

Palm Oil Certification: Not 'Out of the Woods'

An Assessment of Auditors' Stakeholder
Consultation in RSPO Certification Processes

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We are very grateful to the 14 people interviewed for their time and willingness to share their experiences and valuable insights on certification systems. And extend our gratitude to the local stakeholders that shared their experience with the SOCFIN RSPO certification process. Four reviewers further enhanced the report.

Table of Contents

1. Introduction	4
Notes on Methodology	5
A. International Law and Rights Underpinning the Need for Consultation	5
2. International Norms and Standards around Stakeholder Consultation and FPIC	5
B. Normative Elements of FPIC and Meaningful Consultation	7
A. Role of Certification Bodies	9
B. Applicability of International Consultation Norms to Certification Processes	9
3. Stakeholder Consultation Practices of Certification Bodies and Auditors	9
C. Guidance for Certification Bodies and Auditors in Consultation	10
D. Minimum Requirements and Good Practices	11
A. RSPO Guidance and Standards	15
4. Consultation Practices of RSPO	15
B. Experiences with consultation in RSPO certification	18
5. Case Study	21
6. Gaps in RSPO Standards and Processes	26
A. Human Rights in Standards and Gaps in Associated Capacity	26
B. Gaps in CB Guidance on Consultation	26
C. Gaps in Evidence Used During FPIC assessments	27
D. Gaps in outreach and Trust to Share Concerns	28
E. Lack of Safe Spaces and Protection of Complainants	28
F. Checks and Balances	29
7. Conclusion and Ways Forward	29
1. Introduction	4
Notes on Methodology	5
A. International Law and Rights Underpinning the Need for Consultation	5
2. International Norms and Standards around Stakeholder Consultation and FPIC	5
B. Normative Elements of FPIC and Meaningful Consultation	7
A. Role of Certification Bodies	9

1. Introduction

In the past decades, several voluntary palm oil certification systems¹ have been developed due to governments' general incapacity to regulate its use to ensure the protection of environmental and human rights. This has occurred due to pressure from civil society campaigns and grievances as well as to cater for stakeholders such as clients and financiers that demand social and environmental safeguards. Certification systems are sometimes integrated into frameworks or government policies on procurement and due diligence.

Certification schemes hereby place significant responsibility for assessing whether palm oil growers are not destroying primary forests or evicting communities from their land on Certification Bodies (CBs) and their auditors. As a consequence adherence to standards is increasingly controlled by third-party verification. This has led to the exponential growth of audit and certification companies, "which now form a profit-making sector in their own right."²

Although the third-party certification model in principle provides greater independence in certification decisions, **it presents numerous issues that have been under continuous debate over the past years.** These include the fact that they are not free from conflict of interest; that the quality of the verification is linked to capacity and willingness of the auditor; that the boundaries between compliance and non-compliance with social standards are vague; as well as the ongoing discussion about who should pay for these services.³

More importantly, the consequences of certification "gone wrong" and substandard verification have been clearly demonstrated by tragic events such as the 2012 factory fire at Ali Enterprises, which was certified by RINA,⁴ and the 2019 breach of the Brumadinho Dam, which was certified by TÜV SÜD.⁵ Similar events can be found in the certified palm oil industry across Asia⁶ and Sub-Saharan Africa⁷, with devastating consequences for biodiversity and people. Some studies even show that palm oil forests certified as sustainable are being destroyed faster than non-certified land.⁸

Evidence collected by non-governmental organisations (NGOs)⁹ concludes that **CBs often fail to identify and mitigate unsustainable practices due to substandard assessments** (or in some cases alleged collusion).¹⁰ This evidence calls for an extensive analysis of the processes behind these assessments and how the voice of rights-holders such as indigenous people and local communities (IPLC) and other stakeholders is included.

On the one hand, international hard and soft law¹¹ lays out state and business responsibilities on meaningful consultation with – and in many cases gaining the consent of – affected communities. On the other hand, guidance by high level actors has elaborately described the international norms and elements that encompass and ensure meaningful consultation¹² stipulating that communities should be consulted "in good faith in relation **to all matters that may affect their rights.**"¹³ **For all the reasons above, in our view, international norms apply -at least de facto- to CBs and matters linked to certification as well.** However, information assembled by partners of Friends of the Earth (FoE) Netherlands has suggested that consultation processes conducted by CBs as part of RSPO certification have been sub-standard and have violated international and RSPO's own standards on consultation and Free, Prior and Informed Consent (FPIC).

1 These include for example the Roundtable on Sustainable Palm oil (RSPO), The Indonesian Sustainable Palm Oil (ISPO) and the Rainforest Alliance (RA).

2 FAO (retrieved March 2021) – Ongoing debates. <http://www.fao.org/3/y5136e/y5136e0c.html>

3 Ibid

4 Clean Clothes Campaign (2019). Complaint filed against Italian auditor for ignoring fatal flaws in garment factory. <https://cleanclothes.org/news/2018/09/11/complaint-filed-against-italian-auditor-rina-for-ignoring-fatal-flaws-in-garment-factory-on-anniversary-of-deadly-factory-fire-in-pakistan>

5 Business and Human Rights Resource Centre (Oct 17, 2019). Deadly dam breach near Brumadinho: Affected persons file complaint against TÜV SÜD in Germany. <https://www.business-humanrights.org/en/latest-news/deadly-dam-breach-near-brumadinho-affected-persons-file-complaint-against-tuv-sud-in-germany/>

6 Jong, Hans Nicholas (August 5, 2020). 'Meaningless certification': Study makes the case against 'sustainable' palm oil. Mongabay.

<https://news.mongabay.com/2020/08/palm-oil-certification-sustainable-rspo-deforestation-habitat-study/>

7 Rosner, Hilary (2018). Palm oil is unavoidable. Can it be sustainable? National Geographic.

<https://www.nationalgeographic.com/magazine/2018/12/palm-oil-products-borneo-africa-environment-impact/>

8 Dalton, Jane (December 2018). No such thing as sustainable palm oil – 'certified' can destroy even more wildlife, say scientists. Independent

<https://www.independent.co.uk/climate-change/news/palm-oil-sustainable-certified-plantations-orangutans-indonesia-southeast-asia-greenwashing-purdue-a8674681.html>

9 Such as Friends of the Earth, Forest People Program, SOMO and others

10 EIA (2015). Who watches the Watchmen? <https://eia-international.org/report/who-watches-the-watchmen/>

11 Such as ILO Convention 169 (1989) on Indigenous and Tribal Peoples, see chapter 2 for more conventions

12 Such as by the Global Compact, FAO and OHCHR

13 Global Compact (2013). A business reference Guide, United Nations Declaration on The Rights Of Indigenous Peoples, page 11.

As many important analyses have been written about the substandard certification practices and negative impacts of the RSPO itself¹⁴ this paper dedicates particular focus to the practice of consultation during RSPO certification processes. This is significant as it is the consultation that delivers critical information to the certifying body, allowing it to assess compliance with standards and to make the certification decision.

This report first explores international norms and guidance on meaningful stakeholder consultation. Secondly, it analyses the guidance and best practices applied by CB auditors themselves. Thirdly, it describes consultation practices within RSPO certification. Finally, it explores the gaps between RSPO consultation practice and international norms and practices.

Notes on Methodology

The analysis in this paper was based on several sources: a desk review of academic literature and policy frameworks on consultation; FPIC and palm oil certification and other schemes; CSO papers on palm oil certification and the RSPO process; and 14 interviews with auditors and CSOs in Sub-Saharan Africa and international NGOs and academic experts.

The number of interviews conducted by the researcher does not allow for a representative sample or a complete picture of the experiences with consultation processes or the RSPO process. She therefore used the gathered experiences to illustrate common issues and practices in consultation processes, and supported the gathered arguments with information documented in other research over the past few years. Given that there was some sensitivity around the information shared and the reservations of some organisations to discuss these issues publicly, names were left out of the quotes.

The case study box on SOCFIN certification is a summary of findings from four researchers in Ivory Coast, Cameroon, Nigeria and Sierra Leone prepared by the lead researcher from Cameroon and Milieudefensie. This research was conducted in December 2020 and January 2021 and is based on just over 50 semi-structured interviews (bilateral and group discussions) with rights-holders and other stakeholders in the SOCFIN plantation areas. The objective was to document their experience and perception of the RSPO consultation. Verification was done by crosschecking other resource persons, desk study and documents provided by the local resource persons.

2. International Norms and Standards around Stakeholder Consultation and FPIC

A. International Law and Rights Underpinning the Need for Consultation

International law requires meaningful consultation with – and in many cases the informed consent of – affected communities. More broadly, a selection of human rights conventions and principles set out the different **rights to information and participation** for communities who may be affected by natural resource extraction, development or investment. Several instruments require government and business actors to meaningfully consult with these communities. We present three of these key instruments below.

First, and at its most basic level, community members have the right to seek and receive information. This is enshrined in more **general rights on freedom of expression as stipulated in the ICCPR**¹⁵ and upheld by decisions of the Inter American Court of Human Rights establishing that in the case of natural resources the right to information may cover information regarding a project's impacts on the environment and health.¹⁶

14 Gatti, Liang, Velichevskaya, Zhou (2019). Sustainable palm oil may not be so sustainable; SOMO (2018) Looking good on paper; Oxfam, 11.11.11, FIAN, AEFJN, Justice et Paix and CNCD (2018) De mythe van Duurzame palmolie; EIA (2015) & (2019) Who watches the watchmen? Auditors and the breakdown of oversight in the RSPO; FPP (2019). Ground-truthing to improve due diligence on human rights in deforestation-risk supply chains

15 International Covenant on Civil and Political Rights (ICCPR), art. 19.

16 See *Claude Reyes v Chile* para 73 and <https://globalfreedomofexpression.columbia.edu/cases/claude-reyes-v-chile/>

Second, as stipulated by the International Covenant on the Elimination of All forms of Discrimination, communities that are potentially affected by developments have the right to take part in public affairs, which includes the participation of indigenous communities in the conduct of public affairs at any level.¹⁷

The UN High Commissioner states that “specific positive duties for States to ensure the effective participation by indigenous peoples in decision-making **include those of consultation and cooperation with indigenous peoples** and, in particular, the need to seek the “free, prior and informed consent” (FPIC) of indigenous peoples in relation to legislative and administrative measures that may affect them (art. 19).”¹⁸ While FPIC encompasses many of the factors described under consultation, this process adds an element of control in the hands of relevant communities by focusing on their consent.

The obligations to obtain the FPIC of communities for projects that affect them are contained in multiple treaties. While the **International Labour Organization (“ILO”) Convention 169** establishes the only legally binding duty for ratifying governments to consult with indigenous communities regarding development projects and to obtain their consent for resettlement,¹⁹ most states have ratified at least one treaty that can be authoritatively interpreted to require FPIC. These include the International Covenant on Civil and Political Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples Rights.²⁰

Finally, in 2007 the UN General Assembly voted in favour of the **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**,²¹ stating that governments shall obtain the FPIC of indigenous peoples for development projects. While this instrument is not technically binding, the UNDRIP enjoys almost unanimous support and no governments currently oppose it.

While governments are the primary duty-bearers of obligations under international human rights law, **businesses also have responsibilities to respect human rights and should seek to avoid complicity** in violations of human rights, which include FPIC and consultation rights. In particular, soft law instruments such as the United Nations Guiding Principles on Business and Human Rights (UNGPs) map out the need for and process with which companies should conduct human rights due diligence and consultation. For example, in principle 18(b) it states that in order to gauge human rights risks the company needs to “involve in meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.”²²

While FPIC is on the rise in international law, domestic regulations are substantially lagging. The UNGPs therefore call on companies to **adhere to international standards when national requirements are inadequate**.²³ In addition, the ‘Due Diligence Guidance for Responsible Business Conduct’ (Guidance)²⁴ adopted by the OECD Council of Ministers lists stakeholder engagement “as one of the essential characteristics and components of due diligence”. This makes clear that a lack of or insufficient engagement with stakeholders constitutes a due diligence failure.²⁵

17 International Covenant on the Elimination of All forms of discrimination, article 4 and 5

18 Office of the UN High Commissioner for Human Rights (2014). Factors that impede equal political participation and steps to overcome those challenges Report of the Office of the United Nations High Commissioner for Human Rights. <https://www.refworld.org/docid/55c88cc24.html>

19 “Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.” ILO Convention 169, Indigenous and Tribal Peoples Convention, entered into force 5 Sept. 1991, Article 16 [hereafter “ILO Convention 169”].

20 Cases include respectively: The Case of Ángela Poma Poma v. Peru before the Human Rights Committee, Inter-American Court of Human Rights Case of the Saramaka People v. Suriname and Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya, 296/03, African Commission on Human and Peoples’ Rights

21 United Nations Declaration on the rights of indigenous Peoples, see: https://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf

22 UNGPs, principle 18b

23 UN Global Compact (2014) Indigenous Peoples’ Rights and the Role of Free, Prior and Informed Consent. A Good Practice Note endorsed by the United Nations Global Compact Human Rights and Labour Working Group on 20 February 2014.

24 OECD (2018). Due Diligence Guidance for Responsible Business Conduct. <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

25 OECD Watch & Amnesty (2018). The OECD Due Diligence Guidance for Responsible Business Conduct: A briefing for civil society organisations on the strongest elements for use in advocacy. https://www.somo.nl/nl/wp-content/uploads/sites/2/2018/06/OECD-Due-Diligence-Guidance_Briefing-for-Civil-Society_Final.pdf

B. Normative Elements of FPIC and Meaningful Consultation

Guidance on Practical Implementation of FPIC

A range of non-legal but influential sources such as the lending policies and codes of conduct of multilateral banks²⁶ have articulated the expectation that companies obtain FPIC. Guiding documents²⁷ on its practical implementation present a range of procedural elements to be included such as **representation and decision making through indigenous peoples' own methodologies**.²⁸ The concerned parties should establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect, in good faith, and with full and equitable participation. Consultation requires time and an effective system of communication among stakeholders.²⁹

Furthermore, **“Free should imply no coercion, intimidation or manipulation, Prior should imply that consent has been sought sufficiently in advance of any authorization or commencement of activities, that respect is shown for time requirements of indigenous consultation/consensus processes,”**³⁰ and **“not only when the need arises to obtain a community's approval.”**³¹ Some authors have noted that the failure to engage with communities from the start may create barriers to building consensus and to obtaining the community's social license to operate.³²

Finally, **“Informed should imply that information is provided that covers (at least) aspects such as the nature, size, pace, reversibility and scope of any project, locality, and personnel.”**³³ FAO's guidance adds that to establish “the extent of the lands and resources over which existing inhabitants of the targeted project area have both formal and informal rights and/or use [...] local communities, through their representatives, should play a central role.”³⁴

Guidance and Key Elements of Meaningful Consultation

In addition to FPIC guidance, a wealth of information and guidelines has been developed on what constitutes the purpose of consultation and **what makes it meaningful**. In particular, the UNGPs Interpretive guide on UNGP 18, clarifies that “human rights due diligence is about people. It reflects the entitlement of every human being to be treated with dignity. [...] Hence, the key to human rights due diligence is the need to understand the perspective of potentially affected individuals and groups. Where possible and appropriate to the enterprise's size or human rights risk profile, **this should involve direct consultation with those who may be affected or their legitimate representatives**.”³⁵ Elements that are discussed in this and other sources on norms of consultation include at a minimum a community's understanding of the information that is provided, a safe space to share concerns, and self-selection of relevant stakeholders so that genuine concerns are reported.

A key point of consultation is the expectation to ensure that local **communities gain an honest understanding on what the potential impact** of a project would be and that relevant information is shared with them. In this sense it is also important that the community in question “perceives the consultation to be meaningful”.³⁶ FAO's guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition, for example, mentions that the “purpose of iterative consultation is to share, in a multi-directional process, **all relevant information pertaining to the projected development** with relevant actors and rights-holders. With this information, communities are better placed to decide whether a project should or should not go ahead.”³⁷

26 See for example ESS 7 in the Framework of the World Bank: <http://pubdocs.worldbank.org/en/837721522762050108/Environmental-and-Social-Framework.pdf>

27 All guidance that has been written about FPIC cannot be summarised here, but an example of actors that have provided guidance on FPIC include: EBRD, IFC, FAO, the OHCHR, RSPO, FSC, ActionAid, ISEAL, IFAD, Preferred by Nature, members of the International Council on Mining and Metals, and Global Compact.

28 ILO Convention 169

29 “Economic and Social Council (2005). Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples. E/C.19/2005/3. <https://digitallibrary.un.org/record/544406#record-files-collapse-header>

30 Ibid

31 FAO (2016). Free Prior and Informed Consent An indigenous peoples' right and a good practice for local communities, p.15

32 Anaya, S. James and Puig, Sergio (2016). Mitigating State Sovereignty: The Duty to Consult with Indigenous Peoples. Arizona Legal Studies Discussion Paper No. 16-42. Available at SSRN: <https://ssrn.com/abstract=2876760>, page 12.

33 The Report of the International Workshop includes: a) The nature, size, pace, reversibility and scope of any project, b. The reason(s) for or purpose(s) of the project and/or activity; c. The duration of the above; d. The locality of areas that will be affected; e. A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit-sharing in a context that respects the precautionary principle; f. Personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others); g. Procedures that the project may entail.

34 FAO (2014). Free Prior and Informed Consent. An indigenous peoples' right and a good practice for local communities. Manual For Project Practitioners. <http://www.fao.org/3/a-i3496e.pdf>

35 OHCHR (2012). UNGP – An Interpretive Guide. https://www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf SOMO (2012). How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy. <https://www.somo.nl/wp-content/uploads/2012/11/English-version.pdf>

36 SOMO (2012). How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy. <https://www.somo.nl/wp-content/uploads/2012/11/English-version.pdf>

37 FAO (2014).

The UNGP Interpretative Guide adds that consultation should enable “the enterprise to hear, understand and respond to their interests and concerns.”³⁸

Critics point out that the form and content of consultation procedures and mechanisms need to “**allow the full expression of the viewpoints of the peoples concerned**, in a timely manner and based on their full understanding of the issues involved, so that they may be able to affect the outcome and a consensus could be achieved, and be undertaken in a manner that is acceptable to all parties. If these requirements are met, consultation can be an instrument of genuine dialogue, social cohesion and be instrumental in the prevention and resolution of conflict.”³⁹

Meaningful stakeholder engagement should take into account the interests of stakeholders in decision making “and ensure that affected stakeholders’ rights are respected [by] **determining what level of engagement information, consultation or negotiation is needed. Only informing stakeholders without engaging in dialogue is inappropriate.** Therefore, in most cases meaningful stakeholder engagement will include consulting the community and giving them the opportunity to share their views before decisions are made.”⁴⁰ The UNGP Interpretive Note adds that “engagement with stakeholders enables an enterprise to identify whether stakeholders have the same or different perspectives (from the enterprise and from each other).”⁴¹ The OECD Guidance places particular emphasis on rights-holders and “**the need for direct engagement** and consultation with people whose human rights are harmed or at risk of harm.”⁴²

The Guidance hereby emphasises that rights-holders are in fact the most important stakeholders and that “the degree of impact on stakeholders or rights-holders may inform the degree of engagement.”⁴³ In addition, the UNGPs point to ways to maximise the information the company can obtain about its human rights impact and how it is perceived, **including through sources** of external expertise such as CSOs, academics and practitioners. UNGP 18 states that “if direct consultation with affected stakeholders is not possible, expert resources of this type become more significant, as do the insights offered by organizations or individuals that legitimately convey the perspectives of those who may be affected.”⁴⁴

What communities and CSOs can and should expect from the consultation process is at least an effort to allow for the direct engagement with rights-holders and for full expression of the viewpoints of the peoples concerned in an open and safe environment, in which external expertise is used as a key resource.

Finally, within this consultation process “business should be **sensitive to barriers – linguistic, cultural, gender or other – that (indigenous) peoples may face in speaking openly to representatives** of a business.”⁴⁵

The OECD Guidance Note adds that meaningful consultation is characterised by two-way communication and good faith of all parties; timely sharing of relevant information, particularly with rights-holders, prior to project approval as well as during project activities; and accessibility of the information both in terms of its physical accessibility and ease of understanding for all parties in an ongoing manner throughout the due diligence process, and expressly not as a one-off endeavour.⁴⁶ This includes not only communicating in a way and with a language that the relevant people understand, but also **allowing their ability to speak ‘openly’ and without fear for their security** about the business actions in line with a process that allows for ‘full expression’. “It requires sensitivity to cultural differences and perceived power imbalances, where these exist.”⁴⁷

In conclusion, considering the well documented argument that stakeholder engagement efforts “often fall short because of a failure to understand local community dynamics, or a failure to fully engage all local stakeholders that are affected”,⁴⁸ communities and CSOs can and should at least expect an effort to **directly engage with rights-holders and the allowance of full expression of the viewpoints of the peoples concerned in an open and safe environment, in which external expertise is used as a key resource in the consultation process.**

38 UNGP 18

39 Comm. of Experts on the Application of Conventions and Recommendations, General Observation, Indigenous and Tribal Peoples, Int'l Lab. Conference, 98th Sess. (2009). As quoted in Rombouts (2018). Written submission to the EMRIP expert seminar on free, prior and informed consent: <https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/FPIC/RomboutsSJ.pdf>

40 World Resources Institute (2009). Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects. p. 2

41 OHCHR (2012). UNGP – An Interpretive Guide.

42 OECDWatch & Amnesty (2018). The OECD Due Diligence Guidance for Responsible Business Conduct, p.7

43 OECD (2018). OECD Due Diligence Guidance for Responsible Business Conduct. <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>. 49.

44 Ibid, question 41 OHCHR (2012).

45 UNGP – An Interpretive Guide. p. 44

46 IOECD (2018). OECD Due Diligence Guidance for Responsible Business Conduct

47 OHCHR (2012). UNGP – An Interpretive Guide

48 World Resources Institute (2009). Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects, p. 2

3. Stakeholder Consultation Practices of Certification Bodies and Auditors

A. Role of Certification Bodies

Certification refers to the provision by an independent body (the Certification Body - CB) of written assurance (a certificate) that the product, service or system in question meets specific requirements or standards.⁴⁹ Accreditation refers to the formal recognition by an independent body (accreditation body - AB) that **a certification body operates according to international standards.**⁵⁰ The nature of those standards is defined by the certification schemes in question, which are typically written to include both the performance test methods that the product must undergo as well as the criteria that the product must meet to become certified.⁵¹

This testing is done through audits, which refer to the on-site review of processes and practices to decide whether or not they conform with the given norm or standard. These are conducted by CBs through document analysis, field visits and consultation. Generally, audits should be implemented annually and usually require at least brief field visits. However, new exceptions have been agreed where COVID related restrictions prohibit access.⁵² Generally audits are announced but CBs have been calling for an inspection system that is based on risk assessment rather than following the same procedures regardless of circumstances. This **might involve more unannounced visits** to facilities where the risk of non-compliance is perceived to be greater.⁵³

B. Applicability of International Consultation Norms to Certification Processes

The anticipated outcome of consultation conducted by the certificate holder (the company) and consultation conducted by the CB, of course, differs. Where the former consults to “close a deal” and receive consent for use of land, the latter consults to **assess whether the certificate holder is in conformity with a standard.**

However experts on indigenous rights state that “both consultation processes are in principle meant to be a source of empowerment for the community itself.”⁵⁴ Our interviews reveal that overall the key principles and international norms around consultation are considered the same across the board, particularly in relation to: 1) how information is conveyed, language used and proper interpretations, 2) providing confidentiality and a safe space to share concerns, and 3) selecting a diverse set of stakeholders to interview which represent a cross-section of the community and their views. Furthermore, “CBs come in to check if principles have been applied, so their obligation is to consult. The only way for them to determine if, for example, FPIC has been applied, is through consultation.”⁵⁵

It is important to note that multiple practical guides state that norms and guidance on consultation apply to “any project, any activity”⁵⁶ and in relation to “**all matters that may affect them [communities] or their rights.**”⁵⁷ Keeping in mind the fact that company certification constitutes a development that can have far reaching impacts on communities’ and rights-holders’ current and future rights, we propose here that the elements of international consultation standards apply to consultations conducted as part of and within certification processes. The premise of this paper therefore builds on the assumption that the elements and norms presented in guidance on community consultation hereby apply de facto to certification bodies and their staff as well.

49 ISO (2021). Certification. <https://www.iso.org/certification.html>

50 Ibid

51 ISO (2004). ISO/IEC GUIDE 28:2004 Conformity assessment — Guidance on a third-party certification system for products. <https://www.iso.org/standard/38291.html>

52 Interviewee 8

53 FAO (retrieved March 2021) – Ongoing debates

54 Interview 10

55 Interview 8

56 See for example Rainforest Alliance, Global Compact and FAO’s guidance on FPIC

57 Global Compact (2013). A business reference Guide, United Nations Declaration On The Rights Of Indigenous Peoples, p. 11.

C. Guidance for Certification Bodies and Auditors in Consultation

Interviews and documentation analysed for this study demonstrate that **CBs refer to multiple voluntary pieces of guidance that provide instructions** on what consultation as part of certification should look like. First, CBs refer to stakeholder consultation guidance provided by the Certification Scheme itself. Second, they generally refer to handbooks developed by the CB, which need to be approved by the certification scheme. And third, they often refer to the guidance provided on consultation during auditor trainings.

Due to their knowledge of general criticism on auditing conducted by the Forest Steward Council (FSC) regarding consultation various interview respondents referred to the FSC Generic indicators⁵⁸ and the FSC's guidance on Stakeholder Consultation for Forest Evaluations⁵⁹ as the "gold standard" for consultation guidance. The generic indicators address each normative element of each criterion in the FSC Principles & Criteria. They were referred to as the guidance that an auditor "has in hand while going into the field as it describes how best to engage."⁶⁰ For example, 'Principle 3: Indigenous Peoples' Rights' and 'Principle 4: Community Relations' include FPIC guidance relevant for auditors.

In addition, FSC's Guide on Stakeholder Consultation for Forest Evaluations provides six pages describing stakeholder consultations that CBs have to conduct to evaluate a forest manager's conformity with the requirements of the applicable Forest Stewardship Standard. It includes elements such as "the body shall have effective procedures to identify the range of stakeholders that are likely to have information" (2.1) and that the "CB should aim to ensure that any stakeholder that has information relevant to conformance ... has the opportunity to bring such information to the attention of the CB, prior to the decision to grant a certificate" (2.2). Article 2.8 describes a range of different techniques the CB may employ to inform stakeholders of the audit - presented in Box 1.

Box 1: Means of informing local stakeholders (FSC guidance on consultation for CBs)

1. Direct e-mail contact in the language of the recipients;
2. Personal contact by phone or letter;
3. A notice published in the national and/or local press in the country stating when the evaluation is due to take place;
4. Local radio announcements;
5. Signage posted around the forest management unit in the language of the local people;
6. Announcements in village shops / church halls or local customary notice board for issues of public interest;
7. Announcements by the applicant using existing, ongoing mechanisms for consultation between managers and local stakeholders;
8. Face-to-face meetings with stakeholders.

A challenging factor in defining benchmark guidance for consultation, according to respondents, is that even if guidance by the certification scheme were complete, in practice every audit process requires a different approach. There is significant variance in the guidance auditors use when consulting communities to retrieve the information required. Not only do **CBs each have their own handbook, the discretion and approach of each individual auditor herself is another factor**. This is illustrated by quotes such as "in each audit the focus is different. We as auditors try to turn to the guidance, but we each go with our own experience and perspective. Which one is the proper one to turn to? In some cases, building on the experience of a veteran auditor is better than guidance."⁶¹ "In the end, the CB provides the stakeholder list, not the certification scheme".⁶²

58 FSC (2018). FSC-STD-60-004 International Generic Indicators Standard (STD) V (2-0). <https://fsc.org/en/document-centre/documents/resource/262>

59 FSC (2010). FSC-STD-20-006 Stakeholder Consultation for Forest Evaluations Standard (STD) V(3-0) <https://fsc.org/en/document-centre/documents/resource/277>

60 Interviewee 1

61 Interviewee 12

62 Interviewee 3

In many cases, a person that is familiar with the culture of the field visit location is hired. “This gives more value. He can easily grab a lot of information within two hours as he understands the language and culture. If you already have that kind of person, guidance could actually disarray the process.”⁶³ Moreover, because guidance on consultation is an evolving area and voluntary, the guidance that reaches auditors on the ground is sometimes limited.⁶⁴

Linked to this, some note that while better guidance would be positive it would not solve all problems as **proper training and the confidence of the auditor in conducting consultations on social and land issues are critical factors**. While environmental audits can apply more of a “tick the box exercise” (“is the ground polluted - yes or no?”), audits focused on social and land issues (“was there a prior land conflict, was it dealt with appropriately and what are the human rights impacts of palm oil development?”) cannot.

The following quote on land conflicts illustrates the importance of a solid understanding of these issues: “no matter what detailed guidance is provided I cannot imagine that a company can conduct consultation in such a way that it reflects a potential land conflict. The extent to which analysis needs to be done in order to truly discover the details of a land conflict is not presented in any guidance - this can sometimes not even be mapped by someone doing a 4-year PhD”.⁶⁵ Knowledge of local legal, customary or user rights, or **at the least the salient human rights (or ‘social’) impacts that are associated with land or environmental developments arguably need to be a bare minimum requirement for auditors to understand the situation.**

D. Minimum Requirements and Good Practices

Minimum requirements for meaningful consultation based on international norms (as discussed in chapter two) in theory allows for the full expression of the viewpoints of the peoples concerned in an open and safe environment with external expertise is used as a key resource. Although the number of interviews with experts and auditors drawn on for this paper was far from exhaustive, **some common practices can be seen**. This chapter includes those that were mentioned by at least five separate respondents and are divided into four main themes: 1) Gathering the Right Information and Outreach to Stakeholders, 2) Identifying Land Conflicts and IFPC, 3) Meaningful Stakeholder and Community Engagement, and 4) Safe Environment - Neutrality, Security and Risks .

Gathering the Right Information and Outreach to Stakeholders

A main element of CB evidence gathering involves stakeholder consultation with relevant communities, their representatives and other stakeholders. An issue raised by a stakeholder can trigger an investigation by auditors and may or may not result in a finding of non-compliance. The auditor uses stakeholder input to target his or her sampling of the company’s activities. A common practice in this regard includes, at the minimum, **talking to international and local NGOs involved in the location or topic of concern**.

This principle is illustrated by respondent quotes such as “everyone is a stakeholder - if an NGO has a stake, they are a relevant one,”⁶⁶ and “you need to talk to community NGOs as they are often aware of how the FPIC went down”⁶⁷ and “as the company can sometimes present the situation better than it is, we need to know what is the real situation .”⁶⁸ These quotes imply that, in line with some of the guidance discussed above, common practice is to explicitly look for those whose rights have been violated and hereby **include ‘dissenting’ voices during audits**.

In addition, a **thorough document** search and check at least a month before a field visit is part of common practice. This includes internet searches for prior information up to two years prior, dashboards from the company itself, CSO reports, Google searches and more to “find out how issues were resolved and whether anything is shoved under the carpet.”⁶⁹ Working with local people on the ground that can help identify relevant local documents and reports is often part of this process.

63 Interviewee 12

64 Interviewee 13

65 Interviewee 11

66 Interviewee 1

67 Interviewee 2

68 Interviewee 12

69 Interviewee 12

In order to ensure a **solid list of stakeholders to potentially interview** the majority of respondents highlighted that, while the initial list of stakeholders comes from the company, the CB adds to this using 'snowballing' (where stakeholders identify other relevant stakeholders) and other techniques. **"Meaningful means being proactive.** The connected people are emailed and phoned. We sometimes put ads in newspapers and reach out to committees at local level. We employ a risk-based approach, so we also anticipate to double check information from high-risk areas with 1 or 2 low risk areas."⁷⁰ "They [the company] may not give you the hot contacts so you will find out anyway."⁷¹ "A first step is to contact people on this list and check if there are complaints and comments, when people want to meet in person, you schedule a meeting."⁷²

A key part of this process is to **triangulate information given by the company** or found in external resources, which can be done through interviews, satellite images, documents and consultation with communities. "Communities in this sense are our eyes on the ground."⁷³ "Stakeholder input will be meaningful when the auditor really does look into the issue raised by the stakeholder. For example, if a stakeholder says: "The company destroyed part of my plantation", his input is meaningful if the auditor goes on site, verifies and issues a non-compliance if it is true. If it is not true, or if it is not a non-compliance, the input was still meaningful because at least the auditor looked into it. In other words, stakeholder input is meaningful if it influences the conduct of the audit by the auditor."⁷⁴ Common issues shared across the board include the challenge of finding all necessary evidence and the right people, which is sometimes difficult in advance considering available time, resources and the access (or lack thereof) to people. The consultations in communities are therefore often a necessary step. Some experts propose the **process of ground-truthing as a solution for effective evidence gathering** by auditors.

This mechanism refers to information provided by direct observation (such as empirical evidence) as opposed to information provided by interpretation or inference. In other words, "the use of information about the actual situation on the ground, gathered from primary or secondary sources that are independent of companies in the supply chain as opposed to paper-based compliance indicators and company self-reporting."⁷⁰ "In other words, stakeholder input is meaningful if it influences the conduct of the audit by the auditor."

Identifying Land Conflicts and FPIC

A key objective of community consultations is to verify that the company conducted FPIC in the way it claims and to identify any potential land conflicts. A common practice in this regard is that auditors arrive on site aware of the major issues. As one respondent puts it: "You can't get onsite and ask: what is going on here? There can always be little surprises, but not the size of a land conflict."⁷⁶ The majority of respondents claim that any issues surrounding land are generally **caught at the beginning or during the first** audit when the company is obliged to provide information and impact assessments and when auditors have looked for any existing complaints or pending cases. While auditors arrive on site having been briefed by the company and by stakeholders about the big issues, another objective is to open up the discussion with the community 'to anything they want to bring up.'

Land issues were shared as the biggest challenge for auditors given that the status is often unclear. A major obstacle for the auditor during this process is that the government and/or company presents a different story of the land claims than the community, resulting in the conflict. "I have often seen that the explanation by the company or government is taken as truth, for example with Feronia in the DRC."⁷⁷ These situations highlight the important role of the auditor in identifying who exactly the rights-holders are (and therefore who deserves to be consulted) in any situation, as FPIC only applies to them. Speaking not only to village chiefs but also to the elderly, who have been in a community the longest, can be part of this process. **Company documentation on how the FPIC was done will help triangulate information but cannot be depended on as the only source of evidence** in order to assess whether the process was indeed free, prior and informed.

70 Interviewee 1

71 Interviewee 10

72 Interviewee 3

73 Interviewee 3

74 Interviewee 1

75 FPP (2020). Ground-truthing to improve due diligence on human rights in deforestation-risk supply chains. <https://www.forestpeoples.org/sites/default/files/documents/Ground-truthing%20Discussion%20Paper.pdf>

76 Interviewee 1

77 Interviewee 1

Still, based on interviews and case studies in various reports, it seems **far from realistic that the timeframe reserved for audits in general allows for an honest assessment of whether consent was given.** Interviewees shared that field visits could last from two hours to three days, but that time pressure does not always allow for inclusion of all or the right voices. As one person illustrates: “You can’t have confusion between consultation and consent. The consent of the community is not just to do a community meeting, it goes far beyond and is meant to be a continuous process. Usually, here in DRC, the auditor comes in the morning and at the end of day he goes back to Kinshasa. What would need to be deeply discussed about the process of consent on land issues will not be uncovered in a meeting of 3 hours.”⁷⁸

Meaningful Stakeholder and Community Engagement

Respondents suggest that the key element in ensuring stakeholder engagement is meaningful is the inclusion of a cross-section of the community that may be affected. “For a quality audit it is important how it works out for the whole community, **which is why an even wider consultation is needed during audits** than during consultation conducted by the certificate holder.”⁷⁹ Respondents unanimously say that this means including groups that have different positions in the community such as younger and older people, women and men. For example, “young people - who will be the ones working on the plantation later down the line - are often not included because their father is already consulted. The same applies to the wives of these fathers.”⁸⁰

Depending on the complexity of the project, the culturally appropriate approaches necessary to allow the inclusion of the right people differ. Different media is needed to reach different target segments (phone calls or live meetings), different time slots (evenings or mornings) or different announcement locations. As one auditor explains: “In Cameroon, we went to the markets on market day and sent information to students to ensure people knew that we are coming.”⁸¹ In addition, using the appropriate language is considered key, including proper interpretations and an understanding of the community protocols and values.

For this reason many CBs carefully select local experts that have a solid understanding of these values and experience with interviewing on socially sensitive and appropriate topics. “We cannot give the work to someone without ‘social’ experience; the person needs this background and has to understand the culture. If they have never been to a location, they have to do the research well in advance.”⁸² **Also in this case, ‘meaningful’ therefore equals being proactive.**

Common challenges shared across the board include the **difficulty for an auditor to find the right people when flying in during the limited amount of time available.** Often a community leader puts themselves forward for consultations, which is why external expertise becomes more important. “Often, if community NGOs are not involved in selection of stakeholders and you depend on suggestions from the company, you end up with the village head and will have interviews only in the village office, which is not always a safe or accessible place to everyone.”⁸³

On the other hand, according to some interviewees, involving NGOs “sometimes complicates the process” as they can be critical stakeholders with dissenting voices and this takes time in the auditing process. They do not always represent the voices of the communities well either, especially when the community itself is divided. This again implies that auditors chose to not consult with community NGOs or critical voices, in this case due to time limits and that there is a need to consult a range of stakeholders with differing views to triangulate information.

78 Interviewee 2

79 Interviewee 7

80 Interviewee 8

81 Interviewee 10

82 Interviewee 12

83 Interviewee 11

Safe Environment - Neutrality, Security and Risks

Creating a safe environment for stakeholders to share concerns is a critical factor in retrieving the right information and relevant evidence. Based on the interview responses it appears that this element is considered an essential common practice but also the area facing the most practical challenges.

Respondents agree **that independence is at the core of the auditor's and CB's work**. This is illustrated by statements such as: "You could not be independent for some cases, but after that it is the end of your activity as an auditor."⁸⁴ And "You can't be shy about it. It is very important that company reps not listen in when auditors conduct interviews. Auditors have to be polite but blunt that the company rep should stay in his car or go for a long walk. This is just part of the audit rules that companies need to understand, accept and support. The company can't listen in to stakeholder consultations."⁸⁵

Generally, common measures that are taken in order to maintain this independence include: anti- bribery policies; conflict of interest statements for consultants; explicit statements and explanations on the auditor's independence in opening meetings; no accompaniment by the company staff during interviews; and no travel in the company car or carrying the company's products. "If you arrive with a car with the logo you may have issues. We do not want a perceived association with the company."⁸⁶ However, **not depending on at least the local resources of the company, such as cars or a hotel assigned by them, appears to be a challenge** due to the remoteness of some audit locations. In some places it therefore appears to happen more often than not.

Most importantly, stakeholders need to feel secure enough to speak out - that is, to be sure that doing so will not have consequences for themselves or their families. Common measures taken in order to maintain this security include asking whether respondents' names can be used during interviewing; systems for keeping their names confidential; evaluating the local risks in 'high risk' locations; and discussing security and risks during auditor trainings. As one person illustrates: "Security is definitely something we discuss in training. We do role plays with members and staff and make auditors experience and 'feel' the pressure that interviewees may face when sharing sensitive information and advise on how to act accordingly. We have to track all names but are very cautious on not linking comments to people. You cannot interview only one worker for example."⁸⁷ It is clear that auditors in general face **major challenges regarding the fear of sharing relevant information** as retaliation sometimes does occur.

Respondents confirm that they have seen cases where people that speak out lose their jobs or face threats. In any community there are also supporters and opponents of development projects. "In many situations, even in villages that generally oppose a project, one can find people that support it and sometimes these are put forward by the certificate holder. How is a CB supposed to find out conflicting opinions if people do not speak out because of fear or do not get the chance to speak out because certificate holders select their local supporters to speak on behalf of the community?"⁸⁸

Some respondents say that they have not seen good practice by any CB in establishing a safe environment for a community. Stakeholders have often experienced that sharing concerns does not lead to positive change and information on non-compliances provided rarely leads to stopping certification. "There is simply no reason for the community to trust the CB. If a company does not change how it operates, after people have spoken out against it, why would you risk your job and say anything?"⁸⁹

84 Interviewee 10

85 Interviewee 1

86 Interviewee 3

87 Interviewee 10

88 Interviewee 9

89 Interviewee 9

4. Consultation Practices of RSPO

A. RSPO Guidance and Standards

The RSPO has developed a range of guiding documents for both certificate holders (companies) and certification bodies. Those most relevant to the issues described in this paper are briefly described below.

After strong criticism⁹⁰ there have been some improvements (such as revised P&C, new FPIC guidelines) within the RSPO system in recent years. The P&C standard currently includes detailed descriptions of the requirements for the audited company including Communication and Consultation under criterion 1.1, which states “Consultation and communication procedures are documented, disclosed, implemented, made available, and explained to all relevant stakeholders by a nominated management official” and that “a current list of contact and details of stakeholders and their nominated representatives is held.”⁹¹ Furthermore, under criteria 4.4, 4.5 and 4.8 how to assess FPIC and land use is described. Box 2 provides a selection of key indicators the auditor has to apply. The Generic Auditors Checklist gives more detail on indicators the auditor needs to check off to determine that this kind of evidence has been provided.

Box 2: Selection of key indicators for assessing land issues and FPIC - RSPO

4.4 Use of the land for oil palm does not diminish the legal, customary or user rights of other users without their Free, Prior and Informed Consent.

4.4.1 (C) Documents showing legal ownership or lease, or authorised use of customary land authorised by customary landowners through a Free, Prior and Informed (FPIC) process. Documents related to the history of land tenure and the actual legal or customary use of the land are available.

4.4.2 Copies of documents evidencing agreement-making processes and negotiated agreements detailing the FPIC process, including:

a) Evidence that a plan has been developed through consultation and discussion in good faith with all affected groups in the communities, with particular assurance that vulnerable, minorities and gender groups are consulted, and that information has been provided to all affected groups, including information on the steps that are taken to involve them in decision making.

b) Evidence that the unit of certification has respected communities’ decisions to give or withhold their consent to the operation at the time that these decisions were taken.[...]

4.4.3 (C) Maps of an appropriate scale showing the extent of recognised legal, customary or user rights[...]

4.4.4 All relevant information is available in appropriate forms and languages, [...]

4.4.5 (C) Evidence is available to show that communities are represented through institutions or representatives of their own choosing, including by legal counsel if they so choose.

90 See for example: EIA (2019). p.13 and IUCN NL (2021) Review of RSPO systems on competence and independence of assessors and auditors. Author: Andy Whitmore. Commissioned by IUCN National Committee of the Netherlands. Amsterdam: IUCN NL.

91 RSPO (2018). Principles and Criteria. For the Production of Sustainable Palm Oil 2018, Criterion 1.1.

Box 2: Selection of key indicators for assessing land issues and FPIC - RSPO

4.5 No new plantings are established on local peoples' land where it can be demonstrated that there are legal, customary or user rights, without their FPIC. This is dealt with through a documented system that enables these and other stakeholders to express their views through their own representative institutions.

4.5.1 (C) Documents showing identification and assessment of demonstrable legal, customary and user rights are available.

4.5.2 (C) FPIC is obtained for all oil palm development through a comprehensive process, including in particular, full respect for their legal and customary rights to the territories, lands and resources via local communities' own representative institutions, with all the relevant information and documents made available, with option of resourced access to independent advice through a documented, long-term and two-way process of consultation and negotiation.

4.5.3 Evidence is available that affected local peoples understand they have the right to say 'no' to operations planned on their lands before and during initial discussions[...]

4.5.5 Evidence is available that the affected communities and rights-holders have had the option to access information and advice, that is independent of the project proponent, concerning the legal, economic, environmental and social implications of the proposed operations on their lands.

4.5.6 Evidence is available that the communities (or their representatives) gave consent to the initial planning phases of the operations prior to the issuance of a new concession or land title to the operator.

The RSPO Certification Systems for P&C sets a range of standards for the certification bodies themselves, including on impartiality and conflict of interest, confidentiality policies and resource requirements.⁹² It however only describes a few (seven) process requirements related to consultation for certification against P&C. Relevant requirements are described in Box 3. No further methodological guidance or minimum requirements for the auditing performance is available.

Box 3: RSPO Certification Systems for P&C

Key elements included for consultation in RSPO Certification Systems for P&C

4.8.6 All auditors shall ...have at least three (3) years of field experience in the palm oil sector [...]. These include experience in HCV and HCS assessment, social auditing or involvement in human rights activities.

5.6.1 CB's procedures shall include a requirement to make a public announcement on the RSPO website of the audit at least one (1) month prior to its start. The announcement shall be available in English and the national language.

5.6.5 The CB's procedures for certification audit shall include a requirement to gather evidence from relevant stakeholders, designed to ensure that all relevant issues concerning compliance with the RSPO P&C are identified. Relevant stakeholders include but are not limited to statutory bodies, indigenous peoples, local communities (including women representatives, displaced communities), workers and workers' organisations (including migrant workers), smallholders, and local and national NGOs. A summary of this evidence shall be incorporated into the public summary report of the certification assessment.

92 RSPO (2020). RSPO Certification Systems for Principles & Criteria and RSPO Independent Smallholder Standard. RSPO-PRO-T01-002 V3 ENG. See Principle 4.

Box 3: RSPO Certification Systems for P&C

5.6.6 The CB shall review whether oil palm operations have been established in areas that were previously owned by other users and/or are subject to customary rights of local communities and indigenous peoples. If applicable, the CB shall consult the interested parties directly to assess whether land transfers and/or land use agreements have been developed with their free, prior and informed consent and check compliance with the specific terms of such agreements. The CB shall have a mechanism in place to identify the interested parties and ensure a represented sample size of the interested parties are consulted in each audit. The CB shall keep track of which party has been interviewed in the previous audits to ensure proper coverage of the parties throughout the certification cycle.

- *It is noteworthy that the 2017 version of this guiding document indicated that “If applicable, the CB shall consult directly with all of these parties to assess whether land transfers and/or land use agreements have been developed with their free, prior and informed consent”, while in the 2020 version this was changed to “a represented sample size.”*

5.6.7 The CB shall include a summary of stakeholder comments and the CB’s responses and findings in the public summary report.

5.9.1 A certificate of compliance with the RSPO P&C shall not be issued while any major non-compliances are outstanding.

The RSPO Human Rights Working Group (HRWG) was formed in 2014 with the objective of overseeing the successful implementation of the RSPO Principles and Criteria (P&C) and associated Guidance. It aims to provide the RSPO Secretariat and RSPO members with a better understanding and supportive tools to effectively implement the UN Guiding Principles on Business and Human Rights. In particular, chapters four and six of the RSPO “Principles and Criteria” include strong human rights language and refer to legal, user and customary rights, the indigenous rights of free prior and informed consent (FPIC), the rights and protection of human rights defenders, and labour rights.

In 2018, the RSPO Board of Governors adopted a new **RSPO Policy on Human Rights Defenders (HRDs), Whistleblowers, Complainants and Community Spokespersons**,⁹³ facilitated by the RSPO Human Rights Working Group following the adoption of Resolution 6(e)⁹⁴ calling for a policy where HRDs, Whistleblowers, Complainants and community spokespersons can, in confidence, lodge complaints with the RSPO Complaints Panel on the activities undertaken by, on behalf of, or in connection with the activities of a RSPO member which may result in risks to the safety and/or security of said persons.

The RSPO has adopted a zero-tolerance policy against any threats against HRDs and has also made a commitment to safeguard the confidentiality of those involved in this process such as HRDs or victims of human rights violations.⁹⁵ The protection referred to in the HRD policy extends to those persons who have reported in good faith and on reasonable grounds against a member or an affiliate. Relevant articles of this policy are presented below in Box 4.

93 RSPO (2018). RSPO Policy on Human Rights Defenders, Whistleblowers, Complainants and Community Spokespersons. Announcement. <https://rspo.org/news-and-events/announcements/rspo-policy-on-human-rights-defenders-whistleblowers-complainants-and-community-spokespersons>

94 RSPO (2016). Resolution GA13-6e. Proposed Resolution to be adopted at the 13th General Assembly of the Roundtable on Sustainable Palm Oil (RSPO10th of November 2016.) Protecting Human Rights Defenders, Whistleblowers, Complainants And Community Spokespersons. Submitted by FPP. <https://ga.rspo.org/ga13/Resolutions/ResolutionGA13-6e.pdf>

95 RSPO (2018). RSPO Policy on Human Rights Defenders, Whistleblowers, Complainants and Community Spokespersons. <https://rspo.org/news-and-events/announcements/rspo-policy-on-human-rights-defenders-whistleblowers-complainants-and-community-spokespersons>

2.8 Protection in the context of this policy means protection against any unjustified treatment, which is provided for any person who reports in good faith and on reasonable grounds to RSPO against a member and/or their affiliates.

3.1 Protection will extend to HRDs who participate in or are affected by RSPO members and/or their affiliates' activities, and other individuals who are at risk because the complaint has been made.

3.2 Protection may be extended to witnesses and their relatives who provide supporting information regarding the complaint if it is found that manifestly or potentially dangerous conditions exist for those assisting or attempting to assist the individual about to make an incident report.

3.7 RSPO is committed to engaging with relevant stakeholders assigned to protect HRDs and/or their families to provide the needed protection to its best effort and will make all efforts not to jeopardise the situation of the HRDs. This includes the gathering and dissemination of sensitive information on them for verification purposes.

3.10 Allegations of threats against HRDs, requiring protective and corrective actions, shall be dealt with under the Complaints and Appeals Procedures (CAP).

B. Experiences with consultation in RSPO certification

This section presents an overview of experiences with consultation conducted as part of the RSPO system. It is based on interviews with auditors and experts, NGO reports and audit reports submitted to RSPO.

Ensuring the Gathering of the Right Information - Identification and Outreach to Stakeholders

One important feature that appears to characterise the consultation process as part of RSPO certification is that **consultations do not always include the relevant documents and a representative or large enough sample of people** in order to represent the different opinions in a community. This is illustrated by quotes such as: "Individuals that support the company are usually consulted by consultants. When you are critical, you are not consulted."⁹⁶ This is partly linked to the fact that often the paper-based evidence **that auditors work with is provided by the company**. In addition, interviewees shared that, for example, the initial stakeholder list is always provided by the company and is reportedly not always complemented with additional individuals identified by the CB. "They [companies] even sometimes tell the auditors, 'don't talk to this radical guy', and auditors often listen".⁹⁷

Interviews and reports demonstrate a picture in which 'the problem' that auditors come to assess is already defined before conversations with communities start. Any information collected subsequently is not included, which removes any opportunity for communities to be well represented. Instead, meetings with company representatives are planned in the region's capital. "I have seen auditors come to plantations for a few hours with a filled in audit form when they come from the city. That is where the real certification takes place".⁹⁸ This trend is also found in other studies. Human rights defenders in Colombia for example question why auditors do not talk to neighbouring communities who have suffered displacement, violence and loss of access to water and land and instead talk to the company workforce.⁹⁹

⁹⁶ Interviewee 1

⁹⁷ Interviewee 6

⁹⁸ Interviewee 8

⁹⁹ FPP (2019). Ground truthing.

Moreover, there are reports that **auditors do not always visit the right plantations as part of the auditor process.** “The problem is that oil palm plantations are going to change the whole community. First, they will lose their customary land rights they hold for centuries. Second, they will lose their agricultural livelihoods, which is their fundamental means of existence. So talking to few people during an audit is a farce.”¹⁰⁰ These issues are also corroborated in an EIA case study on CB TUV Nord Indonesia, which states that “assessors falsely claimed they had used a “purposive sampling” method to justify the fact they had not carried out interviews in all seven of the villages within and adjacent to the concession. The one village not included in their sample was Muara Tae (a community with customary land rights).¹⁰¹ This illustrates the fact that CBs at times fail to consult with those communities whose rights to FPIC have been violated.

This limited engagement is partially associated with the **very limited timeframes** that auditors have available for conducting audits, but also to the apparent inability of auditors to access and consider significant information. One respondent illustrates: “The time allowed - this is an issue. We need to deliver sometimes in one week. Sometimes the issues are too complex to deal with in this time.”¹⁰² In line with this finding, the EIA case study on PT Mutuagung Lestari in Indonesia shows how evidence from a submitted complaint presented by FPP relating to the legal status of the land and the lack of compliance with the RSPO was not included in audits. The story reads: “It was inconceivable that the assessors who carried out the assessments, and PT Mutuagung Lestari in its verification of them, were unaware of these issues.”¹⁰³

Identifying Land Claims and FPIC

In relation to the identification of land issues and FPIC, RSPO criteria require a series of indicators that constitute ‘proof’ that criterion 4.4 is complied with.¹⁰⁴ Identifying Land Claims and FPIC It states “Use of the land for oil palm does not diminish the legal, customary or user rights of other users without their Free, Prior and Informed Consent,” as highlighted by ECCHR, “This is phrased as an impact criterion which needs appropriate indicators, that actually review the impact.”¹⁰⁵ The current RSPO indicators for this criterion, however, constitute various process oriented indicators. These include the provisions of written documents showing identification and assessment of demonstrable legal, customary and user rights as well as documentation of agreement making processes showing compliance with FPIC standards, either produced by the state or the audited company.

Respondents and documentation¹⁰⁶ additionally demonstrate that in practice this information is not valid. A comparison conducted between the evidence provided by the company and that provided by the local communities often reveals there is little “evidence” – or documents - from the local population as opposed to a lot of evidence - a mass of documents - from the companies. “Because local people often have a link with the land that is not formalised in official documents.”¹⁰⁷

Furthermore, this reliance on written information also indicates that **NGO reports need to be published and official complaints need to be filed before community claims are included or taken ‘seriously’** in the auditing process. Considering the time and resources available to NGOs, impacts may not always be documented on paper, creating another structural issue that renders community claims invisible. Respondents and reports¹⁰⁸ therefore highlight that in relation to land user rights and consultation processes in particular, evidence provided often constitutes both insufficient and unreliable sources. In practice, **“the formal claims of the companies and the other documents collected by the auditors prevail over the evidence of the local population.”**¹⁰⁹

Meaningful Stakeholder and Community Engagement

Regarding the inclusion of CSOs, there appears to have been little engagement in the RSPO audit processes so far. As stated in a recent study, the reasons for this “from the NGO side seemed to be partly a lack of capacity, but also a lack of trust that issues raised would be dealt with.”¹¹⁰ The lack of trust in RSPO audits is also demonstrated by, for example, by the complaint filed by Transformation for Justice (TuK Indonesia), an Indonesian community rights group. The complaint against the RSPO, with the Swiss NCP, is for breaches to the OECD Guidelines, alleging that the RSPO has failed to address complaints by residents of Kerunang and Entapang villages in West Kalimantan whose land was taken by the palm oil company Sime Darby.¹¹¹

100 Interviewee 4

101 EIA (2015). Who is Watching the Watchmen. p.8

102 Interviewee 3

103 EIA (2015). Who is watching the Watchmen. p. 9

104 See Box 2, these include: records of requests for information, management documents, hygiene and safety plans, emergency procedures, records of accidents at work, schedules, monitoring systems, stakeholder lists, minutes of meetings

105 ECCHR (2021). Human rights fitness for the auditing and certification industry - a cross-sectoral analysis of current challenges and possible responses.

106 ECCHR (2021). Human rights fitness for the auditing and certification industry; and FIAN (2018). 100% Duurzame Palmolie: Een Mythe De beperkingen van vrijwillige initiatieven: de Rondetafel voor Duurzame Palmolie (RSPO) en de Belgische Alliantie voor Duurzame Palmolie (BASP) doorgelicht.

107 FIAN (2018). 100% Duurzame Palmolie

108 ECCHR (2021). Human rights fitness for the auditing and certification industry; and FIAN (2018). 100% Duurzame Palmolie

109 Silva-Castañeda, Laura (2014), in FIAN (2018). 100% Duurzame Palmolie

110 IUCN NL (2021) Review of RSPO systems on competence and independence of assessors and auditors

111 OECD Watch (2018). TuK Indonesia vs. Roundtable on Sustainable Palm Oil (RSPO).

The above-mentioned misrepresentation and method of choosing representatives has led some NGOs to refrain from participating with RSPO audits overall.¹¹² “Some NGOs have no faith anymore in the RSPO consultation process, in most cases because there is no cross-section of people represented in the samples. They tend to speak to heads of villages. Also communities that have participated feel they were not being listened to properly.”¹¹³ Others attribute the loss of trust to the fact that the content of consultation misses the point. “We have encountered that there are particular issues in meaningful consultation on the projects regarding land. We find over and over again processes that solely focus on the question: ‘Do you agree with this project?’ As opposed to real involvement in determining the type and modalities of a project and proper consultation on how the project may impact people and their environment.”¹¹⁴ From the community perspective, aside from trust issues raised, other issues in consultation participation includes people not understanding the opportunities an audit could provide or practical restraints (location, time) to attending.

This lack of meaningful engagement can be partially associated with the **capacity of the auditors conducting RSPO audits**. In fact, in the findings of its compliance assessments during 2015 and 2016 the Assurance Services International (ASI)SI concludes that “all the CBs (assessed by ASI) have systematically failed in auditing the compliance of their certificate holders against the selected indicators”.¹¹⁵ ASI as well as RSPO have admitted that CBs are missing key non-conformances in their audits, particularly related to social auditing. This resulted in specific mention in the P&C of the necessity to include social auditors and local experts in stakeholder consultation.

Several respondents shared concerns that often RSPO affiliated CBs do not attribute enough importance to local knowledge or experts. “It is an issue to not have local people. We know of some CBs that just fly people in, while this expertise on local social issues matters. Many auditors have a more environmental background which means that the social is left aside. You need to have one expert on the local social topics, as these keep evolving.”¹¹⁶ The fact that auditors are coming from outside the locality to assess issues that require a **solid understanding of the community and salient social and human rights issues** has led the RSPO itself to “develop a minimal guidance for social audit and training for CB auditors and growers and CBs,” which in 2019 was flagged by RSPO as ‘done’.¹¹⁷ The effect this training has had on the quality of audits remains to be seen.

Partially as a result of the above, previous studies such as ‘Who Watches the Watchmen’ have found that RSPO approved auditors repeatedly conduct “**sub-standard assessments**” and indicate **systemic flaws** in a large number (one quarter) of the RSPO accredited CBs.¹¹⁸ In the second report EIA stands by its finding that RSPO auditors are fundamentally failing to identify and mitigate unsustainable practices by oil palm firms.¹¹⁹ In addition, in their review of audit reports, Profundo found that “in general, more than 60% of the audit surveillance reports reviewed were of low quality, particularly regarding grammar, overall readability and structure of case reporting. [...] they indicated patterns of “checklist mentality”, where auditors appear to have focused more on checking off the availability of documented evidence of labour aspects, and less on obtaining relevant information regarding the CH’s implementation of labour practices.”¹²⁰ A range of other organisations have also criticised the RSPO for lack of reliability of RSPO accredited auditors and assessors.¹²¹

Safe Environment - Neutrality, Security and Risks

Experiences with the RSPO process demonstrate a clear issue with **the independence of auditors**. Interviews demonstrate that, often, auditors certifying for RSPO arrive in company cars and with company employees, removing any perception of independence. This is illustrated by quotes such as: “I have seen them fly in with helicopters and with the company”¹²² and “in our experience with SCS Global in Ivory Coast, the CB used the vehicle of the company, the same boat, they slept in same house and used all of the commodities and facilities from the company that they would audit. How can you be transparent this way?”¹²³ Where in some cases this is attributed to the accessibility to the audit locations and the need and costs of transportation, in other cases this is attributed to alleged collusion with the company itself.¹²⁴ EIA, for example, has “uncovered evidence of RSPO-approved auditors [...] at times, colluding with oil palm companies to cover up serious violations of the organization’s standards.”¹²⁵

112 Interviewee 14 and 2

113 Interviewee 14

114 Interviewee 5

115 ASI (2017), RSPO Compliance assessments in 2015 and 2016, p.8-15.

116 Interviewee 10

117 RSPO (2019). Assurance Taskforce Updates Quarter 1 FY 2018 – 2019.

118 Mongabay (2015), “Greenwashing? RSPO audits rife with ‘mistakes and fraud,’ report finds”. <https://news.mongabay.com/2015/11/greenwashing-rspo-audits-rife-with-mistakes-and-fraud-report-finds/>

119 EIA (2015), Who Watches The Watchmen?

120 Iwundu, Kusumaningtyas, Wikström, Oey (2018). Study of Labour Compliance in RSPO Certified Oil Palm Plantations in Indonesia, Amsterdam, The Netherlands, p.59.

121 EIA, Finnwatch, Humanity United, Interfaith Center on Corporate Responsibility (ICCR), ILRF, OPPUK, Pesticide Action Network Asia & the Pacific (PANAP), RAN, Sawit Watch, Sum of Us, Tenaganita, Trade Union Rights Centre (TURC) and Walk Free

122 Interviewee 6

123 Interviewee 3

124 See case studies in Who Watches the Watchmen.

125 EIA (2015), “Who Watches The Watchmen?”

Finally, respondents share doubts as to whether communities have an **open and safe environment to share serious concerns related to company behaviour in RSPO certification processes**. On the one hand, in some cases this takes the shape of auditors not paying attention to existing or ongoing complaints.¹²⁶ On the other hand, we received multiple reports that before the audit takes place the company would visit communities to warn that a company consultant would be coming to ask questions, creating pressure on the community. “For example, we have seen a company come to visit the influential leaders of the audited village ahead of the audit to say that if they would not answer the questions, they would shut down the company and everyone would lose their jobs.”¹²⁷ The case study in chapter five further supports this point.

The RSPO Resolution GA13-6e proposed to be adopted at the 13th General Assembly of the RSPO corroborated that “there is an increasing number of reports of violence, harassment and death threats towards human rights defenders, whistle-blowers, complainants and community-spokespersons, notably but not only in Africa and Latin America associated with palm oil development.”¹²⁸ For this reason a RSPO Whistleblower Policy was called for, which **includes a ‘risk register’** of high risk areas and specific issues, as well as regularly monitoring the contributory factors. However, interviews and reports do not indicate that CBs involved in conducting the audits have a structural system in place that protects those that speak out against a company. Some go as far to indicate that instead they see “constant harassment of and denial of community members within and as a consequence of the auditing process.”¹²⁹

5. Case Study

SOCFIN’S RSPO CERTIFICATION PROCESS IN WEST AFRICA

This report presents a number of key gaps in the RSPO standards and guidance as well as bad practice relevant to the consultation process conducted by Certification Bodies (CBs). Here, we illustrate several findings with examples from case studies on the certification processes for four SOCFIN companies in West Africa by SCS Global Services (SCS): Société Africaine Forestière et Agricole du Cameroun (SAFACAM) in Cameroon, Société de Grand-Bereby (SOGB) in Ivory Coast, Okomu Oil Palm Company (OOPC) in Nigeria, and SOCFIN Agriculture Company (SAC) in Sierra Leone.¹

126 Interviewee 6

127 Interviewee 3

128 RSPO (2016). Resolution GA13-6e. Proposed Resolution to be adopted at the 13th General Assembly of the Roundtable on Sustainable Palm Oil (RSPO 10th of November 2016.)

129 Interviewee 6

Ability to audit complex land conflicts

Land conflicts between communities and SAFACAM in Cameroon include injustices dating back to the colonial era that still prevail in the daily lives of communities. They also stem from recent land transactions between community leaders and SAFACAM that were made without the consent of the majority of affected families.²

In Ivory Coast the dispossession of community lands by the state dates back to the 1970s. Thirteen villages have been displaced without FPIC or compensation. The privatisation in the 1990s did not address the grievances and claims from the communities and recent expansions or delimitation continue to cause conflict.³ Since 1974, affected communities claim they do not have sufficient living space and they demand the return of their land as well as compensation from SOGB to meet basic standards of living.⁴

In Nigeria, the Edo state government ordered the revocation of 13,750 hectares of land in Owan and Okomu forest reserves after community complaints in November 2015 but did not enforce the order.⁵ This fuels ongoing protests from communities as the plantation resulted in the displacement of thousands of farmers from their farmlands.⁶

Similarly, in Sierra Leone, the 2011 land lease agreement between the state and SAC was immediately resisted by landowner groups and includes a number of injustices in the implementation of the agreement. In 2019 a government technical committee confirmed injustices and abuses.⁷

In all cases, communities and rights-holders reported that they do not get access to important documents such as land leases or even documents they are said to have signed themselves such as 'FPIC agreements' and 'Memoranda of Understanding'.

Land conflicts in the SOCFIN plantations have deep historical dimensions and multiple socio-political layers. They involve competing interests even within communities as well as different sources of legitimation of claims. However their consideration during the RSPO field audits – if assessed at all – was limited to a one to two hour meeting with a subset of communities and community members. The necessary time and resources are clearly lacking to gain full community perspectives on land use or conflicts. Ultimately the RSPO principles and criteria related to tenure are verified with a tick-box exercise. This illustrates the huge gap between the norm and practice on land rights and FPIC in RSPO. It calls into question whether its principles and criteria on land use, land transfers and FPIC processes are auditable and certifiable at all. As long as FPIC is not a legal requirement to establish a plantation, as is the case in many of the countries where SOCFIN operates, it will remain hard, if not impossible, to comply with the RSPO Principles and Criteria in respect to the right of FPIC.

SCS kindly provided a detailed response to a draft of the case study.

1 See chapter one for notes on methodology. en.milieudefensie.nl/news/scs-response-to-box-country-case-study Names and places are anonymised for security reasons.

2 <https://www.socfin.com/en/locations/safacam> & letters from Synaparcam to Safacam from August 2018, March 2019, July and October 2020 & 2011 Framework agreement between Ndonga and Safacam & December 2012 meeting report village – Safacam & Group interviews with four villages affected by Safacam in December 2020.

3 ReAct. Développement Insoutenable, May 2019

4 Procès Verbal de la réunion des chefs des villages concernés par les projets de la SOCATCI, 12 July 1974 & interviews with ten resource persons on 20 December 2020, including 'chef de villages' and 'chef de terres/président du foncier' from four affected villages.

5 Edo State Government Gazette, 5 November 2015, mentioned in: <https://www.thisdaylive.com/index.php/2017/08/09/the-march-against-land-grabs> & <https://www.vanguardngr.com/2019/11/okomu-environmentalists-express-concerns-over-threats-to-biodiversity-land-rights/>

6 <https://www.ejAtlas.org/print/oil-palm-plantation> & Interviews with members of 18 communities affected by OOPC in December 2020.

7 Government of Sierra Leone. Report of the Technical Committee on the Malen Chiefdom Land Dispute in Pujehun District, September 2019.

Exclusion of affected groups and communities

In all four cases studied significant community members and groups were excluded. In some cases this was the result of selection criteria set by the auditor such as a limit to the number of people attending. In other cases the date and place were non-negotiable and for some groups, such as women taking care of children, it was impossible to attend. Auditors were overly dependent on stakeholder lists provided by the company.

In Sierra Leone, community members reported that people who wanted to attend the audit meeting in Taninahun could only do so if their name was listed on a piece of paper and the meeting was limited to 30 persons by the auditor.⁸ In Ivory Coast, community members seem to have been selected by the company and in the village of Oueoulo, for example, SOGB invited only four people to talk with the auditor.⁹

In the SAFACAM case, the biggest riparian village, Nsèppé Elog-Ngango, where there were ongoing land conflicts with the company, was not included in the audit schedule. This was not justified in the public audit report.¹⁰ Similarly, despite the fact that Okomu native communities are major hosts of OOPC in Nigeria, they were excluded from RSPO field audit consultations without official justification.¹¹

In Sierra Leone, the local stakeholder list first used by SCS Global Services was heavily biased towards proponents of the company. The audit team travelled back to the country a second time after civil society raised concerns about this. Again, however, the second audit was completed without input from the Malen Affected Land Owners Association (MALOA), which represents thousands of members amongst communities that have publicly resisted human rights abuses and social harms related to the plantation. The meeting failed to take place due to disagreements on venue and the number of attendees.¹²

Despite its importance, the association of displaced villages (AVD) - a formal structure that should represent the interests of 13 villages 'deguerpis' (kicked out) vis-à-vis the SOGB - says it was not consulted.¹³

Several of the excluded villages, community groups and associations have voiced their claims to land with strong conviction, at times in the context of long-standing land conflicts with companies. Companies and their proponents have built and spread negative perceptions of several groups. The MALOA in Sierra Leone are portrayed as a 'violent group' and this perception seems to have influenced auditor decisions on a consultation meeting.¹⁴ In Cameroon, Synaparcam (Synergie nationale des paysans et riverains du Cameroun) members are perceived as a 'radical group' and are side-lined in relation to SAFACAM RSPO issues.¹⁵ The exclusion of the village Nsèppé Elog-Ngango is explained by village members as the result of the failed attempts by the company to corrupt its leaders and the ongoing conflict over land rights and other community demands.¹⁶

Another issue found in the countries studied is the lack of information provided to rights-holders and stakeholders. In all four cases researched, community members who took part in the audit or that were affected by the company indicated that they do not know what RSPO is about, what the audit was for and how the RSPO consultation process works. In the Cameroon case study none of the interviewees could explain what RSPO is or what their role in the process is. Neither community members nor local and international civil society were informed that the company received its certificate in December 2020. In Ivory Coast, community members say they are still waiting to see reports and resolution of the audit and a plantation mapping session done by the audit team on their customary land.¹⁷ This lack of information and transparency prevents rights-holders and stakeholders from preparing in time for informed participation in the consultation.

8 Sierra Leone case study December 2020, interview with section chief and community member.

9 Invitation letter sent to the Chief of Oueoulo by the SOGB's Director of administration and human resources, dated 28/09/2020.

10 <https://www.rspo.org/certification/search-for-certified-growers> (Socfin entry)

11 Nigeria case study, interviews with members of 5 native communities

12 IMalen Land Owners Association (MALOA), press statement RSPO 6 November 2020.

13 Ivory Coast Case study, interview with president and project staff AVD, December 2020

14 Sierra Leone case study, interview with director from national NGO, information from his meeting with the auditor, December 2020.

15 Cameroon case study, interviews with 6 Synaparcam members, December 2020.

16 Cameroon case study, interviews with formal representatives from Nsèppé Elog-Ngango January 2021.

17 Ivory Coast case study, interview with village chief, December 2020

The different forms of exclusion are practices that go against RSPO's requirements to "gather evidence from relevant stakeholders, designed to ensure that all relevant issues concerning compliance are identified"; to consult with parties that have customary rights; to ensure FPIC was given during development; and to ensure terms of agreements over tenure are upheld.¹⁸ Excluding relevant parties, and especially those that are dissenting or resist the company and its practices during the consultation, implies that important information on the company's RSPO compliance is excluded from the assessment. Any resulting positive certification decision becomes void. The reported events also raise questions regarding the independence of CBs who rely too much on companies' sources, exemplifying the lack of detailed guidance on 'relevant stakeholders' that leaves too much room for interpretation.

Lack of pro-active approach in reaching out to civil society

One of the missed opportunities in the RSPO system is the lack of a pro-active approach to reach out to civil society in the preparatory phase and field audit. The public announcement for the consultation period is posted on the RSPO website in a timely but silent manner. Civil society organisations that have publicly exposed and documented social and environmental harms on the SOCFIN plantations were not pro-actively contacted by the SOCFIN company or SCS.¹⁹ In Sierra Leone, the auditor interviewed the leader of a prominent NGO but left the impression of ticking a box as they neither took notes nor recorded the discussion.²⁰ Before the SAFACAM audit, the auditor did not contact a representative of the prominent farmer interest group Synaparcam in Cameroon.²¹

SCS did not reach out pro-actively to civil society during the preparatory phase and as a result could not focus the audit on critical issues of non-compliance and failed to consult important local rights-holders and other stakeholders during their field audit. National or international groups that collaborate with affected communities were also not given the opportunity to prepare for the consultation together. Failing to include these NGOs misses the mark of meaningful consultation.

Climate of fear: upfront intimidation and fear of backlash

The case studies in the four countries document different forms of intimidation and attempts to influence stakeholders by the audited company prior, during and after the audit consultations. In November 2020, ahead of the auditor visit in Nigeria, OOPC human resources staff visited a village to request the villagers to inform the team coming that the company has been doing a lot for them.²² One community member told the research team he does not want to share negative comments for fear of conflict with the company.²³ SAFACAM tried to condition villagers prior to the field audit: "they wanted us to say we agree with SAFACAM and RSPO....at the end of the meeting people were asked to sign the minutes."²⁴ Three village chiefs interviewed in Ivory Coast speak of similar tactics by SOGB.

During the meetings participants do not always feel they have a safe space to share concerns. In Cameroon two community leaders explained that they had an argument with company executives after the field audit. SAFACAM staff are said to have reproached one leader for accusing the company of committing a "crime against humanity" through the practice of land grabbing during the audit.²⁵ The second incident involved the SAFACAM management during the company's meeting with smallholder farmers in November. An executive reprimanded the leader for having led his community to expel the auditor from his village for lack of trust in the audit.²⁶ Another community leader said: "when you voice such a truth you are portrayed as a rebel, as a detractor."

In Ivory Coast, a SOGB staff member attempted to intimidate a local community organisation so they would not give interviews to the research team without prior authorisation from the company.²⁷ The research team was told by one SOGB staff member that they were instructed by SOCFIN not to receive the Milieudefensie consultants.

18 RSPO certification systems for Principles and Criteria, June 2017, RSPO-PRO-T01-002 V2.0 ENG and the new version from November 2020, RSPO-PRO-T01-002 V3 ENG

19 Milieudefensie and partners, 2 November 2020, Formal complaint SCS Global on the RSPO certification process of Socfin companies

20 Sierra Leone case study, interview with director from national NGO, information from his meeting with the auditor, December 2020

21 Personal communication Synaparcam to Milieudefensie, September 2020 & email Synaparcam to SCS, 25 September 2020

22 Nigeria case study, interview with village chief, December 2020

23 Nigeria case study, interview with community member, December 2020

24 Cameroon case study, interview with community and Synaparcam member, January 2021

25 Cameroon case study, interview with local development committee, December 2020

26 Cameroon case study, interview with village leader, December 2020 & group discussion January 2020.

27 Ivory Coast case study, personal comment from leader in local organisation, December 2020

In some cases the consultation takes place in a 'climate of fear'. Several interviewees from the native Okomu villages in Nigeria mention the presence of military in the area and company barricades. Women report on military seizing their fish nets and fear arrest.²⁸ In the case of Sierra Leone, MALOA members have faced all sorts of intimidation including being charged with criminal offences, arbitrary arrests and physical and psychological violence.²⁹ Several civil society organisations and their staff were/are subject to gag suits with defamation claims by SOCFIN and its financier Bolloré.³⁰

These issues corroborate RSPO's own acknowledgement that reprisals and harassment for complaints or speaking out does happen. When people are not able to voice their concerns because of the climate of fear and expected backlash, the audit will lack significant stakeholder information to assess the company's compliance. The safety and security situation in relation to SOCFIN companies should have led the CB to work with civil society, trade unions and community organisations to identify potential risks associated with their auditing and certification activities and take steps to minimise those risks and prevent possible human rights violations and reprisals. A policy for protection against all forms of reprisals is essential.

Independence of the RSPO audit from the company

In all four case studies, interviewees stated that the RSPO auditor depended on company resources - such as transport in company vehicles with company drivers and accommodation - to conduct the field audit visits. Moreover, some meetings³¹ with stakeholders were held in the premises of the company, such as during the SOGB meetings in Ivory Coast.³¹ In Sierra Leone, SCS proposed to use the SOCFIN canteen for consultations with the MALOA group, who refused on the grounds of security amongst other reasons.³² The aborted audit meeting with the MALOA also calls into question the capacity of the auditor to make an autonomous decision without influence from the company.

Often, company staff accompany the auditors in vehicles or are present during consultation sessions. In Sierra Leone, the audit team used SAC personnel as interpreters during meetings, such as at the meeting in Taninahun.³³ In Cameroon, the auditor arrived with a SAFACAM driver and the social and community development officer, who walked away when the meeting started.³⁴ In one of the villages, the people asked the audit team to leave for their inability to answer questions such as: 'why is an auditor who comes to review SAFACAM's activities hosted by SAFACAM?' and 'why does an auditor [...] use SAFACAM equipment?' and 'will there be a report shared with us and signed by us?'³⁵

The cases underline the key weaknesses in the RSPO processes where CBs are directly hired by the company under audit. In this context the possibility for auditors to operate with independence is very limited. This lack of independence as perceived by the communities during visits prevents them from participating freely and fully in the audit.

SAFACAM: 'Stakeholders are pleased'

The public summary report for SAFACAM RSPO certification contends that 'stakeholders are pleased' with the company.³⁶ The case study, however, identified various rights-holders and stakeholders that had informed the audit team about a number of grievances, including around serious land rights issues, and dissatisfactions regarding the audit process and auditors - to the point that auditors were sent away in one village.

The SAFACAM public summary report seems to be a case in point for the gaps in checks and balances in the RSPO certification process and a general lack of information and details from stakeholder consultations reflected in audit reports. It remains unclear to stakeholders how information is used by the auditor - if at all - to draw its conclusions on the company's compliance with RSPO principles and criteria. RSPO consultation is thereby an extractive process and exemplifies the findings that negative audits or stakeholder concerns rarely influence the certification decision. This in turn greatly impacts trust and willingness of stakeholders to participate.

28 Nigeria case study, interview with one high chief and two chiefs of native Okomu villages, December 2020

29 <https://www.fian.be/Landgrabbing-by-SOCFIN-in-Sierra-Leone-documentation?lang=fr>

30 <https://onnesetairapas.org/> & <https://www.asso-sherpa.org/bollere-slap-suits-socfin-and-socapalm-withdrew-their-appeal-in-the-defamation-proceedings-against-sherpa-react-and-mediapart>

31 August 2020 SOGB invitation letter for 'audit a blanc de RSPO' to chef de village & Case study Ivory Coast, group interviews in three villages, December 2020

32 Sierra Leone case study, interview MALOA representative, December 2020

33 Sierra Leone case study, interview section chief, December 2020

34 Cameroon case study, interview local development committee, December 2020

35 Cameroon case study, interview with village leader, December 2020 & group discussion January 2020

36 SCS Global Services, 29 December 2020, RSPO P&C Initial Certification Audit IC - Public Summary Report <https://www.rspo.org/certification/search-for-certified-growers> (Socfin entry)

6. Gaps in RSPO Standards and Processes

Many reports have been published about the gaps in the RSPO system and auditing system overall,¹³⁰ which represent issues such as transparency, RSPO standards and management, competence of auditors in general, and palm oil itself being a notoriously controversial commodity. Based on an analysis of the international norms, guidance and best practices on consultation, and a presentation of the experience with the RSPO standards and practice, this paper presents a **number of key gaps in the RSPO standards, guidance and practice**, which are relevant specific to the consultation process as part of RSPO certification.

A. Human Rights in Standards and Gaps in Associated Capacity

The RSPO Standard has strong human rights content and language incorporated into its guidance and standards. For example, chapters four and six of the “Principles and Criteria” include customary rights, the indigenous rights of FPIC, the rights of human rights defenders, and labour rights including the right to a decent living wage. In addition, RSPO has created a human rights defenders policy and a Human Rights Working Group.

However, in order to correctly implement these standards and meaningfully consult on them, both the CB and its auditors - and RSPO members for that matter - **require a comprehensive understanding of not only human rights norms but also the salient human rights issues** and social context of the village, region and country where an audit is being implemented. As presented by the ECCHR in its recent paper on the human rights knowledge of auditors in light of the EU mandatory human rights due diligence legislation, “a full understanding of how the exercise and restriction of such rights are reflected in practice on the ground requires specially qualified auditors. A frequent point of critique [in the RSPO case study] is that auditors lack such human rights qualifications and even a full comprehension of the RSPO standard’s requirements. Human rights due diligence of auditors and certifiers includes to provide staff with relevant training to enable them to apply a human rights-specific methodology.”¹³¹

There has been a recent focus on improvement in this area and the recent RSPO guidance for CBs clearly indicates that **audit teams include social auditors with human rights knowledge and local experts** who undertake stakeholder consultation. However, proper social audits require a lot of time, local and human rights expertise as well as a situation where there is trust between the interviewees and interviewers. These three components appear to still often be lacking in RSPO audits and their consultation processes. Doubts have been raised about whether auditors are trained enough on human rights and social knowledge and whether international auditors have the confidence to engage on these kinds of topics during consultations.

B. Gaps in CB Guidance on Consultation

One aspect that calls the trustworthiness of RSPO audits and certificates into question is the discrepancy between overly ambitious standards and lack of methodical guidance, leading to the methodological weaknesses as presented in the previous section. These weaknesses include the application of a ‘Check-the box’ approach, the type of evidence that is used to check off these boxes, and the lack of consultation with relevant parties and individuals. The RSPO Certification Systems for Principles & Criteria aimed at CBs presented in chapter 3a provides guidance on consultation for CBs, but **detailed methodological guidelines are not included**.

In fact, compared to, for example, the FSC guidance on Stakeholder Consultation for Forest Evaluations,¹³² the RSPO certification systems only include seven short articles that are relevant to the approach taken in consultation. There is also a lack of information on the need to consult stakeholders in a timely manner so that they can gather evidence, make preparations for the audit such as determining which stakeholders or rights-holders to speak with, how much time is needed to consult, and where to go. The result of this – in combination with the voluntary nature of the guidance - is that de facto, the methodical approach taken for consultation is left for the CB and auditor to decide, creating a gap between the norm and practice.

130 See for example: EIA (2020), Sustainable palm oil watchdog’s credibility questioned by independent review, <https://eia-international.org/news/sustainable-palm-oil-watchdogs-credibility-questioned-by-independent-review/>; EIA (2015) & (2019) Who Watches the Watchmen? Auditors and the breakdown of oversight in the RSPO. <https://eia-international.org/report/who-watches-the-watchmen/> & <https://eia-international.org/report/who-watches-the-watchmen-2/>; SOMO (2017) The two hats of public security actors in Indonesia <https://www.somo.nl/two-hats-public-security-actors-indonesia/>; Profundo, on behalf of Friends of the Earth Europe & Milieudefensie, (2018). External Concerns on RSPO and ISPO. <https://milieudefensie.nl/actueel/report-rspo-ispo-external-concerns.pdf>; Oxfam, 11.11.11, FIAN, AEFJN, Justice et Paix and CNCD (2018). De mythe van Duurzame palmolie. <https://www.11.be/artikels/item/duurzame-palmolie-blijft-mythe>; SOMO (2018). Looking good on paper. <https://www.somo.nl/sustainability-certification-initiatives-need-to-be-more-effective/>

131 ECCHR (2021). Human rights fitness for the auditing and certification industry;

132 FSC (2010). FSC-STD-20-006 Stakeholder Consultation for Forest Evaluations Standard (STD) V(3-0)

Specifically, there is very little information presented on how relevant stakeholders should be identified for consultation during the certification process. The instruction reads: **“the CB shall have a mechanism in place to identify the interested parties and ensure a represented samples size of the interested parties are consulted in each audit.”** The fact that this was adapted from the 2017 version of the certification system, which states “all of the interested parties” are consulted, signifies a step backwards in accountability, particularly because ‘interested party’ and means of identification are not defined. Furthermore, the guidance for CBs to “include a requirement to gather evidence from relevant stakeholders, designed to ensure that all relevant issues concerning compliance are identified” leaves too much room for interpretation.

C. Gaps in Evidence Used During FPIC assessments

The RSPO Certification Systems indicate that “the CB shall review whether oil palm operations have been established in areas that were previously owned by other users and/or are subject to customary rights of local communities and indigenous peoples. If applicable, the CB shall consult the interested parties directly to assess whether land transfers and/or land use agreements have been developed with their FPIC and check compliance with the specific terms of such agreements.” Practically this means that “auditors should [thus] be required and enabled to independently identify all potentially affected land users, especially those whose user rights claims are not documented and who therefore are particularly vulnerable.”¹³³ In other words, assessing whether land user rights and consultation rights were respected requires engagement with multiple sources and in particular those potentially affected: the rights-holders. This demonstrates several gaps in the RSPO system.

First, as presented in chapter 4b, there are gaps in the phrasing of the indicators used for assessing land rights and use. Experts have flagged poor indicators to quantitatively and qualitatively measure any negative human rights impacts¹³⁴ as a key shortcoming of audits overall. ‘Checking off’ the **RSPO indicators heavily relies on process oriented written documents produced by the state or the audited company**, which are often invalid. Audits “rely almost exclusively on paper-based assessments of compliance (often generic in nature) from secondary sources — data providers; environmental, social, and governance (ESG) risk firms; interested parties (including most social auditors) — and company self-reporting.”¹³⁵

Secondly, information collected in this study presents a picture that the RSPO or **CB’s procedures do not allow for either the necessary training (skills) or time (financial resources) to do proper consultations** to gain full community perspectives. As one respondent illustrates: “Your view on land conflict should be widened as an auditor, wider than publicly fought conflicts - you should talk to people: how did you use it before and how now? But this does not happen, often time does not allow for it.”¹³⁶ Consequently, because consultation with rights-holders is not sufficiently carried out, in practice the claims made in company and state documents collected by auditors takes precedence over the evidence of the local population.

Thirdly, some experts **argue that FPIC rights are not auditable at all**, “as they require the taking into account of the historical context, a multi-actor perspective and often local open conflicts, as well as legal pluralism or contradictions in law, and uncertainties as to availability of evidence”.¹³⁷ Considering the apparent low level of knowledge of auditors on human rights and legal issues, in combination with a lack of dependence on local experts, the assessment of prior land use and conflicts appears an impossible task for a team of international auditors flying in. As stated by Global Compact “obtaining FPIC in a “check-the-box” manner is not sufficient to ensure that the company respects the rights of indigenous peoples. This is because FPIC is not an end in of itself, but rather a process that in turn protects a broad spectrum of internationally recognized human rights.”¹³⁸

133 ECCHR (2021). Human rights fitness for the auditing and certification industry

134 FPP (2019) and ECCHR (2021)

135 FPP (2019). Ground truthing.

136 Interviewee 11

137 ECCHR (2021). Human rights fitness for the auditing and certification industry

138 Global Compact (2013). A business reference Guide, United Nations Declaration On The Rights Of Indigenous Peoples, p. 3.

D. Gaps in outreach and Trust to Share Concerns

The analysis in 4b demonstrates that there are not only essential gaps in outreach to relevant stakeholders, but also gaps in the consultation process itself, which prevents it from being meaningful. This is demonstrated by NGOs and communities losing faith and trust in participating in consultation.

First, in many cases communities and companies report that auditors do not always visit affected communities who live adjacent to relevant sites – communities who may have been evicted or are otherwise impacted. This is corroborated by other studies and audit reports posted on the RSPO site. This leads auditors to ignore significant evidence from rights-holders, fail to assemble suitable information about potential risks or issues and, as a result of under-reporting, fail to present a full picture of the company's impacts.

For this reason, access to CSOs has proven to be essential for communities in order to provide evidence on ongoing land issues and in order to document the community's perspective. As concluded by a study of WUR in 2019 in the case study on the RSPO, "relatively weak communities are struggling against a much stronger adversary [...] the communities have managed to employ interconnections between their own struggles and other related struggles at the more abstract level of conflict on aggregated land-use to gain leverage in their local negotiations. To gain access, **communities' opportunities to team up with local NGOs that in turn team up with national and international NGOs have been crucial**",¹³⁹ implying that cases of community resistance or dissent without NGO back up will not stand a chance. Failing to include these parties in audit consultations therefore automatically misses the mark of meaningful consultation and represents a flaw in the auditing system overall.

Furthermore, there is the perspective of communities that have participated that **they are not being listened to properly during audits**. Aside from trust issues raised, other issues in consultation participation included people not knowing about the audit, not understanding the opportunities an audit could provide or practical restraints (location, time) to attending scheduled consultation interviews. Ensuring that a cross-section of the community is included and that they understand what is at stake or what is being discussed requires solid preparation as well as pro-active sharing of information through means that go beyond the "public announcement on the RSPO website" as stated in the RSPO certification systems.

Good practices include for example the sharing of announcements at public markets and proper translation and locally adapted communication. For this reason, CBs' good practice includes careful selection of local experts that have a solid understanding of language, values, and have experience with interviewing on socially sensitive topics. Consultation processes as part of RSPO certification are rather perceived as a top-down process, which fails to effectively gauge the perspectives of the targeted communities.

E. Lack of Safe Spaces and Protection of Complainants

As demonstrated in chapter 4b, the RSPO process still includes instances of harassment and reprisals during the certification process, especially targeted towards community members that share concerns during audits. Even though the RSPO has a policy in place on the protection of human rights defenders, **it is unclear from this policy or from the Certification Systems what the role of the CB or auditor is and should be in ensuring an open and safe space to share** for those that wish to report concerns, aside from a few articles on confidentiality.

One may argue that, considering that CBs provide a space in which concerns and grievances about an audited company could (and ideally would) be shared, they should - at the least - comply with basic practices on grievances. According to the principles mentioned in UNGP 31 on grievance mechanisms "barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location and fears of reprisal."¹⁴⁰ It is thus important that auditors are, in fact, accessible to the communities whose rights they assess, and that they also have a mechanism in place that offers active protection against reprisals to complainants where this is necessary.

Auditors and CBs should identify potential risks associated with their auditing and certification activities and take steps to minimise risks and prevent possible human rights violations and reprisals. This also means that they demonstrate active involvement of trade unions, CSO and rights-holders, and a policy for their protection against all forms of reprisals. The RSPO human rights defender policy should therefore arguably be explicitly extended to CBs themselves.

¹³⁹ Michiel Kohne (2014). Multi-stakeholder initiative governance as assemblage: Roundtable on Sustainable Palm Oil as a political resource in land conflicts related to oil palm plantations

¹⁴⁰ OHCHR (2011). Guiding Principles On Business And Human Rights. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

Furthermore, when auditors and certification companies are directly hired by an audited member company, independence is inhibited and the risk of human rights violations increases. Dependence on company resources such as transport and accommodation does not present true independence from the perspective of communities. Andy Whitmore has proposed a range of options¹⁴¹ in his recent paper on auditor independence at RSPO that could ensure that CBs are in fact independent. These include a system that ranks CBs and matches clients based on relative risk and competence, an independent body of experts, and an in-house system for allocation to dedicated staff. RSPO would benefit from seriously exploring these options to ensure that a safe space to share concerns is indeed created during audits.

F. Checks and Balances

Much has been written on the apparent lack of checks and balances within the RSPO system. The RSPO is a voluntary system and there is ample evidence that negative audits and reported non-compliances by participating companies do not result in significant consequences regarding certification. We describe here the most important accountability gaps related to consultation.

First, it appears that **little information on consultation is provided in audit reports**. Even though it was beyond the scope of this study to review all audit reports submitted to the RSPO, a random search of recent reports suggests that information generally included in audit reports on consultation includes a list of those consulted, a half page paragraph on the process of implementation and a few statements on non-conformities regarding consultation. In “Methods of Consultation” there appear to be two categories reported in RSPO audit reports: interviews and “An invitation letter to comment was sent”. In multiple reviewed reports, the number of interviews was significantly lower (less than 10) than invitations by letter (approx. 20-30) and no information is reported as to whether a response was received to the invitation letters.

One selected report mentions a non-conformity which reads “evidence of consultations with local communities have been reviewed during the audit. However, the interview conducted with the population of the village named Kongue Lac Ossa did not allow for an assessment on the level of disclosure, the implementation and explanation of these procedures. People of this village refused the interview with the audit team in the presence of their nominated representative (Village Chief).”¹⁴² Nothing is mentioned on whether or how this occurrence influenced the decision process of the auditors. In fact, the company received a decision to certify. This appears to suggest that if there is no information available because a community refuses to talk, the auditors do not use this information and assume compliance with standards.

Second, and as partially described above, there is a **lack of an effective grievance mechanism to address auditing and consultation**. This is particularly significant as there are reported cases of auditors being allowed to assess complaints for companies they had certified themselves, such as in Long Teran Kanan Indonesia and Ketapang District, West Kalimantan, which constitutes a conflict of interest.¹⁴³ The limited guidance articles (5.6.1-5.6.7) in the RSPO Certification Systems Guidance on consultation that external actors depend on present significant obstacles for the potential lodging of complaints against CBs on substandard consultation and audit processes. This lack of ‘tools’ to flag substandard consultation leaves too much room for inadequate consultation processes, and hence inadequate audits that might lead to uninformed and potentially incorrect assessment and certification decisions.

7. Conclusion and Ways Forward

Minimum requirements for consultation based on international norms exist and are well documented in guidance and international law. A quality audit considers how a project works out for the whole community, which is why a wider and meaningful consultation process is needed during audits. As this report demonstrates, ‘meaningful’ equals being pro-active. Considering the well documented argument that stakeholder engagement efforts “often fall short because of a failure to understand local community dynamics, or a failure to fully engage all local stakeholders that are affected”,¹⁴⁴ communities and CSOs can and should expect at least an effort to allow for the inclusion of rights-holders that are affected themselves, for full expression of the viewpoints of the peoples concerned in an open and safe environment, with external expertise used as a key resource in any consultation process. We argue that this should not be different for auditing processes, paying attention to the fact that certification constitutes a development that can have far reaching impacts on communities’ and rights-holders’ current and future rights.

141 IUCN NL (2021) Review of RSPO systems on competence and independence of assessors and auditors.

142 Audit report, Scientific Certification Systems, Inc., DBA SCS Global Services, p. 86. <https://www.rspo.org/certification/search-for-certified-growers>

143 Environmental Investigation Agency (EIA)/grassroots (2015) 14-15

144 World Resources Institute (2009). Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects, p. 2

Based on this research we conclude that RSPO consultation has fundamental gaps in its policies and practices for consultations during the certification process, including:

1. The RSPO process represents a discrepancy between overly ambitious standards and lack of methodical guidance, leading to methodological weaknesses during consultation. Due to minimal guidance, the methodical approach taken for consultation is left for the CB and auditor to decide, creating a gap between the norm and practice.
2. Sampling of relevant stakeholders to consult during audits does not meet its purpose. The guidance for CBs to “include a requirement to gather evidence from relevant stakeholders, designed to ensure that all relevant issues concerning compliance are identified” leaves too much room for interpretation. Communities and companies report that auditors do not always visit relevant affected communities who live adjacent to relevant sites – communities who may have been evicted.
3. RSPO indicators for assessing FPIC are predominantly process-indicators and rely almost exclusively on paper-based assessments of compliance from secondary sources and company self-reporting, which is often not valid. In practice, company documents collected by the auditors are referred to more than evidence from the local population.
4. Proper audits and consultation on social and human rights issues require a lot of time. CB’s procedures often do not allow for the necessary time (due to financial resources) to do proper consultations to gain full community perspectives on land use or conflicts.
5. Considering that national and international NGOs have been crucial for local communities to flag grievances or dissent, failing to include these parties in audit consultations misses the mark of meaningful consultation. This appears to happen often during the RSPO audits.
6. Participants do not always feel they have a safe space to share concerns as harassment and reprisals continue to occur. This is corroborated by RSPO’s own acknowledgement that reprisals and harassment for complaints or speaking out does happen.
7. Sufficient human rights knowledge is often lacking among auditors in RSPO certification processes, despite the fact that consultation requires a comprehensive understanding of human rights norms and social issues and a full understanding of how the exercise and restriction of such rights are reflected in practice on the ground.

These gaps are created by underlying factors that showcase a structural issue with voluntary certification systems such as RSPO. First, CBs often lack independence as they continue to build on resources, information and funds of the company that hires them. Being dependent on company cars and accommodation does not present a picture of independence from the perspective of communities or for an outsider. Second, and linked to this, there appears to increasingly be a lack of interest among some rights-holders and stakeholders to consult for audit processes overall, caused by ‘consultation fatigue’ and lack of trust in the use of consultations and their relevance to solve grievances.

Refusals to consult, lack of consultation or negative findings during consultation appear to have little consequences for certification decisions and there is little verification of audit (or consultation) reports. The lack of sharing concerns is exacerbated by the climate of fear that surrounds consultation processes for auditing purposes, considering ongoing reprisals and harassment.

Finally, the auditing process and indicators used in certification to assess FPIC and land issues raise a valid question as to whether these topics are auditable at all. They require the taking into account of the historical context, perspectives of multiple actors and of customary law. Considering the apparent low level of knowledge of auditors on human rights, lack of dependence on local experts, lack of time, and lack of appropriate indicators, the assessment of prior land use and conflicts often appears an unattainable task for a team of international auditors.

All of the above undermines the credibility of certification decisions and thereby the function of the RSPO certification system as a mechanism for producers, buyers and financiers in the palm oil sector to ‘guarantee’ compliance with ESG norms and human rights legal frameworks.

These findings (as well as the numerous studies conducted on sub-standard auditing) are particularly worrying in the context of the upcoming or existing national or European mandatory human rights due diligence legislation (mHRDD). Due Diligence is generally understood as the process for businesses to identify, prevent, mitigate, and account for the actual or potential adverse impacts of their global activities and value chains and remediate the negative impacts.

Due diligence processes should ensure that stakeholders are informed, consulted and involved. They need to ensure that the rights of indigenous peoples and local communities are respected (in particular, the right to free, prior and informed consent). A strong role for all stakeholders in the different steps of the process is essential for adequate and effective due diligence. Legislators should prevent below standard and 'tick the box' consultation processes – such as the RSPO consultation process – from being incorporated into mHRDD legislation. Previous OECD decisions state that certification is not a proxy for due diligence.¹⁴⁵

Another worrying issue is that in legislative developments on due diligence, auditors and CBs could become responsible for verification of mHRDD and assist companies in gauging whether a company has done enough to address human rights impacts. This would create a new business model for the audit market but also present a potential conflict of interest in the framework of mHRDD when auditors hired by the company need to assess their own HR impact and that of their client as well as make 'independent' certification decisions.

Going forward, auditors and CBs - regardless of the size of their business - need to include their own mandatory human rights due diligence requirements – and arguably be covered by the European mHRDD law. This includes taking steps to identify the risks of their own activity in contributing to their client companies' human rights violations, to adopt the process of ground-truthing during audits, to create a safe space for people and organisations to participate in the audit, to explicitly target voices of dissent during consultation,¹⁴⁶ to implement a solid HRD and whistle-blower policy, and to expand the role of the independent facilitators.

If these steps are not encouraged by RSPO, certification bodies and the auditors that represent them, not only will the consequences for biodiversity and livelihoods be devastating, but palm oil companies under the RSPO certification scheme will continue to be certified while their sustainability practices are far from 'out of the woods'.

145 Netherlands National Contact Point, (2016) Final Statement in Friends of the Earth/Milieudefensie – Rabobank, <https://www.oecdguidelines.nl/notifications/documents/publication/2016/1/15/fs-foe-milieudefensie-rabobank>

146 See EIA (2021). Forests. Burning Questions Credibility of sustainable palm oil still illusive