

HIGH CARBON STOCK APPROACH

HCSA GRIEVANCE MECHANISM

13 January 2021

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INTRODUCTION

The High Carbon Stock Approach

Established in 2014, the **High Carbon Stock Approach (HCSA)** is a methodology that distinguishes forest areas for protection from degraded lands with low carbon, social and biodiversity values that may be developed. The methodology was developed with the aim to ensure a practical, transparent, robust, and scientifically credible approach that is widely accepted to implement commitments to halt deforestation in the tropics, while ensuring the rights and livelihoods of local peoples are respected.

The **HCSA Secretariat** is responsible for administration and management of the activities of the HCSA in pursuance of this objective. Its **Steering Group (SG)** provides overall governance of the HCS Approach and oversee the further development of a methodology designed to achieve no deforestation including refining its objectives, and its relationship to other approaches to halting deforestation. The HCSA **Executive Committee (EC)** is mandated to make decisions by consensus on all matters pertaining to the SG, except for changes to the HCSA methodology. Where the SG is not able to reach consensus, the EC may make final decisions.¹

The Need for a Permanent Grievance Mechanism

The HCSA requires “developers” (including HCSA members) to have a “mutually agreed and documented system for dealing with complaints and grievances which is inclusive, comprehensive and transparent, and which meets internationally recognized human rights standards.”² In October of 2018, the HCSA established an *Interim Grievance Resolution Procedure* to apply until a permanent mechanism was put in place. In January 2019, the HCSA EC confirmed³ that a permanent GM was needed to escalate concerns that “cannot be resolved between the relevant parties, or the resolution proposed by the HCSA member is not recognized as a mutually agreed outcome by parties affected by the implementation of the HCSA.”

This document describes the HCSA GM and the process adopted by the HCSA to ensure a timely, independent, and effective resolution of Complaints submitted. It can be referred to as the “**HCSA GM**”.

A. PRINCIPLES OF THE HCSA GM

1. Complaints shall be received, processed, and resolved by the procedure articulated in this document (the “**Procedure**”) in a manner that:
 - a. is clear, transparent, impartial, and effective, and addresses the Complaint within the shortest period possible with the involvement of relevant stakeholders;

¹ See <http://highcarbonstock.org/governance/> for more information on the HCSA governance.

² See HCSA Social Requirement #10; See also the HCSA Membership Requirements, C.1.A.3 and C.1.B.6 (pending adoption and providing that for “all Member Plantation Companies and Commodity Users... a functioning grievance mechanism aligned with the UN Guiding Principles on Business and Human Rights is in place to respond to, and address, grievances arising from the implementation of HCS Approach in its own operations, supply chains and investments.”).

³ In January 2019, the HCSA EC approved the HCSA Quality Assurance working group workplan to establish a permanent grievance mechanism for the HCSA and early accepted the proposal to do this via including it in the P4F funding workplan proposal in the latter half of 2018.

- b. is consistent with the **United Nations Guiding Principles on Business and Human Rights (UNGP)** as related to effective non-judicial mechanisms;
- c. encourages and supports resolution of conflicts at the Member level, whenever possible;
- d. strives to the greatest extent practicable to build capacity among Members to avoid and resolve grievances on their own, with the participation of relevant stakeholders;
- e. endeavours to play a constructive role in building consensus around the resolution of grievances among relevant actors, and whenever achievable, advance mutually satisfactory solutions;
- f. enables Member provision and cooperation in remediation when breaches occur;
- g. enables the good faith cooperation and meaningful and effective participation of the parties to a Complaint (**Party / Parties**)⁴; and
- h. furthers the goals and objectives of the HCSA.

B. INSTITUTIONS OF THE HCSA GM

1. There shall be a Grievance Unit and Grievance Panel with responsibilities to resolve Complaints in accordance with this Procedure.
 - **Grievance Unit**
2. There shall be a Grievance Unit to provide the required secretariat support required by the Grievance Panel, as provide in this Procedure, and reasonably directed by the Panel.
3. During the first two (2) years of the HCSA GM, the HCSA Secretariat shall act with impartiality as the full-time Grievance Unit, allocating the personnel time and resources available to fulfil the needs of the unit.⁵
4. During this initial period, the HCSA EC and Secretariat will take the necessary reasonable steps to secure the appropriate funds to hire the permanent personnel needed to carry out the functions of the Grievance Unit to be separate from the HCSA Secretariat.
5. At the end of year two, the needs of the HCSA GM (number of individuals, qualifications, and time commitments of the Grievance Unit and Grievance Panel (see subsection B.14 below)) will be decided upon by the HCSA EC and HCSA Secretariat based on an Assessment written by the Secretariat which will count with opinions collected from SG members, former parties, and former Panel member, submitted at the end of mid-year two. While the presumptive way forward is as stated in paragraph 4 above, the HCSA EC and HCSA Secretariat may also decide that the Secretariat as is, or with additional staff, can continue to act as the Grievance Unit.

⁴ Terms in this document referenced in its singular format may also be applied in their plural format where applicable unless the context specifically requires otherwise.

⁵ References to the Grievance Unit throughout this Procedure are understood to mean the HCSA Secretariat during this initial two (2) year period. Where HCSA Secretariat is referred to in this Procedure, the intent is to refer to the Secretariat in its capacity outside of the Grievance Unit.

6. Hiring of members of the Grievance Unit will be conducted by the HCSA Secretariat. Candidates will be selected and sent to the EC for endorsement within sixty (60) days, which shall not be unreasonably withheld.
7. Consistent with the HCSA GM Principles, the Grievance Unit will exercise the following authorities, duties, and functions listed below and as otherwise specified throughout these Procedures.
 - a. Act as the secretary to the Grievance Panel.
 - b. Receive, compile, record and track all information received relating to a Complaint and inform the Panel of the same, including, but not limited to:
 - i. The Complaint and all information contained in submission and any additional evidence, communication, or clarification that are received subsequently from the **Grievance Raiser**;
 - ii. The **Member Respondent's Response** including any evidence that was submitted to rebut the allegations of the Grievance Raiser and all additional evidence, communications, expert opinions, or clarifications that are received subsequently from the Member Respondent;
 - iii. Any additional information arising from further processing of the Complaint (i.e., during the Panel's case planning, Facilitated Settlement, Verification and Investigation, Final Decision, Request for Interpretation, Appeals Process, Monitoring and Closure phases).
 - c. In a neutral and respectful manner, maintain a **Record of the Complaint** and establish and regularly update the online **Case Tracker** (consistent with Section X below).
 - d. At reasonable intervals, provide periodic updates to the Complaint Parties in writing regarding the status and current actions to resolve the Complaint.
 - e. Communicate with the Parties and others as instructed by the Grievance Panel or otherwise authorized by this Procedure.
 - f. Given the working language of the HCSA GM shall be English, and the ability of the Grievance Raiser to submit their complaint in the language of their choice, consult with the Parties to the Complaint to determine the extent to which translation and interpretation can be accommodated by the HCSA and the Parties to the Complaint, including through the voluntary assistance of third parties.
 - g. Design and oversee a culturally appropriate communications strategy to ensure that key HCSA stakeholders are aware of the existence of the HCSA GM, its Procedure and Case Tracker, how it is accessed, and what resources may be available to assist potential Grievance Raisers in accessing and participating in the HCSA GM.
 - h. Provide the Secretariat and EC with the information necessary, consistent with Section X, to facilitate the implementation of **Interim Measures, Final Decisions, Requests for Interpretation, Requests for Appeals, and Facilitated Settlement Agreements (FSA)** that indicate the need for new guidance, clarifications, amendments, or additions to HCSA documents related to HCSA Member Requirements.
 - i. Prepare and administer a **GM Feedback Questionnaire** to compile the observations of the Complaint Parties and other stakeholders participating in the GM processes regarding the

effectiveness of the HCSA GM, their respective satisfaction with the process and outcomes, and their recommendations for improvements to the GM.

- j. Establish and maintain the HCSA GM webpage (procuring technical support as appropriate).
- k. Work with the SG Members and other stakeholders to generate over time a known list of experts that can assist the Panel in the processing of Complaints, carrying out Facilitated Settlement Processes, and developing time-bound Remediation Plans, as well as assist Parties in need.
- l. Prepare the Assessment described in this Section B and the Annual Report described in Section Y below.
- m. Carry out other authorities granted to it by this GM and all reasonable instructions provided by the Grievance Panel

■ **Ad hoc Grievance Panel**

- 8. There shall be ad hoc Grievance Panels that are subject to the oversight of the EC, but independent of it. The Panels to be convened are the ultimate decision-makers of the HCSA GM.
- 9. Each Panel shall consist of three (3) members assembled by the Grievance Unit as soon as it determines that a Complaint is eligible pursuant to section F below (Decision on Formal Acceptance)
- 10. Panel members will be persons respected by their peers, of impeccable integrity, great interpersonal skills, empathy, and sound judgment. The following qualifications would be desirable: a successful record of dealing with a broad range of civil society, affected communities and NGOs, and representatives of the private sectors through negotiation, participation, and consultation; knowledge and experience with the environmental and social issues addressed by the HCSA; and a solid academic and professional background.
- 11. For each Complaint, the Grievance Unit will establish an ad hoc Grievance Panel that has the combined relevant expertise and experience in the issues and processes that may arise in the resolution of the Complaint under review, including:
 - a. Natural resource management and environmental issues;
 - b. Human rights and labour issues;
 - c. Conflict Resolution/Alternative Dispute Resolution/Mediation/Facilitation; and
 - d. Knowledge of the HCSA methodology, Member Requirements, and associated/key documents.
- 12. The Grievance Unit shall implement the *HCSA GM Procedure for Convening an Ad Hoc Grievance Panel* to establish an ad hoc Grievance Panel.
- 13. If a Panel member is to be absent for a prolonged period or must leave prematurely during the review of the Complaint, or If circumstances arise during the review of a Complaint requiring a Panel member to recuse themselves from a single Complaint due to a conflict of interest, the Grievance Unit will immediately seek a replacement member in accordance with the procedures referred to in paragraph 12 and considering the characteristics described in subsections B.10 and B.11. As any new contract may impact a Complaint's processing, Parties of active Complaints shall be promptly notified if any of the conditions in this paragraph arise and if prejudice to a Party may result from any delay, the remaining Panel members in that case shall decide by consensus upon corrective measures.

14. Based on the Assessment referred to in B.5 (above), at the end of two years a decision will be taken by the HSCA EC and HSCA Secretariat whether to maintain the ad-hoc Panel format or establish a permanent Panel.
15. Consistent with the HCSA GM Principles, a Grievance Panel will exercise the following authorities, duties, and functions listed below and as otherwise specified throughout these Procedures.
 - a. Instruct and oversee the Grievance Unit.
 - b. Guarantee the processing of the Complaint in accordance with these Procedures.
 - c. Take all decisions, procedural or otherwise by consensus (including the Final Decision), and where not possible, based on the majority of the Panel members.
 - d. Convene regularly, at a minimum in monthly sessions, to discuss the status of Complaints and implementation of Interim Measures, Final Decisions and Facilitated Settlement Agreements (FSA), and provide for extraordinary sessions, where deemed necessary. Arrange for additional meetings as needed commensurate with the Panel's workload and provide for remote/virtual meetings whenever the work so permits.
 - e. Identify, during the processing of the Complaint, additional breaches of Member Requirement not designated in the Complaint if the facts and circumstances so warrant.
 - f. Ensure that HCSA GM outcomes are compatible with internationally recognized human right.
 - g. Take decisions to accelerate Complaints, issue Interim Measures, and resolve a Complaint through a Final Decision (terms defined below).
 - h. Direct the Grievance Unit to procure of one or more third party experts, while reserving for itself the right to draft their respective terms of reference.
 - i. Save in exceptional circumstances (i.e., illness, loss of Panel member), extend any timelines indicated in this Procedure for not more than a cumulative maximum of thirty (30) days, informing all Parties accordingly (greater extensions require agreement by all Parties).
 - j. Decide on its own, or at the request of a Party, to solicit information from the Parties, third parties named as sources of information in the Complaint, or other willing stakeholders likely to have information relevant to the Complaint and its resolution.
 - k. As appropriate, suggest to the Parties that another HCSA Member within the same supply chain also be joined in the action where conflict resolution and the design and implementation of a time-bound Remediation Plan can be better achieved (joining will require the consent of both Parties);
 - l. Consolidate and investigate simultaneously two or more Complaints against the Respondent that involve the same allegations of fact and/or issues.
 - m. Close investigations and Complaints.
 - n. Coordinate and communicate as necessary with the GMs of other international organisations;
 - o. Make adverse inferences against any Party that impedes the investigations or unreasonably refuses to cooperate with it.

- p. Warn, suspend, or terminate HCSA membership or take another urgent action through Interim Measures against a Respondent who, with the purpose of influencing the outcome of the Complaint, engages in any form of retaliation, reprisal, violence, threats, adverse discrimination against or applies undue pressure upon the Grievance Raiser, others adversely affected, or their spokespersons or whistle-blowers.
- q. Carry out other authorities granted to it by this GM.

C. GROUNDS FOR A COMPLAINT

1. The HCSA GM will process eligible Complaints received as of 13 January 2021.
2. The HCSA GM will process eligible Complaints against Members where assertions of facts related to conduct or activities gives rise to the inference that the Member Respondent has breached the HCSA SG Code of Conduct (detailed in the HCSA SG Membership Document) or the application of the HCSA methodology (detailed in the “*Eligibility and Code of Conduct Requirements, Indicators and Means of Verification*”⁶) (hereinafter, collectively referred to as the **HCSA Membership Requirements**, as periodically revised by the HCSA Members).
3. The Grievance Raiser wishing to file an eligible **Complaint** shall:
 - a. allege a Member breach of one or more of the HCSA Membership Requirements;
 - b. demonstrate that the Member’s GM was unable to resolve the complaint between the relevant Parties, or that the resolution proposed by the Member does not have the mutual agreement of the Parties affected by the implementation of the HCSA;
 - c. affirm that the essence of the Complaint does not essentially duplicate a grievance pending or already examined and settled by the Panel or by another international GM of which the Member Respondent is a voluntary member or is otherwise under its jurisdiction (see Section G below); and
 - d. provide the addition information requested in Subsection E.2 below.
4. Alternatively, to Subsection C.3.b, the Grievance Raiser may demonstrate that:
 - a. the Member does not have a GM that allows for a Complaint for the alleged breach;
 - b. the Member does not have a GM that provides for the remedy sought;
 - c. the Member’s GM is inconsistent with the UNGP requirements for a non-judicial GM *and* such inconsistency, precludes a just and fair remedy in this case; or
 - d. the filing of a Complaint before the Member GM would place the Grievance Raiser (or those he/she represents) vulnerable to threats of violence and retaliation.

⁶ Pending finalization in 2020.

D. WHO CAN FILE A COMPLAINT?

1. A “**Grievances Raiser**” is the presenter of a Complaint.
2. A Grievance Raiser can be the HCSA Executive Committee in the circumstances described at Subsection C.5 above, an HCSA Member, or a non-Member, including from within a Member’s own supply chain. A Grievance Raiser can be an individual or a collective (i.e., a business entity, union, a non-profit organization, or other stakeholder).
3. More than one Grievance Raiser can join in the submission of a Complaint.
4. A third party also may file a Complaint on behalf of others but said Grievance Raiser must provide clear evidence in writing that they are authorized to do so.
5. While satisfying the requirements of Section C, the EC may also initiate a Complaint after it has:
 - a. reviewed third party information⁷ which has been placed before it by the Grievance Unit, Secretariat, or a Member,
 - b. determined that there exists credible information of a breach of HCSA Requirements,
 - c. determined that if the underlying facts and circumstances were true, left unaddressed the matter may affect the Integrity of the HCSA, and
 - d. after resolution was not possible via the Grievance Resolution procedure provided for in the HCSA Code of Conduct.

THE COMPLAINT PROCESS

The process for all Complaints from submission to Closure is described below. See [Annex A](#) for a Flow Chart. It is understood that all persons subject to this Procedure shall always engage in good faith.

E. COMPLAINT SUBMISSION AND REQUIRED CONTENT – STEP 1

1. A Grievance Raiser may file a Complaint in the language of their choice **using an online form** or by downloading and filling the **HCSA GM Complaint Form**. Both are accessible on the [HCSA Grievance Mechanism webpage](#). The downloaded form should be filled in and returned to the secretariat electronically or as hard copy by mail or fax. Alternatively, a complaint letter can be sent electronically or as hard copy by mail or fax per the contact information below:

Attn: HCSA Grievance Unit

Suite 18-01A, Plaza See Hoy Chan,

Jalan Raja Chulan, 50200 Kuala Lumpur, Malaysia

⁷ Third party reports may include reports from credible media, civil society organizations, government institutions, and international organizations.

Email: qa@highcarbonstock.org

2. Information required for Consideration of a Complaint:

- a. Name and contact details of the Party submitting the Complaint; and if that Grievance Raiser is doing so in a representative capacity of another, evidence of the authority to do so;
- b. Express request that confidentiality is required as to the identity of the Grievance Raiser (there are no anonymous Complaints, but confidentiality will be respected such that only the Grievance Unit and Grievance Panel will know the identity, understanding that identities might become obvious depending on the facts and circumstances presented in the Complaint and throughout the process).
- c. HCSA Member(s) against whom the Complaint is being raised (“**Member Respondent(s)**”);
- d. HCSA Member Requirement(s) alleged to be breached⁸;
- e. A clear and concise summary of the key facts and chronology of events surrounding the alleged breach of the HCSA Member Requirements;
- f. Information about whether and in what form the issues have been raised with the Member Respondent prior to presenting the Complaint and what response was provided;
- g. Demonstration that the Complaint’s subject matter does not essentially duplicate a grievance pending or already examined and settled by the Panel or by another international GM (see Section G below).
- h. Evidence in support of the Complaint and its eligibility. What constitutes evidence will be broadly interpreted, but at a minimum, should also include:
 - i. materials demonstrating prior efforts to resolve the matter with the Member Respondent or in the alternative, material substantiating the allegations that the Grievance Raiser should be exempt from this requirement;
 - ii. findings, reports, decisions, and action plans arising from the Member Respondent GM or other bodies that tried to resolve the matter (including reports of mediators or facilitators if previously engaged);
 - iii. third-party reports regarding the issue, affidavits, newspaper articles, doctor’s reports, other documents supporting the Grievance Raiser’s allegations and arguments;
 - iv. where the Grievance Raiser believes that relevant evidence exists in the control of the other Party, and reasons why it is not easily accessible to the Grievance Raiser.
- i. The remedy sought;
- j. The language preferences of the Grievance Raiser; and
- k. If applicable, Request for Interim Measures, Acceleration, and/or Facilitated Settlement.

⁸ If this is not precisely identified, and to increase accessibility, during the eligibility phase the Grievance Unit may work with the facts and Grievance Raiser to identify the possible breach.

3. The Grievance Unit acknowledges receipt of the Complaint within seven (7) days of receiving it.

F. ELIGIBILITY DETERMINATION – STEP 2

■ Complaint Incomplete

1. Where the Grievance Unit finds the Complaint incomplete, it shall notify the Grievance Raiser of what is lacking in terms of information required by E.2 above and provide fourteen (14) days to receive the additional information.
2. Absent the approval of a reasonable extension request, failure to timely provide the information will result in an automatic dismissal of the Complaint. If the Grievance Unit informs the Grievance Raiser that the Complaint was rejected due to incompleteness, the Grievance Raiser is not precluded from re-submitting a complete Complaints at a later date.
3. During this period and as needed, if the Grievance Raiser cannot accommodate, the Grievance Unit will initiate the translations needed to make the decisions required of this Step 2.

■ Decision on Formal Acceptance

4. Once a Complaint is deemed complete, within sixty (60) days the Grievance Unit will review the information provided and make an initial finding, *without prejudice to the merits of the case*, as to whether the allegations of fact made by the Grievance Raiser are not manifestly groundless, but *if proven to be true*, will constitute a breach of one or more of the HCSA Requirements.
5. Complaints deemed by the Grievance Unit to be malicious or presented to gain competitive advantage, are ineligible for a Decision to Accept.
6. Within seven (7) days of a **Decision to Reject** the Complaint, the Grievance Unit shall inform the Grievance Raiser providing an explanation for the rejection. Within 14 days of receipt of the notification, the Grievance Raiser may request in writing that the Grievance Unit reconsider the Decision to Reject. The request will show cause for the reconsideration beyond the fact that the decision was unfavourable to the requesting party. If a Decision to Accept is forthcoming, the Grievance Unit will proceed as directed below in paragraph.
7. Within seven (7) days of its **Decision to Accept** the Complaint, the Grievance Unit shall:
 - a. Assign a Case Number to the accepted Complaint;
 - b. Initiate its procedures to convene an ad hoc Grievance Panel;
 - c. Notify the Grievance Raiser of the formal acceptance and the Case Number;
 - d. Notify the Member Respondent of the accepted Complaint and request **Respondent's Response** to the allegations made in the Complaint within thirty (30) days;
 - e. Provide both the Grievance Raiser and Member Respondent with information about the GM Procedure and outline the next steps in the process; and
 - f. Begin a Record of the Complaint and post the Complaint on the Case Tracker.

8. Within 14 days of contracting each Panel member, the Grievance Unit shall Secure from each member a form **Declaration of No Conflict**⁹ and send a notification to the Parties with the names and bios of the selected ad hoc Panel members.

G. DUPLICATION OF, AND COORDINATION WITH OTHER GMS

■ No Duplication

1. The HCSA GM shall not consider a Complaint if its subject matter (same activities and conduct of the Member Respondent) essentially duplicates a grievance pending or already examined and settled by the Panel or by another international GM. This applies irrespective of the identity of the Grievance Raiser(s) of the complaints.
2. However, the HCSA GM shall not refrain from considering Complaints where:
 - a. the complainant in the other GM is not the directly affected party, but a third party or a non-governmental entity having no mandate from the affected party;
 - b. the other GM is not mandated to provide the remedy sought by the Grievance Raiser in the pending Complaint;
 - c. the other GM does not have the technical expertise or mandate to analyse and apply the HCSA Requirements or declare breaches or violations similar in nature and scope to those alleged in the Complaint;
 - d. the procedure followed before the other GM is limited to a general examination of the Member Respondent’s conduct and activities, but there will be no decision on the specific facts that are the subject of the Complaint.

In the cases described above, the Grievance Unit, *in consultation with the Panel*, may limited it is the HCSA GM’s review to only a portion of the original Complaint that meets the exceptions of (a) thru (d).

■ Coordination of Grievance Mechanisms

3. The Panel may seek to coordinate with other international GMs to ensure that there is no duplication of procedures and to procure any other information relevant to the resolution of a Complaint before it.

H. CASE PLAN FOR RESOLUTION – STEP 3

1. Within fifteen (15) days of receiving the Member Respondent’s Response, the Grievance Panel will convene to review the information received thus far and agree on an initial plan to bring about a fair

⁹ The Grievance Unit will draft a *Declaration of No Conflict* in which the Panel member will affirm that (i) he or she does not have any professional, financial or personal relationship with the Parties or their subsidiaries or their personnel that would result in bias or prejudice or otherwise impact his/her judgment as a Panel member; and that (ii) should a conflict arise in the course of serving as a member of the Grievance Panel they shall immediately declare it to the Grievance Unit.

and expeditious conclusion of the Complaint (“**Case Plan**”). Deliberations and the resulting Case Plan shall at least address the:

- a. complexity of the subject matter;
 - b. nature and scope of the Verification and Investigation activities require;
 - c. necessity of contracting Third Party Expert(s) (including a Mediator or Facilitator);
 - d. need for further information from the Grievance Raiser, Member Respondent, third parties named as sources of information in the Complaint or others likely to have information relevant to the investigation and resolution;
 - e. the likely need for a Field Visit or a hearing;
 - f. issues of Acceleration and Interim Measures; and
 - g. the viability of a Facilitated Settlement Process (**FSP**) with the assistance of the Panel, HCSA Grievance Unit, a third party Mediator/Facilitator, and/or other provision of technical support from the HCSA, its Members or an external expert (see Section K below).
2. The Case Plan is an internal document for the Grievance Unit and Panel. It is not available to the Parties or the public. The Panel may decide to share elements of the plan with the Parties as it deems appropriate to facilitate the processing of the Complaint in accordance with this Procedure. The Panel reserves the authority to modify it at any time.

I. ACCELERATION AND INTERIM MEASURES

■ Acceleration

1. At any time during the processing of the Complaint (including before a Case Plan is prepared), the Grievance Panel may decide that the facts and circumstances warrant the acceleration of its review and thereby call upon all involved to work within an Accelerated Timeline as prescribed by the Panel. Such facts and circumstances include, but are not limited to situations when:
 - a. the passage of time would deprive the Complaint (and its potential resolution) of its effectiveness,
 - b. a prompt decision can avoid the reception of multiple Complaints on the same matter;
 - c. Interim Measures have been determined necessary; and
 - d. an immediate resolution can inform an imminent Member decision.

■ Interim Measures

2. At any time during the processing of the Complaint (including before a Case Plan is prepared), the Panel, on its own initiative or at the request of a Party, may decide that the other Party should adopt Interim Measures. Such measures shall concern serious and urgent situations presenting a risk of irreparable harm to persons, environment, or other subject matter of a pending Complaint. For the purpose of taking a decision on Interim Measures the Panel shall consider that a:

“serious situation” refers to a grave impact that an action or omission can have on a protected right, livelihood, **High Conservation Values (HCVs)** or **High Carbon Stock (HCS)** forests;

“urgent situation” refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and

“irreparable harm” refers to injury to rights, livelihoods, HCV areas or HCS forests, which due to their nature, would not be susceptible to effective and adequate reparation, restoration, or compensation.

3. Requests for Interim Measures, shall contain at least the following:
 - a. without prejudice to E.2.b, identifying information for the persons, and/or the HCV areas or HCS forests susceptible to adverse impacts;
 - b. a detailed and chronological description of the facts that motivate the request and any other available information; and
 - c. the description of the measures of protection requested.
4. Prior to the adoption of Interim Measures, the Panel shall request observations from both Parties if the measures are initiated by the Panel, or just the non-requesting Party (to be received within 15 days of the receipt of the Panel’s invitation for comment), except where the immediacy of the threatened harm precludes further delay. In that circumstance, the Panel shall review its decision as soon as possible, or at the latest during its next period of sessions, taking into account the information received from the Parties.
5. In considering an Interim Measure request from a Party, the Panel shall consider whatever factors it deems most relevant while also taking into account:
 - a. whether the beneficiaries of such measures (where applicable) have consented to the request by the Grievance Raiser (if not the same person(s)), and
 - b. whether the situation justifying the need for the measure has been brought to the attention of the other Party or the reasons why it would not have been possible to do so.
6. A Panel decision that a Party adopt Interim Measures shall be specific as to the action to be taken and the applicable timeline, define any monitoring and reporting requirements, and shall affirm that the Interim Measure decision and Party adoption and implementation of the measures do not constitute a prejudgment on the merits of the Complaint.
7. During the processing of the Complaint and through to its Closure, the Panel shall evaluate periodically, at its own initiative or at the request of either Party, whether to maintain, modify or lift the Interim Measure decision. Prior to taking this decision, the Panel shall receive observations from both Parties.
8. If the Panel issues an Interim Measures decision, it also shall take appropriate follow up measures to monitor the adoption, implementation, and impact of such measures, including by soliciting periodic updates from the Parties and if applicable, affected stakeholders (see Section O below)
9. Failure of a Party to adopt a requested Interim Measure or present the required periodic updates necessary for review and monitoring may prompt the Panel to take further actions, including the application of adverse inferences against the non-responsive Party and soliciting the assistance of the EC.

J. THIRD PARTY INVOLVEMENT

1. Any time during the processing of the Complaint prior to the issuance of a Final Decision or conclusion of a FSA, and again during the monitoring phase --at the reasonable request of either Party or on its own initiative, the Grievance Panel may ask the Grievance Unit to appoint independent experts in any relevant field and consider their reports. Such appointments may include, but not be limited to individuals with expertise and experience in mediation/facilitation, the commodity and region in question, a relevant scientific method, and the overall local context.
2. The Panel will determine the terms of reference of these third parties provided that as a condition of their contracting, they will sign a **Declaration of No Conflict** and **Non-Disclosure Agreement**.¹⁰
3. Notwithstanding the above, any Party to the Complaint may seek the advice and assistance of a third-party expert or advisor to accompany it in its own preparations and processing of the Complaint. Such third parties will be held to the same standard and rules as the Party they represent.

K. FACILITATED SETTLEMENT - STEP 4

- **Prioritizing a Facilitated Settlement Process**
1. On its own initiative or at the request of any of the Parties, the Grievance Panel shall place itself at the disposal of the Parties concerned, at any stage in the processing of the Complaint, with a view to reaching a **Facilitated Settlement Agreement (FSA)** of the matter prioritizing a consensus-based resolution.
 2. If the Panel decides during Step 3 that Facilitated Settlement is potentially viable (even in the absence of a Party request), it shall prioritize this step and within a week of convening to prepare the Case Plan, invite the “preliminary consent” of the Parties to commence a **Facilitated Settlement Process (FSP)**. Party responses will be required within a week of receiving their invitation. Parties are encouraged, but not required, to provide their reasons for declining Facilitated settlement. Party responses to decline or consent will be documented, included in the Record of the Complaint, and logged in the Case Tracker.
 3. Once the mutual preliminary consent of both Parties is received, within thirty (30) days the Parties will conclude a **Terms of Reference for the Facilitated Settlement Process** elaborated by the Parties with the assistance of the Panel. The terms will include, among others: agreed timelines, location of meetings, issues of confidentiality, individuals and third parties to be involved, matters to be settled, extent to which verification and investigation activities will be undertaken as part of the Facilitated Settlement, language of the process, technical support desired, the role of the Panel, and any other

¹⁰ The Grievance Unit will draft (a) *Non-Disclosure Agreement* prohibiting the third party from disclosing information not otherwise available to the public which is learned while contributing to the Complaint process; and (b) a *Declaration of No Conflict* in which the third party will affirm that (i) he or she does not have any professional, financial or personal relationship with the Parties or their subsidiaries or their personnel that would result in bias or prejudice or otherwise impact his/her contribution; and that (ii) should a conflict arise in the course of serving as a third party expert he or she shall immediately declare it to the Grievance Unit

issue important to the Parties). The mutual agreement to the Terms of Reference will represent the final consent of the Parties to pursue the process.

■ **No Agreement on Facilitated Settlement**

4. If the Parties never give their preliminary consent, do not reach agreement on the Terms of Reference or to extend their time to conclude such terms, Step 5 will commence.
5. Decisions not to pursue Facilitated Settlement at this time do not preclude it from being requested by a Party or the Panel in the future.

■ **Facilitated Settlement Process**

6. As the **FSP** is initiated and continued based on the consent of all Parties, any Party may withdraw their consent in writing during the process. The Parties then advance to Step 5.
7. When it deems it necessary, with the agreement of the parties the Panel may entrust to one or more of its three (3) members the task of facilitating (or mediating) negotiations between the Parties. The Panel may also deem, with the consent of the Parties, that a third part facilitator or mediator would be preferable.
8. The Panel may terminate its contributions to the Facilitated Settlement process if it finds that the matter is not susceptible to such a resolution or one of the Parties displays a lack of willingness to reach a Facilitated settlement based on the respect for human rights and the HCSA Member Requirements.
9. If an agreement is reached through an **FSA**, the Panel shall verify and document that all Parties have consented to the agreement. (Agreement of affected indigenous peoples and local communities shall be through free, prior, and informed consent processes.)
10. The Facilitated Settlement Agreement shall at least address the same information provided for in a Final Decision, including its time-bound Remediation Plan (see Section N below).
11. The Panel shall then adopt a **Facilitated Settlement Report** which includes a brief statement summary of the case and its chronology, its pertinent facts and resolution reached. The report shall be transmitted to the Parties concerned and the Panel shall direct the Grievance Unit to publish the report on the Grievance Tracker. The FSA will also be published in full unless one of the Parties express an objection. If there is an objection, within a reasonable period the parties may mutually agree upon one or more redactions that address the objecting party's concerns. If no agreement is reached, the objection stands.
12. During the period of Facilitated Settlement (which shall not exceed sixty (60) days from the conclusion of the Terms of Reference, unless otherwise agreed to or extended by mutual consent of the Parties), the further Complaint shall remain open, but its further processing suspended. If no FSA is reached, the Panel shall continue to process the Complaint in accordance with this Procedure.
13. Facilitated settlement shall be carried out without prejudice to the outcome of the Complaint if the suspension is lifted. If Interim Measures were issued, these too remain effective during the period of the Facilitated Settlement unless the Parties agree otherwise.

L. VERIFICATION AND INVESTIGATION – STEP 5

1. The objectives of all Verification and Investigative activities are to develop a thorough understanding of the issues and concerns raised in the Grievance, establish the applicable facts, facilitate consensus around the facts and potential solutions whenever possible, and gather relevant information to determine breaches of HCSA Member Requirements, as well as the appropriate time-bound Remediation Plan.
2. While the Panel has the authority to use various mechanisms to gather information, all decisions related to Verification and Investigation will strive to balance the potential importance and saliency of the information sought together with the resources that must be expended by either the HCSA GM to secure it, or by the Parties in service of a Panel request. This balance is especially relevant to decisions related to hearings, field visits and requests for information (or analysis) that the HCSA would not otherwise require a Member to possess.
3. With the assistance of the Grievance Unit, the Panel will promptly seek information through engagements with the Grievance Raiser, Member Respondent, third parties named as sources of information in the Complaint, or other willing individuals, groups, or bodies likely to have information relevant to the Complaint and its resolution. These engagements can come in the form of **written communications, meetings, procurement of third-party expert advice** (see Section J above), **hearings**, and **onsite field visits**. The date of each engagement and those involved will be recorded and made available to the Parties. When those engaged request confidentiality their identifying information will not be made available to the Parties.
4. Where other less costly means of engagement are deemed inadequate to secure relevant information, the Panel may decide to organize:
 - a. a hearing to receive oral testimony of witnesses and experts, procure from the Parties direct responses to Panel inquiries, and receive new evidence; and
 - b. an onsite field visit with the Parties allowing for sufficient advance notice for all concerned.
5. When the Panel requests information from a Party, it shall have the discretion to apply the **adverse inference principle** if a Party, without showing sufficient cause for such failure (i.e. trade secrets, privilege, intellectual property, legal obligations), has relevant information within its control and fails to identify or produce it upon a reasonable request. Such failure may give rise to an inference that the evidence arising from that information is unfavourable to that Party.
6. When the Panel is satisfied that the Parties have had a reasonable opportunity to review elements (a) thru (h) of the Record of Complaint (as provide by the Grievance Unit, see Section X below) and present their respective evidence and arguments, and the Panel has completed its own investigations, the Panel shall declare the Verification and Investigation phase closed and instruct the Grievance Unit to notify the Parties. The Parties then will await notification of the Final Decision.
7. Without prejudice to the above, the Grievance Panel shall aim to complete the Verification and Investigation phase within sixty (60) days from the meeting of the Panel to prepare the Case Plan, unless otherwise agreed with the Grievance Raiser and Member Respondent. If the Grievance Panel deems that a period of more than sixty days is required e.g., due to field conditions and the complexity of the case, written justification of this shall be provided to the Grievance Unit and to the Grievance Raiser and Member Respondent. The Grievance Panel shall also provide an update on the status of the Verification and Investigative activities at the end of the sixty-day period.

8. Thereafter, only if it considers it necessary owing to exceptional circumstances, the Panel may decide, on its own initiative or upon application of a Party, to reopen the proceedings at any time before the Final Decision is issued.

M. FINAL DECISION – STEP 6

1. A **Final Decision** is the ultimate determination of the Grievance Panel if a Facilitated Settlement process was not pursued or a prior agreement was not reached by the Parties.
2. The Grievance Panel shall deliberate and deliver its decision within sixty (60) days of the close of the Verification and Investigation phase.
3. The Grievance Unit shall assure that the Panel has a complete Record of the Complaint for deliberations.
4. The Panel shall restrict their deliberations to the facts of the case and the materials contained in the Complaints Record.
5. The Panel shall strive to reach a decision by consensus of its members, failing which the majority decision shall prevail.

■ Content of the Final Decision

6. At a minimum, the Final Decision of the Panel will:
 - a. declare whether there was, or was not, a breach of the HCSA Member Requirements and identify such breaches;
 - b. provide a summary of the evidence received from the Parties, experts, and others;
 - c. state the reasons upon which the decision is based;
 - d. provide a brief description of the dissent if the Final Decision was not achieved by consensus;
 - e. where a breach as found, include a time-bound Remediation Plan consistent with Section N below;
 - f. describe the conditions that will provoke the **Closure** of the Complaint; and
 - g. if applicable, include relevant a summary of lessons learnt and opportunities for building the capacity of HCSA Members and improve the HCSA and these Procedure.

■ Publishing of the Final Decision

7. A Final Decision that concludes there was *no* breach shall be released to both Parties simultaneously and published in the Case Tracker.
8. A Final Decision that concludes there *was* a breach, shall be released to both Parties and published in the Case Tracker forty-five (45) days thereafter, providing time for the Parties, with the assistance of the HCSA as needed, to implement their respective responsibilities with regard to the time-bound Remediation Plan. The Final Decisions shall be forwarded to the HCSA Secretariat and EC to encourage

any assistance required for its good faith implementation. During these 45 days, the Parties may discuss publicly the fact of violations being declared, but they shall not discuss the nature of those violations or any other content of the decision.

- **Member Suspension or Removal in a Final Decision**

9. In the exceptional circumstances where the nature and impact of Respondent Member's conduct and activities have been found to be severe (see Section P below), the Panel may decide that the Member Respondent is subject to an immediate conditional suspension or termination of Membership.
10. In advance of the release of the Final Decision, this element shall be shared confidentially with the EC for its endorsement within fourteen (14) days, which shall not be unreasonably withheld.
11. Withholding an **EC Endorsement** and asking the Panel for reconsideration of its decision, shall only arise if the EC can reasonably conclude that the Panel acted in bad faith and knowing disregard of the evidence presented to it. EC Members that are part of the Member Respondent's supply chain must remove themselves from the deliberations and decision related to an EC Endorsement.

- **Requests for Interpretation and Requests for Appeal**

12. Upon receipt of the Final Decision, Parties may either: file a **Request for Interpretation or a Request for Appeal**

- *Request for Interpretation*

13. Without prejudice to its finality, within fifteen (15) days of the issuance of the *receipt* of the Final Decision, either Party may request an Interpretation of the Decision. Requests will be made in writing and sent to the Grievance Unit. The request will state with precision the Party's question relating to the meaning or scope of the element of the Final Decision upon which the interpretation is requested.
14. The Grievance Unit will immediately transmit the **Request for Interpretation of the Decision** to the Panel.
15. The Grievance Unit will promptly transmit the request to the non-requesting with an invitation to submit any written observations they deem relevant within fifteen (15) days from receipt of the invitation.
16. A Request for Interpretation of a Decision does not suspend the immediate effect of the Final Decision, including any required implementation of the time bound Remediation Plan.
17. Once comments from the non-requesting Party are received, the Panel will respond to the request within thirty (30) days. The Panel's interpretation shall then become part of the original Final Decision.
18. Within fifteen (15) days of receiving the Request for Interpretation, either Party may file a Request for Appeal of the Final Decision (now incorporating the Panel's interpretation).

- *Request for Appeal*

19. Notwithstanding the timeline provided for in sub-section M (18) above, within thirty (30) days of the issuance of the *receipt* of the Final Decision as provided for in M (8) above, either Party subject to an adverse decision by the Grievance Panel may send to the *HCSA Executive Committee* a Request for Appeal of all or part of the Final Decision.

20. A Request for Appeal suspends the immediate effect of the Final Decision. If the request appeals only a part of the Final Decision (i.e., a single element of the time-bound Remediation Plan), the remaining parts of the Final Decision will continue to have effect.
21. A **Decision on Appeal** will be issued within (60) sixty days of the receipt by the *HCSA Executive Committee* of the Request for Appeal.
22. A Request for Appeal will be an exceptional recourse to safeguard against the violation of fundamental principles of due process and the integrity of the HCSA, including this GM. A party may file its request only on the basis of one or more of the following six (6) grounds:
- (i) the Grievance Panel was not properly constituted;
 - (ii) the Grievance Panel has manifestly exceeded its powers;
 - (iii) there was corruption or conflict of interest (that was not disclosed) on the part of a member of the Grievance Panel;
 - (iv) there has been a serious departure from the GM procedure;
 - (v) the Final Decision has failed to state the reasons on which it is based; or
 - (vi) there is a Final Decision that no reasonable panel could have concluded.

A Request for Appeal will specify the parts of the decision that are being appealed and the explain with detail the grounds on which the appeal is made.

If the Request for Appeal describes facts and circumstances that, if true, could reasonably support one or more of the grounds listed above, the *HCSA Executive Committee* will immediately instruct the Grievance Unit to follow the procedures of sub-section B.8 through B.12 above and constitute an ad-hoc **Grievance Appeals Panel** consisting of three members. If the Grievance Unit is unable to convene a Grievance Appeals Panel, the HCSA Executive Committee shall immediately constitute a five (5) member EC Appeals Committee within the Executive Committee (one member from each of the Plantation Companies, the NGOs, the Commodity User Companies, and the Technical Support Organisations). The fifth member will be a staff member from the Secretariat as appointed by the Secretariat. As with the Grievance Panel, no member will have an existing business relationship with one of the parties to the underlying grievance.

23. Based on the Record of the Case alone (see Section X below), the new Grievance Appeals Panel (or if required, the EC Appeals Committee) will review the findings and conclusions of the Grievance Panel and decide to annul, modify, or affirm the Final Decision in whole or part.

Only in the most exception of circumstances will any new investigations and fact finding be permitted. This will be in the sole discretion of the Grievance Appeals Panel.

As with the underlining Grievance Panel, the Grievance Appeals Panel will take all decisions, procedural or otherwise by consensus, and where not possible, based on the majority of the members.

The Grievance Unit will communicate the outcome of the appeals process to the Parties immediately (no later than within (7) seven days) of the issuance of the decision. This decision shall be binding to all parties and no further appeal on the same matter shall be accepted.

The decision of the [Grievance Appeals Panel/EC Appeals Committee] will now be the new Final Decision and therefore be implemented, reviewed for failures to implement, monitored, published in

the Case Tracker, and declared closed consistent with that which is already provided for these activities in this GM.

N. TIME-BOUND REMEDIATION PLANS

1. In the context of a Final Decision, the Grievance Panel will seek to build consensus around a time-bound Remediation Plan, but consent of the Parties is not required.
2. In the development of a time-bound Remediation Plan, the Panel recognizes that what constitutes a fair and just remedy:
 - a. will depend, and be tailored¹¹ to the facts and circumstances of each case, but in all cases be *rights-compatible*¹²;
 - b. may come in many forms, some used in combination (i.e., apologies, restitution, rehabilitation, restoration, financial or non-financial compensation, guarantees of non-repetition);
 - c. will be tied to its capacity to restore the Grievance Raiser (or those they represent) to the same position as they were prior to the breach;
 - d. will be its distinction between when a business entity is responsible for *providing* for or cooperating in a remedy versus *supporting* remediation by others (i.e., activities and conduct of direct/indirect suppliers versus those of the Member Respondent);
 - e. shall be its respect for internationally recognized right to an effective remedy when adverse impacts to human rights occur; and the acknowledgment that restoration or conservation activities should provide for the lost or damaged HCV or HCS areas on a long-term basis.
3. Remediation plans shall, at a minimum, contain the following information:
 - a. details about the agreed remediation outcomes and associated timelines;
 - b. who is responsible for specific actions;
 - c. in the case that compensation is to be provided, who receives the compensation, in what form, when; how often, and for how long;
 - d. any additional dispute resolution procedures;
 - e. repercussions if there is failure to implement the plan;
 - f. the monitoring and reporting process, including outcome indicators if possible;
 - g. involvement of third parties;
 - h. confidentiality of any terms of the agreement;

¹¹ For example, a “tailored” remedy that targets only a single region or commodity of a Member Respondent supply chain, but not others having nothing to do with the breach or its potential or actual adverse impact.

¹² This means that the remedy is in accordance with internationally recognized human rights and does not result in re-victimisation or infringement of the rights of others.

- i. responsibilities in terms of related costs of implementation; and
- j. conditions upon which the Parties will deem the plan fully implemented and Closure of the Complaint warranted.

O. MONITORING – STEP 7

1. The procedure for monitoring the implementation of an Interim Measure, the terms of an FSA or a Final Decision shall be described in the measure, decision, or agreement, specifying responsibilities and timelines, and where possible, outcome indicators.
2. Without prejudice to the above, the HCSA GM shall encourage monitoring to be conducted in a participatory manner, involving both Parties and where of added value, other stakeholders with the capacity to contribute effectively and meaningfully.
3. The Panel shall receive periodic reports from the Parties to the Complaint in accordance with the terms of the measure, agreement, or decision.
4. At any time, the Panel may require from other sources of information relevant data regarding the implementation. To that end, the Panel may also request expert analysis, opinions, or reports where it considers it necessary.
5. In exceptional cases, the Panel also may convene a **Hearing on Implementation**.
6. The Panel will review the periodic reports at their regular meetings, or in an inter sessional manner if the urgency or severity so requires. Upon review of the relevant information, the Panel shall determine the state of implementation with the Interim Measure, Final Decision or FSA and issue any new measures it deems appropriate.
7. The outcomes of this monitoring process and any new measures prescribed by the Panel will be publicly disclosed.

P. FAILURES TO IMPLEMENT INTERIM MEASURES, FINAL DECISION, OR FACILITATED SETTLEMENT AGREEMENT – STEP 8

1. If a Party fails to implement in whole or part the Interim Measures or Final Decision issued by the Grievance Panel, the Panel may take additional decisions designed to bring the non-implementing Party in compliance and where appropriate, sanction the Party and remedy new or aggravated adverse impacts resulting from the failure to implement.
2. Without prejudice to Subsection M.9 (above), the conditional suspension or termination of HCSA Membership are reserved for cases of failures to implement Interim Measures and Final Decisions of a nature and impact that are severe, where “severe” is determined based on a combined assessment

of the intensity¹³ (low, medium, high), scale (isolated or widespread), and persistence (one time, repeated or ongoing) of the failure to implement.

3. If a Party fails to implement the FSA, the consequences described in the agreement shall apply. The aggrieved Party may also request the Grievance Panel to review the matter and decide if the facts and circumstances indicate that the consequences outlined in the agreement are insufficient and further actions may be warranted. Before such further actions are decided upon, the Grievance Panel will provide a reasonable time period for the remediating Party to present its account of the alleged implementation failure. The Panel may decide upon new consequences (including alterations to the remediation plan), particularly where it determines that the current applicable facts and circumstances could not have been foreseen by the Parties and otherwise accounted for during their conclusion of the original agreement.

Q. CLOSURE OF THE COMPLAINT – STEP 9

1. The Panel has the sole discretion to declare the **Closure of the Complaint**, based on the conditions for closure described in the Final Decision or FSA.
2. Prior to declaring Closure, the Panel shall seek the observations of the Parties to the Complaint.
3. Once the closure decision is made, the Panel will instruct the Grievance Unit to notify the Parties and post the closure status on the HCSA Grievance Tracker.

OTHER PROVISIONS

R. COMPLAINT SUSPENSION/CANCELLATION

1. The Grievance Raiser may notify the Grievance Unit of the intention to withdraw their complaint at any time. When a Complaint is withdrawn, the Grievance Unit shall immediately notify the Member Respondent of such withdrawal. If the Grievance Panel determines that the underlying facts and circumstances of the withdrawn Complaint, if true, may affect the Integrity of the HCSA, it may refer the matter to the EC for further attention and appropriate action, as long as doing so would not prejudice the original Grievance Raiser. (The Integrity of the HCSA refers to matters that may adversely affect the credibility and legitimacy of the organization, the future likelihood of the HCSA achieving its objectives, or the utility and value of the HCSA methodology itself).
2. If the Grievance Raiser and Member Respondent agree to an FSP, the processing of the Complaint is temporarily suspended (see Section K above). At any time during the FSP, either Party may then ask for the Complaint processing to be resumed, regardless of the consent of the other Party or the Panel.

¹³ For example, less intensity might be inadequate monitoring or documentation of land use planning exercises; medium intensity might be worker discrimination or small-scale deforestation in an HCV area; high intensity might be incidents of forced labour or acts of violence against environmental or human rights defenders.

3. The Panel may also decide to cancel a Complaint (discontinue its processing) if there is lack of cooperation by the Grievance Raiser or if it is discovered that another Member presented the Complaint to be malicious or gain competitive advantage.
4. If a Member Respondent chooses to withdraw its membership in the HCSA after a Decision to Accept a Complaint is made; the Panel may decide to continue to process the Complaint if its subject matter goes to the Integrity of the HCSA, not otherwise prejudice the Grievance Raiser, and be feasible in the absence of and/or with the lack of cooperation of the Grievance Raiser.

S. EXECUTIVE COMMITTEE INVOLVEMENT IN THE COMPLAINT PROCESS

1. At any time before the Final Decision and during the period of Monitoring:
 - a. the Panel may formally request the comments, observations, and technical expertise of the Executive Committee or one of the established Working Groups, technical panels, tasks forces, or other similar bodies of the HCSA if it believes that such contribution would elucidate facts, facilitate agreement between the Parties, assist with the formulation of a time-bound Remediation Plan, or contribute to the understanding of an HCSA Requirement; and/or
 - b. the EC also may request permission of the Panel to submit a written contribution if the resolution of a particular Complaint may have an impact on the future conduct and activities of other HCSA Members and/or otherwise implicate a future change in the application or interpretation of the HCSA Member Requirements and the HCS Approach.
2. The presentations provided for in this Section will be in the working language of the Complaint process and bear the names and signatures of its authors.
3. The EC shall also play a role in the endorsement of the hiring of new Grievance Unit and Panel members (Subsection B.10) and Panel decisions related to HCSA Member suspensions or terminations (subsections M.9 and P.2), the dissemination of information about the existence and availability of the HCSA GM (see Subsection AA.1), and the periodic review and response of lessons learned (Section Y).
4. The EC may also become a Grievance Raiser in accordance with Subsection D.5 above.

T. APPLICABLE LAW

1. The Grievance Panel may consider applicable national and international law when relevant to determining the proper interpretation and application of HCSA Membership Requirements. Where there are discrepancies between the national law and international law, the highest standard will be applied.

U. PARTY COMMUNICATIONS WITH THE PANEL

1. Except in the context of meetings, hearings and site visits convened and organized by the HCSA GM, Parties and their representatives or experts shall not have direct communications with the Panel or a

member of the Panel regarding any matter related to the processing of an ongoing Complaint to which it is Party.

2. All such communications to the Panel from the Parties, their representatives or experts shall be in writing and sent through the Grievance Unit.
3. If these communications are attempted, the other Party shall be notified immediately, and the Panel shall take corrective measures if deemed appropriate (i.e., to censure or equalize the balance of information and influence).
4. Notwithstanding the above, if any party to a Complaint intends to make a public statement in relations to a pending Complaint, that statement must be shared with the Grievance Unit prior to its publication. This is intended to prevent any prejudicial statements that could possibly harm the on-going investigation and resolution of a Complaint. All parties to a Complaint are encouraged to refrain from making such statement until the Complaint has been deliberated by the Grievance Panel.

V. PROTECTION OF GRIEVANCE RAISER AND OTHERS INVOLVED IN COMPLAINT PROCESSES

1. The Panel may warn, take necessary actions against, and/or issue Interim Measures to any Party who, with the purpose of influencing the outcome of the Complaint, engages in any form of retaliation, reprisal, violence, threats, adverse discrimination against or applies undue pressure upon the other Party, their representatives, witnesses, spokespersons, whistle-blowers, or advisors.
2. Any Party should immediately notify the Panel of actual or potential incidents of retaliation, reprisal, violence, threats, or adverse discrimination.
3. Among other necessary actions it deems appropriate, the Panel may:
 - a. make adverse inferences against any Party that impedes the investigations or unreasonably refuses to cooperate with it, including with respect to the engagements prohibited in the aforementioned paragraphs of this section;
 - b. with the consent of the individual(s) who are the subject of the actions described in V.1 above, seek the cooperation of the respected authorities to provide required protection of persons and investigate and sanction those responsible; and
 - c. engage the cooperation of the EC in reproaching or sanctioning a Member engaged in the behaviour described in this section.
4. Where a Grievance Raiser request anonymity due to fears of retaliation, reprisal, violence, threats adverse discrimination, or undue pressure, the HCSA GM will take appropriate measures throughout the process to protect their privacy and identity to the maximum extent possible, while recognizing that the identity of the Grievance Raiser or those he or she represents might become obvious depending on the facts and circumstances presented in the Complaint and throughout the process.

W. COSTS

1. The HCSA will endeavour to finance all costs related to *its* involvement in the processing of the Complaint (including third party experts desired by the Panel). Extensive translation and interpretation costs will be discussed with the Parties. Costs of each Party's good faith cooperation and meaningful and effective participation in the process is their own responsibility (i.e., production of evidence, attendance at meetings, hearings, site visits, etc.).
2. At this stage, the HCSA does not have resources to fund a GM that is more comprehensive than provided in this Procedure. The HCSA Secretariat will work with the EC to engage in robust fundraising aimed at financing what is already provided for, as well as future enhancements deemed appropriate during periodic reviews of the GM. The Grievance Panel and Grievance Unit will take all reasonable steps to minimize costs during the processing of the Complaints without compromising its commitments to the principles of this HCSA GM (A.1 above) and still ensuring transparency about the allocation of the costs.

X. RECORD OF COMPLAINT AND CASE TRACKER

■ Record of Complaint

1. A Record of Complaint is maintained by the Grievance Unit and will contain, at a minimum:
 - a. the original Complaint and its tracking number;
 - b. the Member Respondent's Response to the Complaint;
 - c. all written submissions and communications from the Parties;
 - d. transcriptions of all interviews conducted by the GM (protecting anonymity where requested);
 - e. reports of independent investigators and experts;
 - f. all other documentary evidence including photographs, video recordings and maps;
 - g. the decisions and grounds for the decisions to Accelerate processing or issue Interim Measures;
 - h. documents related to the FSP (i.e., drafts of agreements and communications of the Parties, the FSA, Facilitated Settlement Report, and confirmation of FPIC if applicable);
 - i. the Final Decision;
 - j. the Request for Interpretation and Panel response;
 - k. any other information deemed relevant to the Complaint and its resolution; and
2. documents related to any appeals process, including the Request for Appeal and new Final Decision. This Record of Complaint shall be maintained by the HCSA for no less than five (5) years.

3. The Record of Complaint is made available to the Parties, subject to issues of confidentiality provided for by this Procedure. It is not available to the public in its entirety, though elements will appear in the Case Tracker.
4. When the Verification and Investigation phase is closed by the Panel, the Grievance Unit assures that the Panel has a full complement of the contents to date in anticipation of deliberations.

■ **Case Tracker**

5. The Grievance Unit shall regularly update the status of a Complaint (including Requests for Interpretation) on the **Case Tracker**.
6. The Case Tracker is an online service available to the public on the [HCSA GM webpage](#). As soon as an Identify Number is assigned to an accepted Complaint, the Grievance Unit will list the Complaint on the tracker.
7. The Grievance Unit shall take reasonable steps to ensure that information relating to Complaints are always presented in a neutral way, without prejudice towards any of the Parties involved. While maximizing transparency, in all postings to the Case Tracker, the Grievance Unit shall be respectful about the need to maintain certain identities confidential as provided for in this Procedure.
8. Beyond the matter of the confidentiality of Grievance Raiser identities, the Panel may direct narrowly tailored redactions where transparency would place at further risk of harm one or more others (i.e., leaders of communities, unions, Member Respondent staff), or where a reasonable case of commercial confidentiality, intellectual property, or other legal consideration (i.e., privilege) is presented by a Party requesting confidentiality and opportunity is given to the other Party to respond.
9. The Grievance Unit shall make announcements of the following events on its Case Tracker within fourteen (14) days of the information becoming available to it, and publish a copy of the corresponding documents as indicated below:
 - a. Decision to Accept a Complaint (include copy of Complaint);
 - b. Receipt of Member Respondent's Response to the Complaint (include copy of Response);
 - c. Decision of Panel to Accelerate Complaint processing (include copy of decision);
 - d. Decision of Panel to issue Interim Measures (include copy of decision);
 - e. Decisions taken by Parties to consent or decline the FSP;
 - f. Completion of Facilitated Settlement Report (include report and if the Parties direct, a copy of agreement);
 - g. Closure of Verification and Investigation step;
 - h. Final Decision of Panel (include copy of decision with time-bound Remediation Plan);
 - i. Decisions of Panel related to Party implementation of Interim Measures, Final Decision and FSA (include copy of any new decisions and measures issued);
 - j. Decision to Cancel a Complaint (include copy of decision);

- k. Change in status of the HCSA Member Respondent, if applicable; and
 - l. Decisions made on Appeal.
10. To increase transparency and accessibility, the Grievance Unit will highlight dates, Parties, the status of the Complaint (i.e., “in Facilitated Settlement” or “Panel deliberating for Final Decision”), and a brief description (not more than one paragraph) of the nature and content of the case. These descriptive parts of the Case Tracker shall be in English and the preferred language of the Grievance Raiser. If funding permits, other translations may be provided going forward.

Y. LESSONS LEARNED

1. Findings and recommendations emerging from this HCSA GM, the monitoring of implementation, feedback from GM Parties and stakeholders, and the annual reports on the GM, among others, can be important sources of potential changes within the HCSA leading to improvements in the HCSA methodology, HCSA Member Requirements, the HCSA GM itself.
2. The Grievance Unit, in consultation with relevant Panel members, shall present an annual report to the HCSA EC at least once a year (the **HCSA GM Annual Report**). The report shall, at a minimum, include a
 - a. *Summary of:* new Complaints received that year, the status of ongoing Complaints (including any new Interim Measures, appeals filed, Final Decisions and FSA), the past year’s coordination/engagements with the GMs of other international organizations, and inputs received through the GM Feedback Questionnaire -- at all times respecting issues of confidentiality while providing appropriate transparency and whenever possible, presenting information in disaggregate terms, at least with respect to gender); and
 - b. *Lessons learned, key trends in emerging grievances, findings and recommendations* related to the avoidance of Complaints in the future and the improvement of the HCSA methodology, Membership Requirements, and the HCSA GM itself
3. Notwithstanding the above, the Panel also may address a communication to the HCSA EC at any other time it determines that a lesson learned during a Complaint process warrants immediate attention.
4. The EC will share the HCSA GM Annual Report with SG Members and the Grievance Unit will post it on the HCSA GM webpage.

Z. PERIODIC REVIEW OF HCSA GM PROCEDURE

1. Upon receipt of the HCSA GM Annual Report, the EC will place discussion of its contents on the agenda of the next in-person meeting of the SG.
2. At its discretion, but at least once a year, the HCSA EC will record the actions it has taken in response to the recommendations and findings presented by the Panel in the HCSA GM Annual Report and instruct the HCSA Secretariat to make that record public.

3. The HCSA Grievance Unit will welcome stakeholder comments, observations and recommendations related to the HCSA GM, including through the HCSA GM webpage. The Grievance Unit will keep a record of such inputs.
4. Proposals to amend this Procedure may be introduced by a Member of the SG, the HCSA EC, or the HCSA Secretariat. Where there is sufficient support for the proposal, it shall require deliberations by the SG, an adequate and inclusive public comment period, and then the approval of the HCSA EC. The HCSA Secretariat, together with the HCSA EC, will manage this process.

AA. ACCESSIBILITY

1. The Grievance Unit, in consultation with the HCSA Secretariat, EC and other SG Members, will disseminate communications material designed to inform HCSA stakeholders about the existence of the HCSA GM, its Case Tracker and procedures, and how to access each.
2. This communication material will be made available in multiple languages, in hard copy and online, and via other identified culturally appropriate means and formats.
3. The Grievance Unit will recommend for Panel approval, other measures that may increase the accessibility of the GM by reducing potential barrier to access (language, distance, literacy, expertise).
4. The Grievance Unit will also render assistance that is reasonable within its available resources to actual or potential Grievance Raisers that may encounter such barriers.

BB. LIABILITY

1. The Grievance Unit, the Grievance Panel, the HCSA and its officials and authorized personnel, shall in no way be held liable to any person for any loss or damage arising, whether directly or indirectly, from any act or lawful exercise of their powers or duties under this Procedure including all things done in the *bona fide* belief of the existence of such powers or duties.

CC. WITHOUT PREJUDICE

1. The existence and use of this HCSA GM is without prejudice to any existing rights under any other GM (judicial or non-judicial) that an individual or group of individuals may otherwise have access to under national or international law or the rules and regulations of other institutions, agencies, or commissions to which it is a member or otherwise regulated.

ANNEX A: Simplified Flow Chart of HCSA GM Procedure

