Secretariat operations. They should be independent to ensure their integrity as auditors. So, monitoring and dealing with CBs performance is conducted through ASI. However, to make sure CBs understand, adopt and use RSPO standards, the Secretariat also provides regular updates, workshops, and information of endorsed trainers for CBs.</p> <p>TR added that starting March 2021, there will be an annual review of CBs performance by ASI, which will be reported back to the Secretariat. ASI will publish this annual review on its website.</p> <p>Based on TR's explanation, DHB further clarified that ASI is responsible for CBs performance through the annual review. TR confirmed. TR added that beside the annual review, there is also auditing of CB compliance by</p>	
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	<p>ASI. The decision on suspension and termination of auditors comes from ASI. However, with regular Incident Review meetings now planned, the assurance unit will have more opportunities to exchange information with ASI on CBs performance.</p> <p>Member reminded the group that the analysis should focus not only on things that are not going well, but also to keep up with the existing systems which are working well and noted the need to also highlight the positive results achieved so far.</p> <p>On the potential root causes, member asked whether the analysis could also identify structural challenges for the deforestation and land conflict theme, as this information would be useful to move the discussion forward.</p> <p>Member highlighted that there is no feedback loop now between the Complaints Panel and ASI. Member also commented that the number and type of assessments by ASI are governed by the RSPO certification system. We should only suggest changes to this if there are benefits and it will improve the system. Previous suggestions from ASI to increase the number of assessments and unannounced visits have not been approved by RSPO.</p> <p>LSC reminded the group that ASI and CBs should be regularly reviewed and assessed and have KPIs to achieve. LSC further shared that CP's concerns have been raised with ASI before but not much improvement and feedback was received. On gaps in the grievance system, LSC pointed out there should be a multistakeholder review on CAP. LSC added the need to look not only at what has happened within CAP but also to look equally at the wider grievance systems.</p>	
<p>4.0</p>	<p>Grievance Unit Strategies and Workplan</p> <p>IR explained the differences between grievances and complaints within the RSPO framework. A complaint is intended to mean a grievance that is filed via the Complaints & Appeals Procedure (CAP), delivered by the CP for further actions and, when necessary, subject to the relevant sanctions. A grievance is the wider framework which the complaint system sits under along with other components.</p> <p>IR continued to break down the Grievance system in RSPO, which involves 3 key components: the Complaints Desk, non-CAP Grievances, and the members' Internal Grievance Mechanisms. RSPO members are most familiar with the Grievance Desk, which manages the day-to-day complaints under CAP, the dispute settlement facility, post-complaints monitoring and bilateral engagement. Non-CAP Grievances covers grievances from external service providers (ASI, HCVRN, HCSA, ISEAL), the public domain, second party processes, and HRDs. The Internal Grievance Mechanism covers building up the credibility of a member's IGM, supports monitoring of compliance of the IGM, and links to RSPO's Grievance System.</p>	

	<p>Following IR's explanation, SW continued by sharing more details on workplans for each of the three components. Under the Complaints Desk the work covers: (a) Review of Internal SOP (based on present CAP). The SOP will be reviewed when a new version of CAP has been endorsed; (b) Alignments with other units under Assurance and across divisions; (c) Discussions on relationships with service providers; (d) CAP Review within the period of July 2021-June 2022; (e) and Improving accessibility to the Complaints System, including providing translation services for any complainants who don't speak English. The non-CAP Grievances cover: (a) Reviewing existing process flows provided by the RSPO Key Documents; (b) Building framework and SOPs to guide grievance management; (c) Integrating the frameworks into the existing grievance system; (d) Safety mechanism – to ensure consistency of action (by CP/CEO). The Members Internal Grievance Mechanism component will identify the RSPO Secretariat's role in supporting the performance and use of members' Internal Grievance Mechanisms.</p> <p>SW continued that as for now, the Grievance Unit doesn't have a detailed timeline because of lack of manpower in the team.</p> <p>Member asked how the Secretariat can adequately firewall the Complaints Desk from other parts of the system to fulfil confidentiality requirements, and secondly what manpower would be sufficient for the Grievance Unit to deliver the work properly and improve the capacity of the Complaints Desk on the ground. Finally, member also asked how ASC and CP can work together for CAP review.</p> <p>TR responded that the firewall system sits in the Complaints Panel during case deliberation until a decision is made. On the number of grievance managers, TR suggested that the Secretariat will need 3-5 more to support the work. To deal with the complexity of the complaints, the Secretariat will be working with regional offices to make sure the local context is strongly maintained during the case deliberation and decision-making process. If the current SOP and the system can be simplified, necessary manpower can be reduced. On improving the capacity of the Complaints Desk on the ground, TR responded that the Complaints Desk doesn't have capacity to do the investigation on the ground. The Secretariat is using investigators based on their excellent experience and high integrity. The plan is to expand the pool of experts based on skill sets or regional networks to do the investigations.</p>	
<p>5.0</p>	<p>The Concept of Remedy in the RSPO Complaints System</p> <p>MC started by pointing out that the right to remedy is tort law that 'for every harm there is a remedy'. It is also under international human rights law, violation of a human right gives rise to a right to remedy.</p> <p>MC also shared specific remedy provisions made for workers (ILO), women (CEDAW), children (CRC), and indigenous peoples (UNDRIP). Under international law, there are 5 forms of remedy including: restitution</p>	

	<p>(e.g. grabbed land is returned), rehabilitation (e.g. harms are restored), compensation (e.g. damages paid / made good), satisfaction (e.g. public apology), and guarantees of non-repetition (e.g. new law/policy/procedure). These are not exclusive. The right to remedy is a general right of all legal persons including peoples.</p> <p>MC continued sharing on business and Human Rights obligations and responsibilities, which is covered in the UN Guiding Principles on Business and Human Rights (UNGP), including the ‘Respect, Protect and Remedy’ framework, under which states have an obligation to protect and respect human rights and provide remedy for violations. Businesses have a responsibility to respect international human rights and provide remedy for violations even where national laws don’t require this. MC added that UNGP norms are used for non-judicial remedy procedures.</p> <p>MC shared the UNGP Guidelines on Non-judicial Remedy Procedures, which RSPO should include in its system, including the defined characteristics: accessible, predictable, equitable, transparent, rights-compatible, legitimate, and provide mechanisms for learning.</p> <p>MC discussed what is already in the RSPO P&C in terms of Grievance Mechanisms, including on dispute and grievance resolution and protection of ‘HRDs’ (i.e., ‘whistle-blowers, complainants, community spokespersons and HRDs’). When looking at the Complaints and Appeals Procedure as it is, MC shared how much is already built into the system. The purpose is to deal with complaints arising from a breach of RSPO Key Documents (1.1.1), to ensure that any alleged breach is resolved in a fair, impartial and transparent manner (1.1.2), to be guided by the principles relating to accessibility, efficiency, impartiality, accountability, and independence (1.1.3). These overlap with the UNGPs but not fully.</p> <p>MC continued that under the CAP ‘Resolution’ means ‘Remedy’. CP can issue a direction to execute corrective actions within a specified time, cease and desist order (where applicable) and stop work orders (7.1.15.2), corrective actions determined by the Complaints Panel to remedy the breach including a time frame for implementation of those actions (12.3.5), and the Respondent shall not engage in any form of retaliation, reprisal, violence, threats or adverse discrimination against or apply undue pressure upon the Complainant, affected communities or their spokespersons or whistle-blowers (9.2).</p> <p>MC summarised that CAP is meant to provide remedy but questioned to what extent the closure of a complaint means remedy has been achieved. RSPO can’t solve everything but it should aim to solve violations of its standards. MC underlined the need to look at the system carefully to ensure it fits with UNGP and HR norms.</p> <p>TR shared some updates that the CAP review is already budgeted from June 2021-June 2022. TR also explained that the Secretariat is open to any model the stakeholders decide. It shouldn’t be decided by the Secretariat but based on the stakeholders’ recommendation and how to operate it.</p>	
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<p>6.0</p>	<p>Moving forward</p> <p>Continuous Collaborative Work between ASC and CP</p> <p>NJ offered for co-chairs from both bodies to share their thoughts on the proposed continued collaboration.</p> <p>DHB suggested that it is essential for CP to be able to participate in the CAP review deliberations. Based on the last review of the Complaint System, TR responded that the process will not exclude anyone. As the CP will be the user of this revised document, CP’s position should remain independent. However, since this process is not finalised, TR will bring all suggestions into the discussion with the CEO.</p> <p>LSC explained that when establishing the CAP, RSPO had a multistakeholder in-depth process to develop the procedure. LSC seconded DHB’s suggestion that the Secretariat should consider CP’s engagement in the CAP review process.</p> <p>Member highlighted beyond the independence and firewall, the most important thing is to uphold the impartiality of the process and decision making and what tools are needed for this purpose.</p> <p>LSC suggested that the CP is interested in focusing the collaboration with the ASC on the complaints and grievance process. In the future, regular catch up would be very much welcomed. Additionally, working together in a working group for CAP review would be welcomed, including on inclusion of remedy.</p> <p>Member asked if there would be an interactive discussion to develop the ToR for the CAP review. TR agreed but reminded the group that the more people involved leads to a longer time potentially needed to finalise the document. She suggested one representative each from the ASC and the CP to take part and the Secretariat will convene the technical process. Both LSC and DHB also supported the suggestion.</p> <p>Any Other Business</p> <p>Member raised a question that the RSPO and the Secretariat are not currently subject to a formal complaints mechanism and it is not possible to raise a complaint against these entities.</p> <p>TR explained that in the past there were complaints against RSPO standards and the Secretariat performance. These didn’t use the CAP system, but via letter addressed to the Secretariat. The complaints against the Secretariat performance are still not being addressed by the Complaints Desk. There has been no clear procedure for accepting and addressing complaints against RSPO and the Secretariat, and these have been routed directly to the CEO or a related SC. This is the reason the</p>	<p>The Secretariat will discuss and consider mechanisms to include the CP in the CAP review process.</p> <p>The Secretariat will suggest regular ASC/CP catch up meetings and to include CAP review in the discussion.</p> <p>ASC and CP will choose a representative each to be involved in the process to develop the ToR for the CAP review.</p>
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	<p>RSPO has the Grievance Unit to cover this gap, and this is being covered by the wider grievance review.</p>	
	<p>End of meeting</p> <p>DHB and MG thanked NJ and all the ASC & CP members who attended the meeting, for their feedback and comments.</p> <p>The meeting adjourned at 6pm.</p>	