

RSPO Dispute Settlement Facility (DSF)

Framework, Terms of Reference, and Protocol

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I. Framework:

A. Overview and Objectives

RSPO requires in its Code of Conduct and in its Principles & Criteria (P&C) that members adhere to specific requirements. When stakeholders wish to raise a complaint or dispute against a member regarding conformity with RSPO requirements, recourse is ultimately available through RSPO's Complaints System. In order to engage this Complaints System in a practical and more efficient way, parties are encouraged to seek avenues for resolution of disputes under a framework that applies the relevant sections of the P & C in a consistent manner that is complementary and subordinate to the Complaints System. The addition of a Dispute Settlement Facility (DSF) under RSPO attempts to fulfil this need; the DSF addresses disputes arising from issues relevant to certain RSPO P & C, as detailed in Section I.B below.

RSPO acknowledges the need to work within the legal framework of each nation, but also acknowledges that the legal system and judiciary sometimes fall short of resolving land-related disputes. Inconsistencies within and implementation of the legal system can also contribute to or complicate such disputes. Additionally, there is an apparent need for a non-legalistic approach, which could act more in the realm of conflict resolution and prevention than arbitration.

The aim of the DSF is thus principally to:

1. 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.
2. Alleviate administrative and technical burdens placed on the currently existing Complaints System and its executors.

B. Context

How the context of the DSF falls into the larger context of the Complaints System is depicted in the flow diagram and text of the document entitled, "RSPO Complaint System.doc."

Palm oil land related disputes show they mostly result from lack of FPIC, recognition of the community voice, and respect for customary rights. The RSPO P&C criteria 2.2, 2.3, 6.4, 7.5, and 7.6 specifically require certain kinds of interactions regarding how producers are to proceed when dealing with issues surrounding land use and customary rights of local peoples, and most notably to follow processes of Free, Prior, Informed Consent as specified in the P & C. Furthermore, requirement 4.2.4 in the RSPO Certification Systems document states that certification is not possible when there are ongoing disputes. To more expeditiously settle disputes of these kinds between RSPO members and their respective stakeholders, RSPO has thus created an additional Dispute Settlement Facility (DSF), described herein.

The DSF enables a mediation process that may be undertaken by mutual consent of the parties involved in the dispute. While the primary intention of this DSF is to address land-related disputes, parties may choose this system as a way to resolve other forms of disputes as well. In all cases, parties are encouraged to first try to settle disputes on their own, i.e., by directly engaging the other side, without seeking outside help. Failing this, the preferred course of action, for the reasons described above, is to seek mediation through the DSF as a way to achieve resolution. The DSF is subordinate to the RSPO Complaints System, which may be further pursued if a party rejects the mediation process or the DSF mediated process fails to achieve a resolution.

C. Categories of Disputes:

For the purposes of the DSF, disputes shall be divided into five categories:

1. *A dispute that has existed and is known by the RSPO member, but is not divulged once they have initiated the certification process* – Disputes of this category require that the member agree to the mediation process detailed in section IV of this document immediately as applicable and if so requested by the disputing party(ies). Certification shall be suspended until a resolution has been achieved between the two sides on their own, through the DSF, or through the Complaints System.

2. *A dispute that has been “acquired,” or “assumed” by a member via their acquisition of land or operations from another company, but the member is otherwise in good standing* - In this category, the member must agree to the mediation process detailed in section IV of this document immediately as applicable and if so requested by the disputing party(ies). As long as the member cooperates, certification status of other operations shall not be adversely affected. A prerequisite to this is that it must be clarified and agreed, from a historical perspective, who the parties initially involved in the dispute were. In any case, this category of dispute shall not be construed as a means for any member to acquire such a disputed situation as a way to alleviate another company of responsibility and/or penalty under point (1) above.
3. *A new dispute that arises only after certification has been granted.*
4. *A dispute that had been settled and recognized by relevant parties (and perhaps the authorities) but for whatever reason the dispute resurfaces.* For example, a dispute over land, which had been settled amicably between the elders of the local community and a plantation company and the settlement was duly witnessed by the district government. However, with the passage of time, some younger members of the local community felt that their community had not been given a fair deal and called for a renegotiation for a better compensation, thus leading to the resurrection of a previous conflict.
5. Other disputes brought to the DSF at the discretion of the parties directly involved in the dispute.

II. Terms of Reference:

A. Stakeholder Standing and Engagement

Parties who shall have primary standing and therefore recourse under the DSF are those who have a direct land-related conflict or other disputes with each other, i.e., individuals, smallholder groups, and/or their communities, and companies. Other stakeholders and associated organizations such as conservation-based NGOs, certification bodies, etc., may be called upon for support by the parties having primary standing, but they may not exercise the DSF as a recourse for disputes they raise from their own organizations; such complaints have recourse through the main RSPO Complaints System.

At the same time, it is important to conduct the DSF in a way that minimizes the likelihood that once a resolution has been reached through the DSF, that the same disputes will not flare up again, the outcomes being contested by other parties who consider themselves also stakeholders (e.g. a section of a community which somehow does not feel their concerns are adequately addressed, etc). In this respect, disputants should, as part of their responsibility under the DSF, be required to demonstrate that they diligently communicate with their constituents on a scale that is broader than their

immediate members, such as to district and local levels. This communication process should occur in an ongoing manner as the DSF is employed, through to the proposed resolution, such that the resolution is communicated to the broader context of stakeholders and acceptance thereby maximized.

B. Oversight and Administration

The RSPO Executive Board (EB) shall have full responsibility for oversight of the DSF and the Secretariat shall oversee the administration of it. The EB may, at its discretion, appoint a “DSF Steering Committee” to oversee the DSF, which shall be entrusted with ensuring its proper functioning, and making recommendations and adjustments to the structure of the DSF as needed. This Steering Committee shall report its activities, as well as any recommendations and adjustments, to the Secretariat on at least a semi-annual basis, with any substantive changes in procedure notified in advance to and duly approved by the EB.

The Secretariat may also outsource any or all of the duties associated with the maintenance and the flow of information involved with the DSF to a contracted service provider (or providers), but said contracted provider(s) shall not have the power to make decisions regarding the outcome of any case where the DSF is used. This service provider shall report to the aforementioned Steering Committee or directly to the Secretariat, as determined by the Secretariat.

To facilitate the mediation processes intended by the DSF, the following components are hereby named as integral and therefore necessary aspects of the aforesaid oversight and administration by RSPO:

C. Building Capacity to use the DSF

RSPO, working with the DSF Steering Committee shall establish a program to enable RSPO members, local stakeholders and other parties’ awareness of and understanding of how to use the DSF, including how to involve/commence a DSF mediation process, how a mediation process is conducted, what are requirements, and how to prepare oneself. Such a program of education and awareness includes but is not limited to:

- Publications bearing on the DSF and the RSPO that are accessible to and understandable by the people who need to use them (in translation, with easily understandable terms); and
- Meetings in-person and otherwise.

Topics include but are not limited to:

- When and how to pursue mediation as an option;
- How to notify the other side of a request for mediation
- How to notify RSPO of the desire to initiate mediation
- How to choose a mediator
- What to expect from the mediation process
- Recourse when obstacles are encountered

- The broader context of the DSF with respect to RSPO requirements in general and the Complaints System in particular.
- How to develop and disseminate communications related to participation in and outcome of the DSF process.

D. Approval of Mediators

The Secretariat or a party commissioned by the Secretariat shall maintain and publish a list of approved mediators. Approval of mediators shall follow an accreditation process whereby at least the following criteria are met:

- Each mediator shall have the demonstrated qualifications and/or credentials and experience. These shall be evaluated by the Secretariat or a duly empowered service provider, the criteria for decision (i.e., minimum acceptable qualifications) and approval specified in writing and employed consistently for all persons seeking approval. Qualifications include but are not limited to:
 - Training as a mediator, with adequate experience
 - Availability to actually carry out the work
 - Familiarity with the area/region wherein a dispute is situated
 - Fluency in the (local) language relevant for the region
 - Awareness of local culture and social realities, including but not limited to issues pertaining to Land Ownership Claims, Payments for Land Compensation, Ancestral Land and also its Divisions Amongst Descendants
 - Familiarity with land use related issues
 - Basic know-how of legal framework, national laws and legislation
 - Knowledge of RSPO Statutes, By-Laws, Code of Conduct, P&C, Complaints System, and other relevant motions of the General Assembly, as well as RSPO communications mechanisms
- Each mediator shall submit a full declaration of interests and update this declaration at least annually and also as new interests arise.
- Each mediator shall enter into an agreement with RSPO and with each of the parties involved in the dispute, to maintain confidentiality.
- Each mediator shall agree to follow minimum requirements for conducting and reporting on mediation, as detailed in this document or applicable references stated herein.

E. Housing of Information and Notification

The Secretariat shall itself house or otherwise have unlimited access to all information held and processed by a contracted service provider for the DSF. Similarly, all relevant information must be accessible to RSPO stakeholders via the RSPO website, taking the following into consideration:

The DSF aspires to ensure transparency throughout the mediation process and the reporting thereof. Decisions not to disclose information through the RSPO website or other media require motivation on genuine grounds that disclosure will go against the interest of the mediation process and/or may jeopardize the well-being or safety of stakeholders involved, and that non-

disclosure does not undermine adherence to the principles and objectives of RSPO, to wit:

1. The non-disclosed information relates to a legitimate aim, i.e. peaceful and constructive dispute settlement in accordance with RSPO objectives and P&C;
2. The disclosure of said information threatens harm to that aim; and
3. The harm to the aim is greater than the public interest in having the information disclosed.

In addition, the Secretariat shall make available, on its website and through other media as it deems useful or necessary, summary reports of the information, activities, status, and results of all persons and parties involved with the DSF. This reporting shall be done in a consistent manner per a template or format provided by RSPO that allows comparison and overview of the DSF over time, as a means of better assessing its effectiveness.

F. Monitoring

The DSF shall formally report to the Executive Board on at least an annual basis about its activities, and the Executive Board shall, with at least the same frequency, review the activities and cases encompassed by the DSF, and thereby evaluate its effectiveness.

Revisions to procedures and practices shall be made along specified timelines, as the EB deems prudent. The EB may assign part of the evaluation work to the Secretariat or to a contract service provider, and these entities may make recommendations, but final decisions on action shall be the exclusive power of the EB.

This monitoring and review process and the associated outcome(s) shall be reported on the RSPO website at least annually.

III. PROTOCOL

A. Timelines and Expectations:

1. General expectations of the DSF and its mediation processes
 - Mediation is not the same as arbitration. Both sides of a dispute must ultimately voluntarily and mutually agree on the decided outcome.
 - Resolutions reached through mediation processes are often “iterative” in nature; while the compromises reached may satisfy the parties involved in a permanent way, they do not necessarily completely eliminate the possibility of further evolution, discussion, and/or alternative outcomes in the future, provided these opportunities are

acknowledged and mutually agreed by the parties as being part of the process.

2. Refusal of aggrieved parties to participate

- The DSF presumes that both sides involved in a dispute will agree to participate in a mediation process. RSPO realizes however that good-faith attempts to enter the DSF process by the party against whom the dispute is raised may be met with refusal to use the DSF by the aggrieved side, for whatever reason. Such a unilateral refusal to participate could be used to force the other side through the RSPO Complaints System and thereby incur penalties that might otherwise be avoided had the DSF been successfully used. In such cases the refusal to participate in the DSF must be evaluated by the RSPO Complaints Panel in order to inform their decision about the party against whom the complaint is held.
- In order to inform the Complaints Panel, the Complaints Panel shall direct the DSF Manager to contract an external expert to investigate the nature of the refusal. The primary parties involved shall have the opportunity to object to the expert assigned to this task. The costs for the expert's investigation shall be borne by RSPO.

3. Completion of the DSF process

Notwithstanding point (2) above, the expectation is that once a mediator has been engaged, that either:

- Resolution will be achieved or at least all parties involved express that adequate progress is reached, within one year, and in particular, accordance with clause 4.2.4. of RSPO Certification Systems (26 June 2007) (currently being reviewed);
- the mediation process will have been abandoned by one or both sides for another avenue of recourse such as the Complaints System; or
- both sides mutually agree to extend the mediation process. In such cases, use of the DSF can be construed under the RSPO Principles & Criteria to be a "recognized dispute resolution process acceptable to both parties," in which case decisions regarding withdrawal of a company's certification (or similar adverse actions against said company) are not yet necessary.

4. Notification and Continuity

- Post-mediation dialogue between the immediate parties using the DSF and their respective stakeholder communities is necessary diligence, to ensure that the resolution(s) reached through the DSF are clearly communicated and thus better accepted.
- In all cases, once a mediator has been engaged, it shall be the responsibility of the mediator to update the Secretariat on the status of the dispute on at least a quarterly basis and also upon resolution or abandonment of the process.

B. Flow and Detail of Events:

The basic steps involved with use of the DSF are as follows:

1. Preliminary/Inquiry
 - a. RSPO receives a formal complaint through its Complaints System. If the Complaints Panel determines that the case is justified and that P & C are relevant to the DSF's context, RSPO or its contracted service provider directs the inquiring party to the appropriate information, mechanisms, and/or parties that will enable it to engage the DSF. The Secretariat or its contracted service provider shall document the inquiry, including the name(s) or the inquiring side, the topic and party being disputed against, and the date of the inquiry.
 - b. RSPO receives an inquiry from either or both sides of a dispute for assistance through the DSF to resolve a dispute. In such cases the DSF is seen as an opportunity to resolve a dispute before it escalates to the status of a formal complaint under RSPO. Inquiries of this nature, i.e., where no formal complaint has yet been raised, shall be subject to all RSPO requirements for the DSF process, except that they shall be, at their explicit request, exempt from public RSPO announcements and communications about the mediation process as specified in this document, provided that this "quiet" approach is acceptable to all parties of primary standing in the dispute.
2. Initiation - If a party wishes to engage in mediation (i.e., use the DSF), they must notify RSPO in writing of that intention. The Secretariat or its contracted service provider shall document this notification, including retaining the original notification, the date it was received, the basic claim(s) or subject of the dispute, and the opposing side(s) to be involved in the mediation.
3. Agreement on a mediator. The mediator must be approved under the DSF per section 3 above and agreed upon by both sides involved in the mediation.
4. Once the mediator has been chosen, s/he will then notify RSPO that s/he has been engaged for the work. The Secretariat or its contracted service provider shall note the identity of the mediator and the date on which engagement – and therefore the mediation process – has begun.
5. The mediator will conduct the mediation and will report to RSPO as described in Section IV above. The mediator's final report shall include at least the following:
 - a. That both sides agreed on the process of the mediation, including setting/location for meetings, meeting frequency, and persons to be

- directly involved in the mediation. The mediator shall include a description of the roles and responsibilities of each person involved in the mediation and an assessment of their suitability to the process.
- b. An agreement on the costs incurred by each side involved in the mediation, and what they were.
 - c. While it is expected that the intended goal of the mediation process is a rapid and lasting resolution, both parties, at their mutual consent, may explicitly agree that a temporary resolution may be an acceptable outcome. In such cases, a commonly agreed time frame for the duration of the temporary resolution must be specified, with a proposed subsequent development aimed at alleviating the dispute and ensuring full adherence to RSPO requirements. The mediator shall report all such intentions and outcomes in detail.
 - d. An agreement on the history and facts of the case. This must be based on:
 - i. a presentation of facts by each side and a summary thereby included in the mediator's report;
 - ii. reference to customary laws, applicable; and
 - iii. a statement by each side of desired outcomes of the mediation
 - e. The actual outcome of the mediation process. The outcome can be one of two basic paths:
 - i. Successful – a mutually agreed outcome. In this case the mediator shall specify the terms of the agreement.
 - ii. Unsuccessful – in this case the mediator shall detail the essential nature of the disagreement that still exists and a summary of each side's stated intentions as to the next step(s) they each intend to take.
 - f. An overview of the broader stakeholder engagement done by the primary parties involved in the mediation process, to help ensure that the resolution(s) reached will be durable, along the lines of sections II.A and III.A.3 of this document.
6. The mediator shall submit his/her report simultaneously to both sides and to RSPO. Both sides must then validate the mediator's report in writing to RSPO, or otherwise state what aspect(s) of the report they do not consider accurate and the reasons why. The Secretariat shall determine the proper course of action, consulting with the EB as necessary.
 7. The RSPO Secretariat or its contracted service provider shall publish the outcome of the mediation on the RSPO website, as well as document the outcome in summary form for the purposes of monitoring and oversight as described in Section II above.

C. Costs

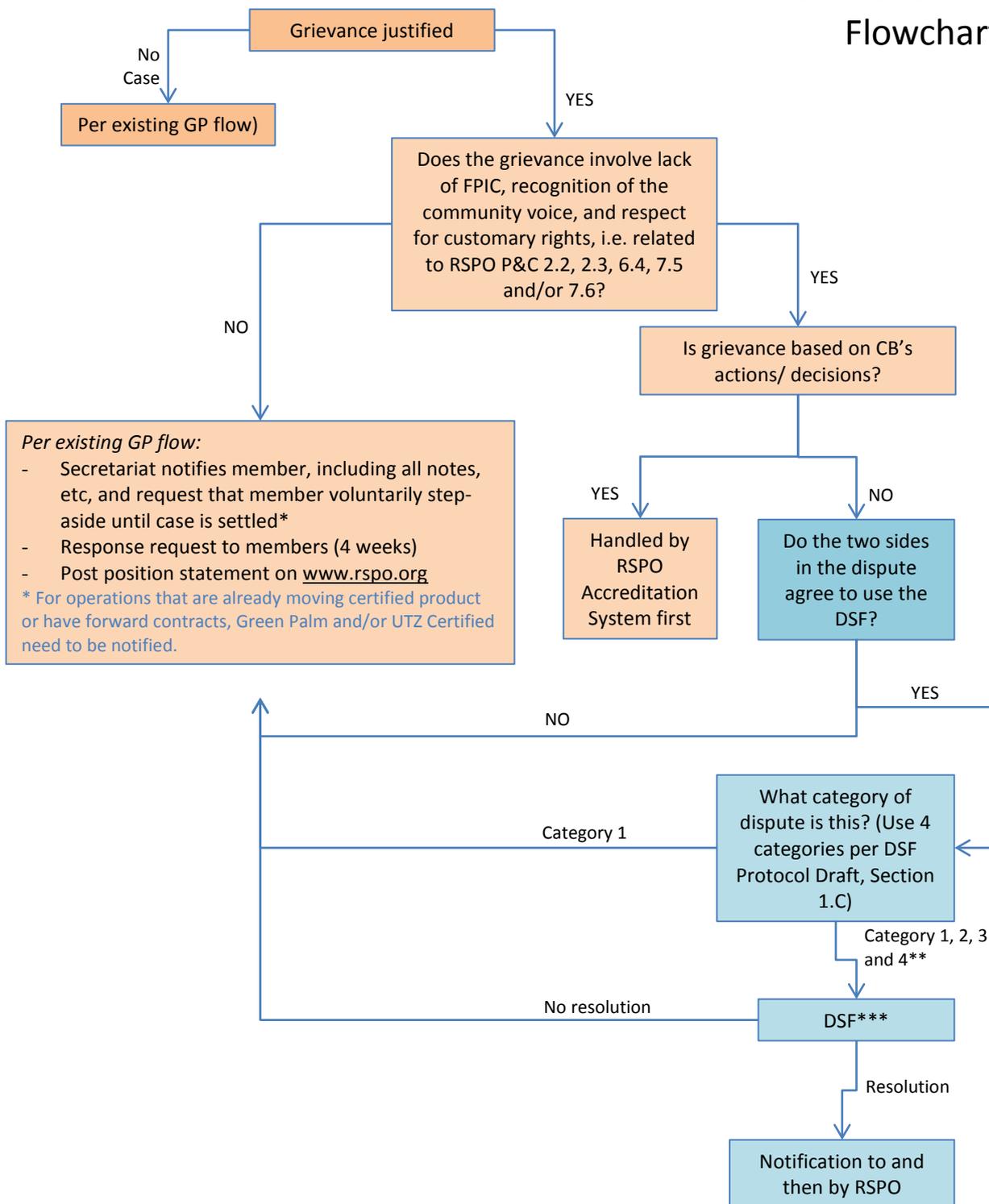
The costs for the mediator's services shall be borne in total by the sum payments of both sides engaged in the mediation, with deductions based on

discretionary financial support tendered by RSPO. For its first year of operations, the DSF shall publish fee schedules of all mediators approved under the DSF.

In order to calculate the share each side must pay, proportionate to the respective parties carrying capacity, the following factors must be taken into consideration:

- a base administrative fee for maintenance and processing of the data by RSPO or its designated agent;
- costs of travel-related expenses incurred by the mediator and each side engaging in the mediation, compared to overall revenues and financial resources devoted to the operation(s) under dispute;
- the number of individuals (or farming families) poised to benefit from compensation resulting from a positive outcome to the mediation process, the idea being that larger numbers of people can collectively bear more costs;
- the gross revenues and/or volumes gained by the party being disputed against, the idea being the greater the amount, the greater the cost that should be borne.

DSF Procedure Flowchart



** Even a “category 1” dispute could still use the DSF as a way toward resolution.
 *** For the DSF, there could be another, separate flow diagram, reflecting what is in the narrative protocol