

FREE, PRIOR AND INFORMED CONSENT GUIDE FOR RSPO MEMBERS



Meeting with local community in Kalimantan Tengah, Indonesia (2014). Photo: Rahayu Zulkifli.

RSPO Human Rights Working Group 2015

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Free, Prior and Informed Consent: Guide for RSPO members (2015)

by Marcus Colchester, Sophie Chao, Patrick Anderson and Holly Jonas.

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IMPORTANT NOTE: This document: *Free, Prior and Informed Consent: Guide for RSPO members (2015)*, replaces the previous version “*Free, Prior and Informed Consent and the Roundtable on Sustainable Palm Oil – A Guide for Companies (October 2008)*” stated in the RSPO Principles and Criteria (2013).

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Acronyms

CB	Certification Body
CBD	Convention on Biological Diversity
CoC	Code of Conduct
CP	Complaints Panel
DSF	Dispute Settlement Facility
ESIA	Environmental and Social Impact Assessment
FPIC	Free, Prior and Informed Consent
FSC	Forest Stewardship Council
HCV	High Conservation Value
HCVA	High Conservation Value Assessment
RSPO HRWG	RSPO Human Rights Working Group
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFC	International Finance Corporation
ILO 107	ILO Convention 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries
ILO 169	ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries
IMO	InterMediary Organisation
MoU	Memorandum of Understanding
P&C&I	Principles & Criteria & Indicators
RSB	Roundtable on Sustainable BioMaterials
RTRS	Roundtable on Responsible Soy
SOP	Standard Operational Procedure
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNREDD	United Nations Reduction of Emissions from Deforestation and Forest Degradation
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

Rationale

Free, Prior and Informed Consent (FPIC) has been a central requirement of the RSPO Principles and Criteria since they were adopted in 2005. Respect for the right to FPIC is designed to ensure that RSPO certified sustainable palm oil comes from areas without land conflicts or ‘land grabs’. This revised Guide provides advice on how to implement the binding elements of the revised RSPO standard (the Principles, Criteria and Indicators) pertinent to FPIC while also building on the advice already available in the revised RSPO standard’s Guidance.

In 2007-2008, the RSPO with assistance from Forest Peoples Programme developed a ‘Guide for Companies’ⁱ on FPIC which has since been used by some RSPO member companies to guide their own procedures of land acquisition. During the meetings of the Task Force for the Revision of the P&C in 2012-13 it was agreed that this Guide needed to be revised and updated to take into account: the new requirements in the P&C on FPIC as agreed by the Task Force and accepted by the Extraordinary Assembly in April 2013; RSPO members companies’ and affected communities’ experiences with FPIC since 2005 and; wider experiences with FPIC in other sectors.

The Board of Governors assigned this work to the RSPO Human Rights Working Group (HRWG), which accepted this task while proposing that FPIC methods be better integrated with guidance for Social Impact Assessment. The need for this approach was affirmed in the Open Space Forum at RT11 in Medan, Indonesia, in November 2013. To this end, a mini task force within the HRWG emerged which included international human rights NGOs Forest Peoples Programme and Natural Justice, and oil palm companies OLAM, Golden Veroleum Limited and New Britain Palm Oil Limited.

This revised Guide has been elaborated in the light of lessons learned from *inter alia*, field experiences of the companies; current tools used to monitor effectiveness of ESIA and FPIC; newly adopted Standard Operating Procedures and Policies; community experiences as documented in case studies and independent reviews; submissions to the Complaints Panel and; lessons from audits. Particular attention is paid to the need for clear guidance on community representation, respecting community decision making, participatory mapping, gender equity, securing livelihoods and how to identify customary lands and deal with divergent notions of land rights. The revision process of the FPIC Guide involved a wide range of stakeholders most particularly community spokespersons, IMO, producer companies and auditors.

This Guide also draws on the inputs from two two-day multi-stakeholder workshops held in Kuala Lumpur and Jakarta in June and July 2014, with the participation of company personnel, community representatives, auditors and local NGOs. The Discussion Paper shared at those workshops was then reformulated as a draft of this Guide, which was shared with workshop participants and presented to the HRWG for comments. The Guide then underwent a further round of amendments based on comments received and inputs from a further focus group discussion held in Jakarta in June 2015, prior to submission to the RSPO Secretariat and Board of Governors for adoption.

ⁱ FPP 2008

What is Free, Prior and Informed Consent?

Free, Prior and Informed Consent (FPIC) is the right of indigenous peoples and other local communities **to give or to withhold** their consent to any project affecting their lands, livelihoods and environment. This consent should be given or withheld **freely**, meaning without coercion, intimidation or manipulation, and through communities' own freely chosen representatives such as their customary or other institutions. It should be sought **prior** to the project going ahead, meaning sufficiently in advance of any authorisation or commencement of activities and respecting the time requirements of indigenous consultation processes. It should be **informed**, meaning that communities must have access to and be provided with comprehensive and impartial information on the project, including the nature and purpose of the project, its scale and location, duration, reversibility, and scope; all possible economic, social, cultural and environmental impacts, including potential risks and benefits, resulting from the project and that the costs and benefits of alternative development options can be considered by the community with, or offered by, any other parties who wish to do so, with whom the community is free to engage. Key to respecting **consent** are iterative processes of collective consultation, the demonstration of good faith in negotiations, transparent and mutually respectful dialogue, broad and equitable participation, and free decision by the community to give or withhold consent, reached through its self-chosen mode of decision-making.

Lessons learned from the implementation of FPIC to date point to a need to specify in addition what does **not** suffice or qualify as adherence to the principle ([Annex 6](#)). For instance, FPIC is not:

- **Consultation:** consultation is an important element in the consent-seeking process, but is not in itself sufficient to demonstrate that the right of communities to give or withhold their consent has been respected.
- **Pushing for 'yes':** while it is generally in the interests of the company to obtain the consent of communities to their project, the whole purpose of FPIC is that it respects communities' right to say 'no' to a project. The withholding of consent at any stage of the process should be respected.
- **A stand-alone right:** rather, it is an expression of a wider set of human rights protections that secure these peoples' rights to control their lives, livelihoods, lands and other rights and freedoms. It thus needs to be respected alongside other rights including rights relating to self-governance, participation, representation, culture, identity, property, development and, crucially, to lands and territories.
- **A linear, tick-the-box process:** FPIC does not end with the signing of an agreement by the community. Rather, it guarantees indigenous peoples and local communities a voice at every stage of development planning and implementation for projects that may affect their wider rights. Throughout project operation, the ongoing participation of communities, participatory monitoring and robust verification are required for FPIC to be upheld.
- **A one-way process:** Rather than a one-way transfer of information from the company to communities where communities are passive recipients, FPIC is as much about the

company learning from the communities as to their customary tenure, livelihoods, history, social organisation, representation and decision-making structures, and aspirations for development as it is about the company imparting impartial and comprehensive information to communities about the projected development. This is exemplified by the central role communities must play in designing, implementing and validating ESIA's, HCVAs, participatory mapping and so forth.

- **An individual right:** rather, it is a collective right of indigenous peoples and local communities and therefore must be sought not on a one-to-one basis but through wide consultation and community participation.
- **A right to veto:** FPIC is a collective right and as such the will of the majority of the community should prevail. The question for the people themselves is to decide how the will of the majority is expressed – ie through which decision-making processes within the community do they reach a decision and through which institutions do they express their view to the outsiders. FPIC is not a right for individuals to ‘veto’ the choices of their wider group.
- **Corporate Social Responsibility:** while the form and contents of a company’s CSR policy should be shared with the community in question, CSR in itself is not tantamount to FPIC but rather companies must seek to include a commitment to FPIC in their corporate policies.
- **New:** apart from the fact that FPIC is now widely recognised in a number of voluntary standards and norms of financial institutions, and well-established in international human rights law and jurisprudence, as well as in the RSPO P&C of 2005, it exists in some form or another in most national legal frameworks, and also in the customary legal systems and decision-making structures of indigenous peoples and other local communities.

FPIC in the RSPO and beyond

Respect for FPIC has been a central requirement of the RSPO Principles and Criteria since they were first adopted in 2005. It seeks to ensure that RSPO certified sustainable palm oil comes from areas without land conflicts or ‘land grabs’ and that oil palm expansion takes places in ways that do not destroy High Conservation Values (HCVs) or cause social conflict. FPIC is thus a principle of best social practice and of best environmental practice, ensuring just land acquisition and use.

During 2012-2013, the RSPO Task Force on the Revision of the Principles and Criteria incorporated a number of changes in the Principles and Criteria, Indicators, Specific Guidance and Guidance related to lands and FPIC, in order to assure better compliance. The revised P&C of 2013 further reinforces the importance of respecting FPIC, providing more explicit and substantial language to this end ([Annex 1](#)). Several RSPO companies have now also developed Standard Operational Procedures (SOPs) on FPIC to better enforce implementation of the RSPO standard in this regard. Proposed verifiers have thus been developed to help companies and certification bodies check compliance with RSPO requirements ([Annex 2](#)).

The challenges lie in whether and how FPIC is actually being implemented on the ground. Addressing these challenges requires taking into account the wide range of experiences on the ground of multiple stakeholders involved in the FPIC process, including companies,

communities, assessors, auditors and non-governmental organisations. Conflicts of varying degrees of intensity between communities and companies are still widespread, with some raised to the Complaint Panel and Dispute Settlement Facility, so clearly there is still room for progress in the implementation of the RSPO standard as it relates to FPIC. Clearer guidance, as provided in this document, and developed through a multi-stakeholder process, has been designed to this end.

Summary of key revisions to RSPO P&C

- ❖ growers and millers commit to ethical conduct, including through a human rights policy
- ❖ added protections of 'user rights'
- ❖ stronger language on need for 'effective participation in decision-making'
- ❖ publicly available documents to include Human Rights Policy
- ❖ involvement of neighbouring communities where applicable in participatory mapping
- ❖ no evidence that palm oil operations have instigated violence in their operations
- ❖ stronger language on 'consultation and discussion' with all affected groups in the communities
- ❖ evidence required that company has respected communities' decisions to give or withhold their consent to the operation at the time that this decision was taken
- ❖ implications of operations on communities' lands must be accepted by affected communities, including implications for legal status of their land at expiry of the company's title
- ❖ evidence required that communities are represented through institutions/representatives of their own choosing, including legal counsel
- ❖ reference to RSPO Working Group on Human Rights as providing mechanism to identify, prevent, mitigate and address human rights issues and impacts
- ❖ anonymity of complainants and whistleblowers, where requested, must be respected, and risks of reprisals prevented
- ❖ evidence that affected local peoples understand they have the right to say 'no' to operations planned on their lands from prior to initial discussions, up until agreements are signed
- ❖ evidence required that communities and rights-holders have access to information and advice independent of project proponent
- ❖ SOP required to respond constructively to stakeholders, including specific timeframe to respond to requests for information
- ❖ Human rights policy to include respect for fair conduct of business; prohibition of all forms of corruption, bribery and fraudulent use of funds and resources
- ❖ evidence required that information is received including on RSPO mechanisms for stakeholder involvement, including information on stakeholders' rights and responsibilities
- ❖ prohibition on use of mercenaries and para-militaries in their operations
- ❖ prohibition on extra-judicial intimidation and harassment by contracted security forces
- ❖ required evidence that where a negotiated agreement cannot be reached, sustained efforts have been made to achieve such an agreement, which could include third party arbitration
- ❖ confirmation that communities gave consent to initial planning phases of operations prior to new issuance of a concession or land title to the operator
- ❖ reference to UN Convention against Corruption
- ❖ reference to UN Guiding Principles on Business and Human Rights

A full list of revisions to the RSPO P&C is available in Annex 1.

Beyond the RSPO, respect for indigenous peoples' and other local communities' right to give or to withhold their consent to any project that may affect their lands and livelihoods is now a well-established requirement in a wide range of multi-stakeholder commodity roundtables, private sector and International Financial Institutions' standardsⁱⁱ. Several major companies have now also elaborated their own policies of social and environmental sustainability, which include the obligation to seek consent of potentially affected communitiesⁱⁱⁱ. Some of these apply not only to the activities of the company itself but also to its suppliers and the wider commodity supply chain.

The right to FPIC is enshrined in international law^{iv} (in particular, the United Nations Declaration on the Rights of Indigenous Peoples) and jurisprudence ([Annex 3](#)), and national legal frameworks and constitutions generally support the right of people to be consulted and given a choice in decision-making when it comes to their lands, livelihoods and environment. Even where national laws do not require FPIC in those particular terms, companies that have subscribed to certification standards, such as the RSPO, are expected to go beyond domestic law to uphold the higher international standards by seeking community consent. In many ways, voluntary standards have emerged precisely because existing national laws and governance are limited, and therefore do not guarantee social and environmental sustainability of land use and commodity production. This, however, in no way precludes a dynamic interaction between the two: on the contrary, progressive-minded companies seeking to 'raise the bar' can be highly instrumental in promoting laws and regulations to better recognise, protect and respect responsible practices, such as respecting FPIC.

ⁱⁱ These include inter alia the FSC for timber, the RSB for biofuels, the RSPO for palm oil, the RTRS for soy, the IFC's Performance Standards and the UN-REDD Programme FPIC Guidance

ⁱⁱⁱ These include APP, APRIL, GAR and Wilmar's 'no deforestation, no exploitation' policies.

^{iv} These include UNDRIP, ICCPR, ICESCR, ICERD, ILO 107, ILO 169, the Conference of Parties' decisions relating to the implementation of the CBD and the related Akwe-Kon Guidelines, and the VGGT.

The business case for community consent

The business risks of imposing a large-scale project on a host community without its consent are also multiple and profound. At the project level, community opposition can lead to reduced access to capital; increased construction costs and delays; reduced access to critical project labour and material inputs; operational delays and increased production costs; reduced demand for products (particularly by companies with branded products); and increased costs of post-hoc mitigation of environmental and social impacts. Community opposition can also cause the government to revoke permits, impose fines, or even halt operations. Moreover, community resistance can have adverse impacts on corporate operations beyond the scope of an individual project, including negative impacts on stock prices, brands, and reputations, and greater difficulty in securing financing, insurance, and community cooperation in future projects.

Conflict may arise between communities, companies and the State, but also within and between communities themselves, if equal opportunities and benefit-sharing mechanisms are not put in place. This and the broader mismanagement of natural resources are of particular concern in post-conflict countries, where land governance and rule of law may be weak and the risk of conflict over natural resources where inequitably distributed heightened.

Conversely, carrying out FPIC properly is the basis for trust-based, transparent and sustainable relationships with local communities, and where consent is given, the development of contracts and agreements that are equitable and accountable to its parties, and therefore more likely to be achieved in practice.

Revising national laws and developing a framework to facilitate compliance with FPIC such that RSPO company implementation of the principle is facilitated and market access secured through accreditation, would also place the State in a better position to gain the benefits from investments, to avoid reputational risks of being found in breach of international human rights law, to avoid further civil conflict and to avoid the problem of investors choosing instead to invest in other countries where they feel their investments are more secure.

Source: Sohn 2007.

Ways forward

While the visibility of FPIC may be growing on paper, the effectiveness and standardisation of its implementation requires major and urgent improvements ([Annex 5](#)). This Guide provides advice on how to implement the binding elements of the revised RSPO standard (the Principles, Criteria and Indicators) pertinent to FPIC while also building on the advice already available in the revised RSPO standard's Guidance. It also suggests more specific and measurable indicators and verifiers against which RSPO members' practices can be assessed by Certification Bodies (see Annex 2). The Guide should also be valuable to local communities and their supporting IMO, as well as relevant government bodies, so that they are made aware of the elements and dimensions required on the part of RSPO companies for a thorough, robust and accountable FPIC process, and communities' right to redress where these are not respected. The experiences and lessons learned from all these actors form the basis for this Guide.

The advice provided in this Guide is generic and intended for broad application by RSPO members. However, local realities and contexts, including the socio-economic, political, historical and cultural makeup of the region and country in question, need to be taken into account. Certain steps may require additional attention and time. The content, implications and order of each stage should be **discussed and agreed** with the communities. Additional stakeholders may be suggested to partake in the process in different ways. Consultations with communities may take different forms, and the legitimacy of these processes demonstrated in variable ways. The Guide has two parts: it sets out the requirements of the RSPO Principles, Criteria and Indicators relevant to FPIC and it then provides recommendations of best practice for how to achieve compliance with these requirements.

More importantly, FPIC is conceived as an expression of the right to self-determination and as such the form of engagement that particular communities choose in order to represent themselves, carrying out their internal deliberations and reach decisions will depend on their choices and will be shaped by their traditions, cultural norms and often customary laws and systems of organisation. Company SOPs need to be flexible enough to adapt to and respect such local variables.

Last but not least, experiences on the ground demonstrate that where national laws and regulations fail to provide adequate recognition and protection to the rights of indigenous peoples and local communities, where international human rights instruments are poorly enforced, and where national and international legal frameworks are not harmonised, the ability of companies to abide by certification standards such as the RSPO is hindered, and their efforts towards sustainability requirements at times penalised rather than encouraged as a result. As such, the effective implementation of certification standards that require respect for both national and international systems of law requires legal harmonisation and effective and independently monitored implementation and enforcement of such laws. It is our view that the RSPO and its member companies, individually and in concert with other RSPO members can play a pivotal role in pushing for legal reform by engaging with national governments to revise laws and regulations so the rights of communities are recognised, land investments are secure and conflicts are avoided.

GUIDE

Why observe the right to FPIC?

RSPO members need to respect indigenous peoples' and local communities' right to give or withhold their Free, Prior and Informed Consent to operations planned on their lands for a number of mutually reinforcing reasons.

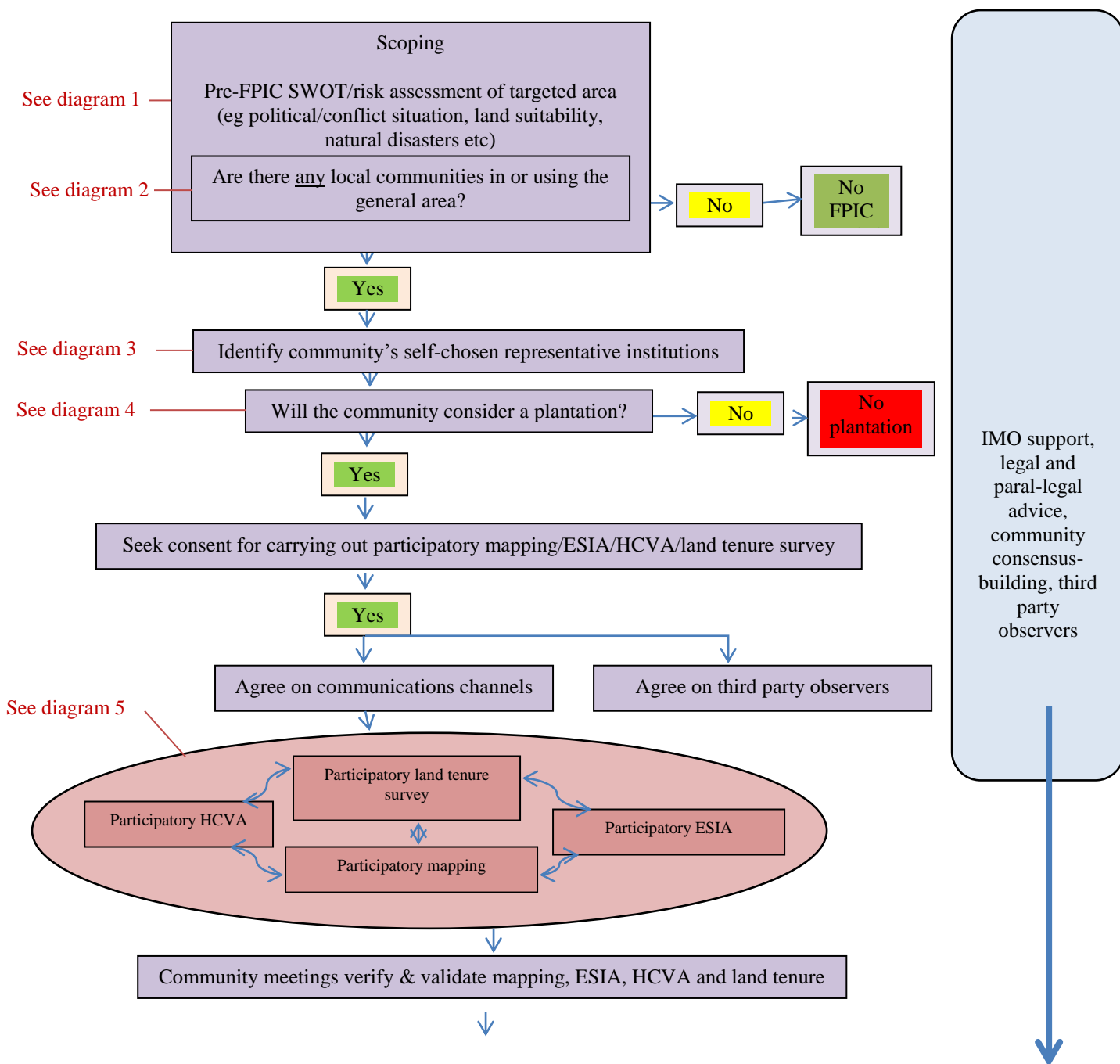
- It is a requirement of the RSPO Principles & Criteria
- It is a right of indigenous peoples enshrined in international law
- It is widely accepted in global best practice standards
- It provides companies with a 'social license to operate'
- It ensures companies respect communities' wider rights to lands and resources and to choose their own representatives
- It means companies cannot be accused of 'land grabbing'
- It secures good relationships with local communities, important for smallholder partnerships and trouble-free employment
- It results in a negotiated agreement binding on both the company and the communities
- It helps companies avoid being embroiled in land conflicts
- It helps companies avoid costly litigation, work stoppages or lost access to plantings resulting from land disputes.

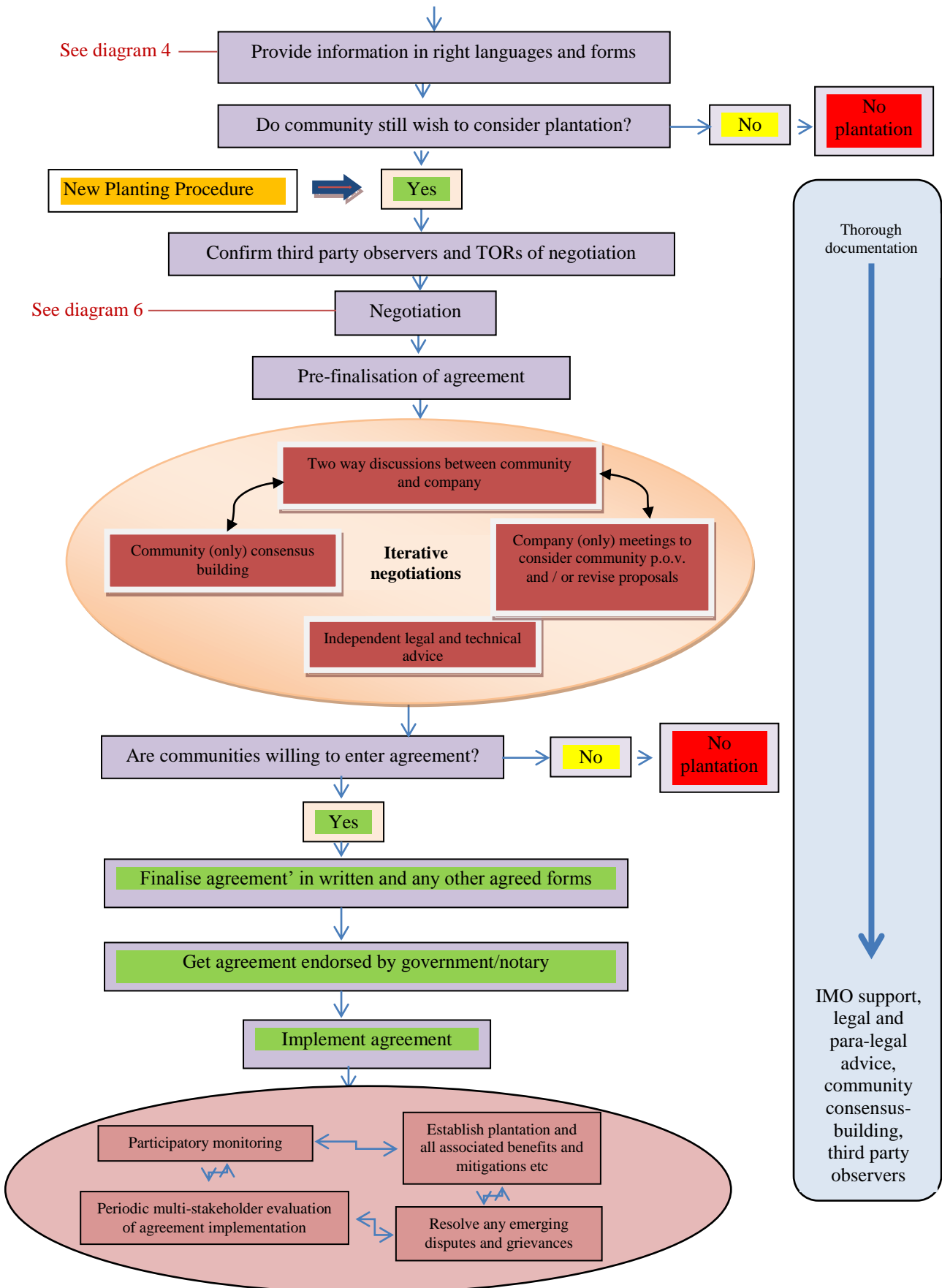
A procedure to secure FPIC is required whenever companies want to acquire any lands to which indigenous peoples; local communities and other users have prior legal, customary or informal rights. FPIC is a responsibility of companies seeking to acquire lands and should not be contracted out to consultancies, as the agreement that results should be between the company and the communities.

This Guide sets out the procedures to be followed as required by the generic RSPO Principles and Criteria, Indicators and Guidance. The Guide includes both binding requirements derived from the Principles, Criteria and Indicators and advice on how companies can comply with these requirements.

Guide 1. FPIC flowchart

The flowchart for respecting FPIC set out below suggests the main stages for the engaging with communities in seeking their consent, in line with the requirements of the RSPO standard. Further elaboration on specific sections is then provided in separate diagrams throughout the Guide. It should be noted that the phases delineated below may vary (in terms of order, content, duration and participation) depending on the local context and the decisions of communities, and so are suggestive rather than fixed and exhaustive.






Developing Standard Operating Procedures

Companies need to develop SOPs for key aspects of RSPO P&C including FPIC and Land Acquisition, Grievance Procedures and Conflict Resolution. SOPs must make clear who in the company has responsibility for implementation but should provide enough scope for flexible application to allow for community cultural preferences and choices about how they want to negotiate and engage with the company. Companies may also want to develop model protocols for engagement with the communities but such protocols should be negotiated to result in a mutually agreeable process. This can be carried out through an “FPIC engagement agreement” where the finally agreed process is set out and mutually confirmed. Companies should avoid presenting SOPs and protocols as ‘non-negotiable’ as community engagement will differ across regions and communities. As with FPIC in general, making it a participatory process is key to legitimacy and effectiveness in practice. Likewise with Memorandums of Understanding (MoUs) and agreements, sharing pre-written model drafts is recommended, to provide a comprehensive starting point and checklist. All final documents, however, should only be the *outcome* of a fully informed negotiation and community decision-making process (including with such legal and IMO support as the community may choose). Model MoUs support community discussions and decision-making, provided that it is always recognised that communities are encouraged to think about the agreements among themselves, examine every point therein, negotiate inclusion or exclusion or amendment of any points, and that the final negotiated agreement is not pre-mandated by either party.

Guide 2. Engaging with representative organizations

 REQUIREMENTS UNDER THE RSPO STANDARD			
Principle	Criteria	Indicator	Guidance & Specific Guidance
<p>2 Compliance with applicable laws and regulations</p>	<p>2.3: 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.</p>	<p>2.3.4: Evidence shall be available to show that communities are represented through institutions or representatives of their own choosing, including legal counsel.</p>	<p>For 2.3: The representation of communities should be transparent and in open communication with other community members.</p> <p>For 2.3.4: Evidence should be available from the companies, communities or other relevant stakeholders.</p>
<p>6 Responsible consideration of employees and of individuals and communities affected by growers and millers</p>	<p>6.1: Aspects of plantation and mill management that have social impacts, including replanting, are identified in a participatory way, and plans to mitigate the negative impacts and promote the positive ones are made, implemented and monitored, to demonstrate continual improvement.</p>	<p>6.1.2 There shall be evidence that the assessment has been done with the participation of affected parties.</p>	<p>For 6.1: Participation in this context means that affected parties are able to express their views through their own representative institutions, or freely chosen spokespersons, during the identification of impacts, reviewing findings and plans for mitigation, and monitoring the success of implemented plans.</p> <p>Identification of social impacts should be carried out by the grower with the participation of affected parties, including women and migrant workers as appropriate to the situation.</p> <p>For 6.4.2: Companies</p>

<p>7 Responsible development of new plantings</p>	<p>6.4: Any negotiations concerning compensation for loss of legal, customary or user rights are dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions.</p> <p>7.6: Where it can be demonstrated that local peoples have legal, customary or user rights, they are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements.</p>	<p>6.4.2: A procedure for calculating and distributing fair compensation (monetary or otherwise) shall be established and implemented, monitored and evaluated in a participatory way, and corrective actions taken as a result of this evaluation. This procedure shall take into account: gender differences in the power to claim rights, ownership and access to land; differences of transmigrants and long-established communities; and differences in ethnic groups' proof of legal versus communal ownership of land.</p> <p>7.6.6: Evidence shall be available that the affected communities and rights holders have access to 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.</p>	<p>should make best efforts to ensure that equal opportunities have been provided to both female and male heads of households to hold land titles in smallholder schemes.</p> <p>This criterion should be considered in conjunction with Criteria 2.2 and 2.3, and the associated Guidance.</p> <p>For 7.6.6: Growers and millers will confirm that the communities (or their representatives) gave consent to the initial planning phases of the operations prior to the new issuance of a concession or land title to the operator.</p>
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Guidance:

As noted, FPIC is a procedural right (or principle) that derives from the collective rights of peoples to self-determination and their right to control their lands, territories and other resources. International law is also clear that peoples have the right to choose their own representatives institutions. Thus since FPIC is an expression of collective rights, an early step in any process to secure FPIC is for the communities involved to decide for themselves how they will be represented in their dealings with outside interests. The RSPO P&C uphold these principles of international law. While indigenous peoples are recognised under a number of national legal systems, the general lack of legal personality and legal recognition of these peoples and their representative institutions under legal frameworks makes it all the more important to recognise self-identification as the key principle in the distinguishing

‘indigenous peoples’ and their customary decision-making bodies. However, the RSPO goes beyond this in that the rights afforded to communities within the P&C extend beyond indigenous peoples to ‘other local communities’, and likewise both legal, customary and user rights need to be identified and adequately compensated for ([Box ‘What is a ‘community’ and who are ‘indigenous peoples’?’](#)).

The pre-FPIC assessment and verification of whether any communities are living in or using the general area that will be affected by the proposed development involves examining a wide range of information sources ([Diagram 1](#)) which will already give the project proponent a general idea of the social composition and institutions in place. The findings of these preliminary stages should be communicated thoroughly to those company staff and or consultant teams tasked with consulting the communities directly and ascertaining their interest in learning about and considering the proposed project. The teams responsible for this should for instance be fully familiar with the social, cultural, economic, political, historical, tenure and livelihoods aspects of these communities and be equipped with a wide range of skills (for instance, a land expert, a social anthropologist, an economist, a local person who speaks the local language) as well as including both men and women.

Documents to share with communities as part of community interest-gauging stage

- ✓ factsheet on the company
- ✓ proposed project factsheet
- ✓ summary factsheet on RSPO P&C and elements pertinent to FPIC
- ✓ factsheet on the RSPO and standard
- ✓ contact details of proponent

Documents to share with communities as part of consultations and negotiations

- ✓ detailed factsheet on company
- ✓ diagram of permit acquisition process and current stage
- ✓ detailed factsheet on RSPO and standard
- ✓ details of proposed development (including legal and financial implications)
- ✓ initial summary of anticipated risks and benefits (social and environmental)
- ✓ proposals for participatory HCVA and ESIA
- ✓ proposals for developing participatory maps
- ✓ proposals for smallholder/ outgrower schemes
- ✓ contact details of support organisation
- ✓ contact details of RSPO
- ✓ existing company SOPs
- ✓ suggested next steps in FPIC process

The company team then needs to engage directly with each of the communities in the area (rather than adopting a ‘sampling approach’ and extrapolating the views of one particular community to all others, even where social organisation and tenure systems appear similar) through extensive and inclusive consultations, in order to ascertain which organisations and individuals the communities consider as their self-chosen representatives. This can include sending a letter to the community to ask if they will consider a visit from company representatives, including the purpose and nature of the visit, as well as contact details of the team. Where this is not possible, the team can visit the village and consult with the communities’ representatives to decide on whether a meeting is wanted, and if so, where and when, and who needs to be present. Ideally such meetings take place in the village itself, as this is generally more conducive to dialogue and communities are more at ease in their local setting, but this should be agreed to with the community. In some cultures,

consultations and decision-making takes place in specific areas and settings (eg a community hall) and this should be respected, as it will in turn give legitimacy and accountability to the consultation outcomes. For all full community meetings, communities will need adequate

notice, and preparation and capacity support in advance by the company, advisors, IMO and other parties, as the communities may determine or invite, and a suitable day and time should be agreed when everyone is most likely to be around. Active monitoring and support from IMOs or other stakeholders may be helpful for the proper functioning of the process and it is for the community to decide whether they invite, request or allow such monitoring and support and under what terms and conditions.

Requirements

A pre-condition to this process is to pro-actively inform the community that they have the right to choose their own representatives and institutions, should they wish to pursue interactions with the project proponent, and that they have the right to choose more than one such representative, depending on the issue at hand. The communities' self-chosen representatives may include one or a combination of bodies (**Diagram 2**), all of which need to be taken into consideration and engaged with directly, where communities so wish. For instance, different representatives might be chosen by the community to guide discussions and make decisions on land, compensation, labour, water and food security, environmental protections etc. Companies seeking to expand existing operations or create wholly new plantings must also notify the RSPO in conformity with the mandatory New Plantings Procedure. This includes providing summaries of the independently assessed HCV Assessments, and social and environmental impact assessments, including evidence that an FPIC process has been mutually agreed with the affected communities.

Guidance

Note that engaging with representative institutions does not imply that these are the only institutions that the proponent should consult. It is sometimes challenging to identify legitimate representative institutions where there are leadership crises or tensions in local representation or decision-making structures (eg State and customary). This, along with opportunism, spurious claims, elite co-optation and corruption on the part of village heads for instance can be avoided by regularly requesting to hold broad consultations with the wider community, rather than on a one-to-one basis with selected representatives, as the social pressure of a collective setting often tends to limit individual decision-making based on self-interest rather than the collective will^v. Where there are several hamlets, smaller unit meetings can be held, during which one can cross-check who the chosen representative bodies and individuals are.

While it is important to engage with local village heads, note that these should not be treated as the only or primary community representatives by default. In some areas it may be that different tribes and castes have their own representative body, which is considered more legitimate than government official village heads. One should avoid assuming communities coincide with administrative (e.g. electoral) boundaries. In some cases, village heads are elected by the government and not by the community itself, and they should be included in consultations with the broader community, rather than engaged with on a one-to-one basis without broader involvement. It is not impossible to hold a meeting with the entire village in most cases, particularly, if this takes place in the village itself, as it ideally should do. At the same time, any individuals or groups should not be seen holding the broad community hostage by refusing to participate in, by disturbing, or by dominating community meetings. Where there are individuals or groups that hold separate views or concerns from the broad community, whatever their view, the company should make additional efforts to consult and

^v See guidance in the RSPO Malaysia NI on identifying representative institutions, available at [http://www.rspo.org/file/PDF/RSPO_national%20interpretation/msia/MYNI%20including%20approved%20smallholder%20guidance%20-%20Nov%202010%20\(Final\).pdf](http://www.rspo.org/file/PDF/RSPO_national%20interpretation/msia/MYNI%20including%20approved%20smallholder%20guidance%20-%20Nov%202010%20(Final).pdf)

include these individuals or groups. This is discussed further below. Ultimately the broad community determination should be recognized by the company, but where individuals have an encumbered, private rights in land, that are recognised by law and / or by custom as being alienable and which are not nested within collective rights subject to community decision-making, then they do have the right to sell their lands to companies on a ‘willing buyer-willing seller’ basis, even if their neighbours do not agree. Where IMOs are involved, it is important to ascertain with the communities the role that these IMOs play, the extent of their mandate, and most importantly, whether or not the community wishes them to represent them and if so, under what circumstances and to what extent ([Box ‘The roles of IMOs: support not substitution’](#)).

Given that communities are rarely homogeneous, the project proponent should also ascertain whether minority groups (women, youth, the elderly, poor and landless families, migrants, ethnic minorities, seasonal users etc.) also have representative bodies, in or outside the community itself, that need to be included in consultations. Note also that communities who claims rights over an area may not live in that area per se, or on a permanent basis, depending on the form of land use in question (e.g. seasonal users, transhumant pastoralists), however these customary users and rightsholders must be represented in the consent process. Where social and cultural norms preclude the involvement of one or more of these groups in consultations, the project proponent should make clear that under the RSPO P&C it is obliged to engage in a participatory and transparent way with communities, and this requires that the views of minority groups are also taken into account. During these early stages of ascertaining community interest in the project, it is recommended that the proponent explain in broad terms what the RSPO is, its objectives and processes, the standard’s requirements, the responsibilities of its members, and the rights of communities protected under the standard.

In addition to broad community-level consultations, it is recommended that side-meetings also be held with such minority groups to ascertain their views. For instance, female team members may choose to talk informally to women and girls outside the meeting setting, in contexts where they feel more comfortable and free to speak, such as during gardening, cooking or childcare. An impacts-based approach should be adopted in parallel to consent-seeking, since impact can reach beyond those groups who have the right to give consent to the operation. Consultations should also include self-chosen representatives of neighbouring and downstream communities. Where a diaspora lives in urban areas, these should also be consulted, but it should be ascertained first with the local community whether it considers them as direct or indirect stakeholders in the process, given that they may not be active land users or rights-holders.

[Diagram 4](#) provides an indicative and non-exhaustive list of the kinds of information that the project proponent should share with communities as part of the initial interest-gauging stage, and then as part of consultations where communities have expressed interest in the project. All of these should be shared pro-actively by the company (rather than at the request of the community)

Diagram 1

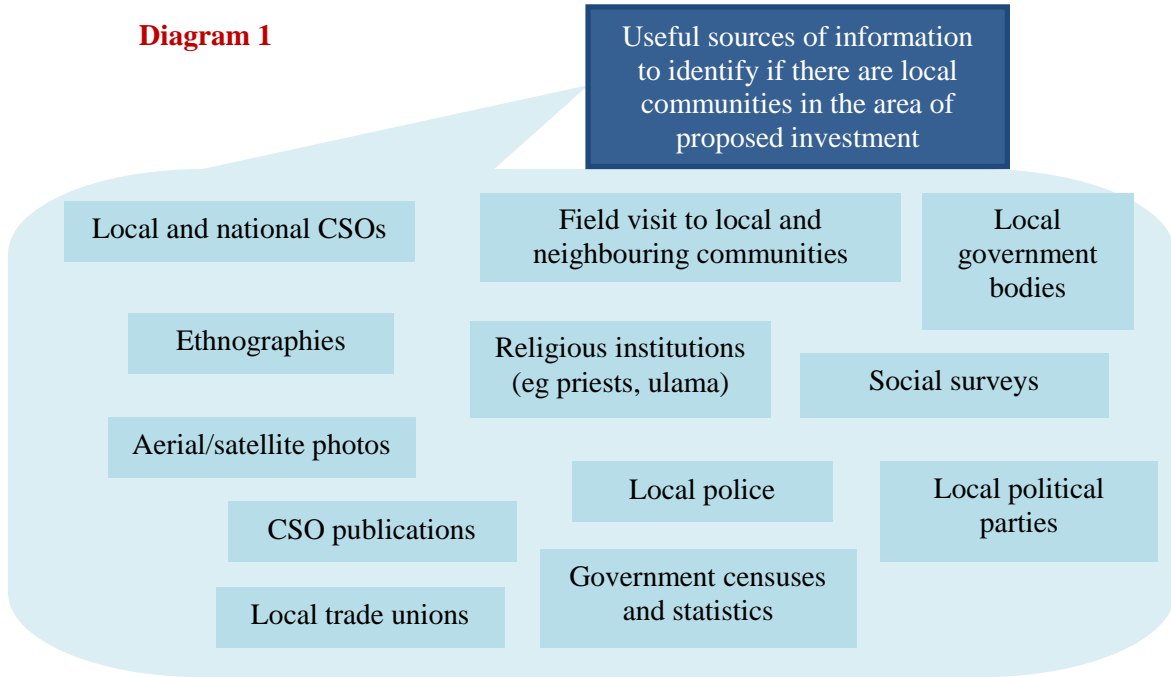
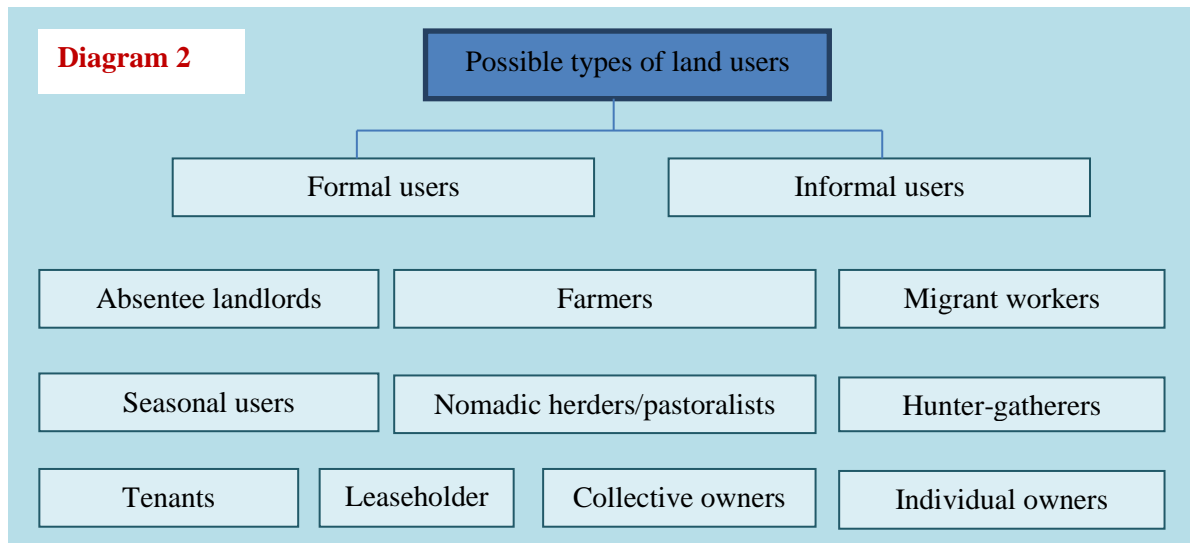


Diagram 2



What is a ‘community’ and who are ‘indigenous peoples’?

The term ‘local communities’ can be used to refer to a community in a particular place where local people share common concern around local facilities, services and environment and which may at times depart from traditional or State definitions. Generally, local communities attach particular meaning to land and natural resources as sources of culture, customs, history and identity, and depend on them to sustain their livelihoods, social organisation, culture and traditions, beliefs, environment and ecology. The term ‘indigenous peoples’, as understood by modern international organisations and legal experts includes priority in time with respect the occupation and use of a specific territory; the voluntary perpetuation of cultural distinctiveness; self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and an experience of subjugation, exclusion or discrimination, whether or not these conditions persist. Both groups will tend to use and manage land in accordance with customary tenure systems and associated rights, and should therefore be treated as rights-holders over such lands and the natural resources therein, regardless of whether such rights are formal or informal. Note that both groups may also sustain close relationships with incomers and migrants through kinship and inter-marriage, which usually has implications for land use and ownership rights, thus the distinction between indigenous and non-indigenous peoples is best ascertained from the community itself. The RSPO standard refers to both ‘indigenous peoples and local communities’ and requires the same processes and respect for rights of both groups by members, including notably in relation to respect for the right to give or withhold FPIC. The nature and composition of any particular community is best identified by that community itself through its freely self-chosen representatives. Iterative consultations with communities and carrying out comprehensive and detailed social and tenure surveys are key ways to ascertain what and who a community refers to in any particular context and region.

Sources: RSB 2010; Daes 1996.

The roles of IMOs: support not substitution


IMOs can play a key facilitating role for local communities in terms of information-sharing, legal and para-legal support, capacity-building, and access to the RSPO's conflict resolution mechanisms. They can help provide the enabling conditions necessary to ensure communities effectively exercise their right to FPIC. This can include legal and technical advice to communities. The RSPO values a multi-stakeholder approach, but given that communities themselves are not members, and that language barriers, the use of technical jargon, technology gaps, communities' lack of awareness of their rights and of the RSPO, and limitations of resources and capacity all conspire to prevent them being able to activate the bureaucratic machinery of the complaints procedures, it has proven to date impossible for communities to activate the RSPO's conflict resolution mechanisms without the support of local and often international IMOs.

Communities may seek counsel from different IMOs on different kinds of issues. Some IMOs may be composed of community members themselves, such as indigenous peoples' organisations. It is important to clarify which IMOs the community consider as their supporting organisations and in what respect, and recommended that these relationships be formalised to ensure the legitimacy and accountability of these IMOs towards the community (eg an MoU). Where IMOs are RSPO members, they are expected to abide by the Code of Conduct and complaints can be raised if they fail to do so. In any case, it must be kept in mind that the rights-holders, the decision-makers and the grieved parties in disputes are the communities. This includes their right to freely choose their supporting organisations, who are not necessarily their representatives.

IMOs also have a responsibility to ensure that where they provide support, they do this in support of the needs of the community, which may or may not align with their own objectives as an organisation. They must also be aware that their actions require the mandate of the community, freely given through the community's chosen representatives and institutions. If a company considers that an IMO is operating without a clear mandate from the community, it should raise this issue with the community directly to seek the community's decision on how any problems arising from the IMO's behaviour can best be dealt with.

The RSPO recently undertook a review to ascertain to what extent so-called 'intermediary organisations' such as NGOs and other elements of civil society can help fulfil communities' needs, which will prove a useful source of information for stakeholders on the role these organisations can play in supporting communities in legitimate and accountable ways. The report is available at <http://www.rspo.org/resources/key-documents/certification/standards-setting-process> . (see also [Concluding Reflections](#))

Guide 3 Identifying prior rights to land

 REQUIREMENTS UNDER THE RSPO STANDARD			
Principle	Criteria	Indicator	Guidance & Specific Guidance
1 Commitment to transparency	1.2 Management documents are publicly available, except where this is prevented by commercial confidentiality or where disclosure of information would result in negative environmental or social outcomes.	1.2.1: Publicly available documents shall include, but are not necessarily limited to: <ul style="list-style-type: none"> • Land titles/user rights (Criterion 2.2) [...] 	For 1.2: This concerns management documents relating to environmental, social and legal issues that are relevant to compliance with RSPO Criteria. Ongoing disputes (within or outside of a legal mechanism) can be considered as confidential information where disclosure could result in potential negative outcomes for all parties involved. However, affected stakeholders and those seeking resolution to conflict should have access to relevant information.
2 Compliance with applicable laws and regulations	2.1 There is compliance with all applicable local, national and ratified international laws and regulations.	2.1.1: Evidence of compliance with relevant legal requirements shall be available. 2.1.2: A documented system, which includes written information on legal requirements, shall be maintained. 2.1.3: A mechanism for ensuring compliance shall be implemented.	For 2.1: Implementing all legal requirements is an essential baseline requirement for all growers whatever their location or size. Relevant legislation includes, but is not limited to: regulations governing land tenure and land-use rights [...], labour, agricultural practices (e.g. chemical use), environment (e.g. wildlife laws,

	<p>2.2 The right to use the land is demonstrated, and is not legitimately contested by local people who can demonstrate that they</p>	<p>2.1.4: A system for tracking any changes in the law shall be implemented.</p> <p>2.2.1 Documents showing legal ownership or lease, history of land tenure and the actual legal use of the land shall be available.</p>	<p>pollution, environmental management and forestry laws), storage, transportation and processing practices. It also includes laws made pursuant to a country's obligations under international laws or conventions (e.g. the Convention on Biological Diversity (CBD), ILO core Conventions, UN Guiding Principles on Business and Human Rights). Furthermore, where countries have provisions to respect customary law, these will be taken into account.</p> <p>Contradictions and inconsistencies should be identified and solutions suggested.</p> <p>For National Interpretation: All relevant legislation will be identified, and any particularly important requirements identified.</p> <p>For 2.1.4: The systems used for tracking any changes in laws and regulations should be appropriate to the scale of the organisation.</p> <p>For 2.2.2: Plantation</p>
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	<p>have legal, customary or user rights.</p>	<p>2.2.2 Legal boundaries shall be clearly demarcated and visibly maintained.</p> <p>2.2.3 Where there are or have been disputes, additional proof of legal acquisition of title and evidence that fair compensation has been</p>	<p>operations should cease on land planted beyond the legally determined area and there should be specific plans in place to address such issues for associated smallholders.</p> <p>Where there is a conflict on the condition of land use as per land title, growers should show evidence that necessary action has been taken to resolve the conflict with relevant parties.</p> <p>A mechanism should be in place to resolve any conflict (Criteria 6.3 and 6.4).</p> <p>Where operations overlap with other rights holders, companies should resolve the issue with the appropriate authorities, consistent with Criteria 6.3 and 6.4.</p> <p>For National Interpretation: Any legal, customary or user rights to land, or disputes, which are likely to be relevant, will be identified.</p>
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	<p>2.3 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.</p>	<p>made to previous owners and occupants shall be available, and that these have been accepted with free, prior and informed consent (FPIC).</p> <p>2.2.4 There shall be an absence of significant land conflict, unless requirements for acceptable conflict resolution processes (see Criteria 6.3 and 6.4) are implemented and accepted by the parties involved.</p> <p>2.2.5 For any conflict or dispute over the land, the extent of the disputed area shall be mapped out in a participatory way with involvement of affected parties (including neighbouring communities where applicable).</p> <p>2.3.1: Maps of an appropriate scale showing the extent of recognised legal, customary or user rights (Criteria 2.2, 7.5 and 7.6) shall be developed through participatory mapping involving affected parties (including neighbouring communities where applicable, and relevant authorities).</p> <p>2.3.2: Copies of negotiated agreements detailing the process of free, prior and informed consent (FPIC) (Criteria 2.2, 7.5 and 7.6) shall be available and shall include: [...] c) Evidence that the legal, economic, environmental and social implications for permitting operations on</p>	<p>For 2.3: All indicators will apply to current operations, but there are exceptions for long-established plantations which may not have records dating back to the time of the decision making, in particular for compliance with Indicators 2.3.1 and 2.3.2.</p> <p>Where there are legal or customary rights over land, the grower should demonstrate that these rights are understood and are not being threatened or reduced. This Criterion should be considered in conjunction with Criteria 6.4, 7.5 and 7.6. Where customary rights areas are unclear these should</p>
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<p>5 Environmental responsibility and conservation of natural resources and biodiversity</p>	<p>5.2 The status of rare, threatened or endangered species and other High Conservation Value habitats, if any, that exist in the plantation or that could be affected by plantation or mill management, shall be identified and operations managed to best ensure that they are maintained and/or enhanced.</p>	<p>their land have been understood and accepted by affected communities, including the implications for the legal status of their land at the expiry of the company's title, concession or lease on the land.</p> <p>5.2.5: Where HCV set-asides with existing rights of local communities have been identified, there shall be evidence of a negotiated agreement that optimally safeguards both the HCVs and these rights.</p>	<p>be established through participatory mapping exercises involving affected parties (including neighbouring communities and local authorities).</p> <p>This Criterion allows for sales and negotiated agreements to compensate other users for lost benefits and/ or relinquished right [...]. Establishing certainty in land negotiations is of long-term benefit for all parties.</p> <p>Companies should be especially careful where they are offered lands acquired from the State by its invoking the national interest (also known as 'eminent domain').</p> <p>National Interpretation: Any commonly encountered situations should be identified.</p> <p>For 5.2: Operators need to consider a variety of land management and tenure options to secure HCV management areas in ways that also secure local peoples' rights and livelihoods. Some areas are best allocated to community management and secured through</p>
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<p>6 Responsible consideration of employees, and of individuals and communities affected by growers and mills</p>	<p>6.1 Aspects of plantation and mill management that have social impacts, including replanting, are identified in a participatory way, and plans to mitigate the negative impacts and promote the positive ones are made, implemented and monitored, to demonstrate continual improvement.</p>	<p>6.1.1 A social impact assessment (SIA) including records of meetings shall be documented.</p>	<p>customary or legal tenures, in other cases co-management options can be considered. Where communities are asked to relinquish rights so that HCVs can be maintained or enhanced by the companies or State agencies, then great care needs to be taken to ensure that communities retain access to adequate land and resources to secure their basic needs; all such relinquishment of rights must be subjected to their free, prior, and informed consent (see Criteria 2.2 and 2.3).</p> <p>For 6.1: For National Interpretation: As social impacts are particularly dependent on local social conditions, National Interpretation will identify the important issues, and methodologies for collecting data and using the results. This should include adequate consideration of the impacts on the customary or traditional rights of local communities and indigenous people, where these exist (Criteria 2.3 and 6.4).</p>
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	<p>6.4 Any negotiations concerning compensation for loss of legal, customary or user rights are dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions.</p>	<p>6.1.2 There shall be evidence that the assessment has been done with the participation of affected parties.</p> <p>6.4.1: A procedure for identifying legal, customary or user rights, and a procedure for identifying people entitled to compensation, shall be in place.</p> <p>6.4.2: A procedure for calculating and distributing fair compensation (monetary or otherwise) shall be established and implemented, monitored and evaluated in a participatory way, and corrective actions taken as a result of this evaluation. This procedure shall take into account: gender differences in the power to claim rights, ownership and access to land; differences of transmigrants and long-established communities; and differences in ethnic groups' proof of legal versus communal ownership of land.</p> <p>6.4.3: The process and outcome of any negotiated agreements and compensation claims shall be documented, with evidence of the participation of affected parties, and made publicly available.</p>	<p>For 6.4: This criterion should be considered in conjunction with Criteria 2.2 and 2.3, and the associated Guidance.</p> <p>For 6.4.2: Companies should make best efforts to ensure that equal opportunities have been provided to both female and male heads of households to hold land titles in smallholder schemes.</p> <p>For 7.1: The potential impacts of all major proposed activities should be assessed in</p>
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<p>7 Responsible development of new plantings</p>	<p>7.1 A comprehensive and participatory independent social and environmental impact assessment is undertaken prior to establishing new plantings or operations, or expanding existing ones, and the results incorporated into planning, management and operations.</p> <p>7.3 New plantings since November 2005 have not replaced primary forest or any area required to maintain or enhance one or more High Conservation Values.</p>	<p>7.1.1: An independent social and environmental impact assessment (SEIA), undertaken through a participatory methodology including the relevant affected stakeholders, shall be documented.</p> <p>7.1.2: Appropriate management planning and operational procedures shall be developed and implemented to avoid or mitigate identified potential negative impacts.</p> <p>7.1.3: Where the development includes an outgrower scheme, the impacts of the scheme and the implications of the way it is managed shall be given particular attention.</p> <p>7.3.5: Areas required by affected communities to meet their basic needs, taking into account potential positive and negative changes in livelihood resulting from proposed operations, shall be identified in consultation with the communities and incorporated into HCV assessments and management plans (see Criterion 5.2).</p>	<p>a participatory way prior to development. The assessment should include, in no order of preference and as a minimum: [...]</p> <ul style="list-style-type: none"> • Analysis of land ownership and user rights; • Analysis of current land use patterns; <p>[...]</p> <p>For 7.3.1: Evidence should include historical remote sensing imagery which demonstrates that there has been no conversion of primary forest or any area required to maintain or enhance one or more HCV. Satellite or aerial photographs, land use maps and vegetation maps should be used to inform the HCV assessment.</p> <p>Where land has been cleared since November 2005, and without a prior and adequate HCV assessment, it will be excluded from the</p>
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	<p>7.5 No new plantings are established on local peoples' land where it can be demonstrated that there are legal, customary or user rights, without their free, prior and informed consent. This is dealt with through a documented system that enables these and other stakeholders to express their views through their own representative institutions.</p>		<p>RSPO certification programme until an adequate HCV compensation plan has been developed and accepted by the RSPO.</p> <p>For 7.3.5: The management plan will be adaptive to changes in HCV 5 and 6. Decisions will be made in consultation with the affected communities.</p> <p>For 7.5: This activity should be integrated with the Social and Environmental Impact Assessment (SEIA) required by Criterion 7.1.</p> <p>Where new plantings are considered to be acceptable, management plans and operations should maintain sacred sites. Agreements with indigenous peoples, local communities and other stakeholders should be made without coercion or other undue influence (see Guidance for Criterion 2.3).</p> <p>Relevant stakeholders include those affected by or concerned with the new plantings.</p> <p>Free, prior and informed consent (FPIC) is a guiding principle and should</p>
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	<p>7.6 Where it can be demonstrated that local peoples have legal, customary or user rights, they are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements.</p>	<p>7.6.1: Documented identification and assessment of demonstrable legal, customary and user rights shall be available.</p> <p>7.6.2: A system for identifying people entitled to compensation shall be in place.</p> <p>7.6.3: A system for calculating and distributing fair compensation (monetary or otherwise) shall be in place.</p> <p>7.6.4: Communities that have lost access and rights to land for plantation expansion shall be given opportunities to benefit from plantation development.</p> <p>7.6.5: The process and outcome of any compensation claims shall be documented and made publicly available.</p> <p>7.6.6: Evidence shall be available that the affected communities and rights holders have access to information and advice,</p>	<p>be applied to all RSPO members throughout the supply chain. Refer to RSPO approved FPIC guidance (<i>‘FPIC and the RSPO; A Guide for Companies’</i>, October 2008).</p> <p>Customary and user rights will be demonstrated through participatory user mapping as part of the FPIC process.</p> <p>For 7.6.1: This activity shall be integrated with the social and environmental impact assessment (SEIA) required by Criterion 7.1.</p> <p>For 7.6.6: Growers and millers will confirm that the communities (or their representatives) gave consent to the initial</p>
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		that is independent of the project proponent, concerning the legal, economic, environmental and social implications of the proposed operations on their lands.	<p>planning phases of the operations prior to the new issuance of a concession or land title to the operator.</p> <p>For 7.6: Refer to Criteria 2.2, 2.3 and 6.4 and associated Guidance.</p> <p>This requirement includes indigenous peoples (see Annex 1).</p>
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Guidance:

One of the first steps in a process assuring FPIC is identifying whether a planned oil palm development area, and wider areas that it will impact, are encumbered with prior rights and uses. This may include a very wide range of uses and rights including formal and statutory rights, customary rights, and more informal land uses. Most communities who already inhabit those lands and forests suited to oil palm plantings practise very mixed economies, which combine highly complex systems of resource use through farming, livestock-raising, fishing, hunting and gathering, for a wide range of purposes including subsistence, trade and cash cropping. For most indigenous peoples and local communities, land is much more than an economic resource, but is integrally connected to their culture, social organisation, identity, history and traditions. These land use systems are underpinned by, and in turn shape, sophisticated bodies of local lore and traditional knowledge, customary laws and other normative systems that guide society and complex social structures that order people’s lives. These multiple uses of lands and resources are not only very varied but also often gendered, with the various sexes, age grades, castes and classes making use of their environments in specific, and sometimes time-honoured, ways. The RSPO P&C require that companies planning to develop oil palm in such areas respect communities’ prior rights and negotiate for use of the land for oil palm by accepting that they have the right to give or withhold consent to the proposed operations ([Box ‘Users’ Rights and FPIC’](#)). The P&C require companies to apply two main means to ascertain these prior land uses: first by carrying out a study of land tenure and second through participatory mapping.

In many ways the requirement for participatory mapping and recommendation for a land tenure survey overlaps with existing requirements for an Environmental Impact Assessment, participatory Social Impact Assessment and participatory High Conservation Value Assessment (Criteria 5.1, 6.1 and 7.1) that are also integral to the P&C. A key part of such assessments is carrying out of a baseline study against which the potential impacts of proposed activities can be assessed in terms of social and environmental impacts and effects on High Conservation Values. These baseline studies are also integral to subsequent ‘Monitoring and Evaluation’. The ESIA and HCVA can provide a major part of the information that needs to be shared with potentially affected communities to ensure their consent is ‘informed’ (see below).

Consent to the complementary processes of participatory mapping, ESIA and HCVA should be sought from the communities, including the stages involved, participation, a timeline of implementation, terms of ownership and distribution of the documents, identification of key contact persons and details, and any remuneration or contribution in kind offered to those participating for their time ([Box 'Contributions for community participation'](#)). Agreeing to the use and distribution of the maps is particularly important: some communities may fear negative repercussions on the part of the local government if the participatory maps challenge existing government maps, or that the government may seek to intervene or oppose the mapping process if they are not directly involved, or that the maps produced will be used against them rather than as a tool to assert their rights. Agreeing to participation in mapping is also key: it should involve the whole range of land users identified ([Diagram 3](#)) – both individual, collective and nested land rights – and also include neighbouring communities who share boundaries and or resources with the community in question, in order to ensure that the maps contains all relevant information pertinent to land and natural resource use (eg rivers) and will not later become a source of dispute with adjacent groups. For an effective mapping process and outcome to take place, it is imperative that the communities have access to maps of the boundaries of the planned operation itself.

Ideally, the mapping team will include at a minimum a land expert, a social anthropologist and a geographer in addition of course to local community members as chosen by the community itself, to ensure that different values in the landscape are properly mapped. In some areas, communities may already have produced their own maps, and these should be taken into account in the participatory mapping process. As far as possible, the community should be encouraged to include minority groups such as women, youth, ethnic minorities and so forth, in the mapping process. Where this proves difficult, with the agreement of the community, parallel maps can be produced with these sub-groups and then overlaid to compare and verify elements and values identified.

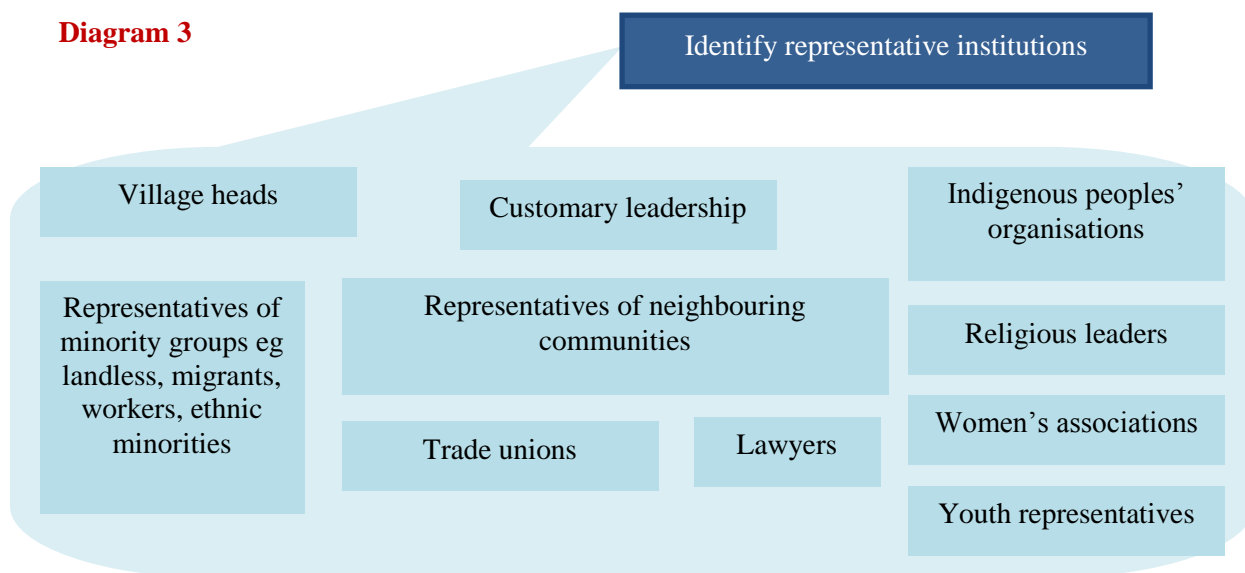
Should the communities wish to produce their own maps before engaging with the company in mapping, the proponent should ascertain whether the community has the means to do so, and possibly provide a list of independent technical support sources. Likewise, to ensure community 'ownership' of the mapping process, time and resources should be allocated to train the communities in the use of GPS, data sheets, questionnaires, cameras and any other relevant equipment. It should be ensured that community members are fully confident in the use of the materials needed prior to field visits and community consultations. Note that community members may suggest changes or improvements to the materials and methods anticipated, and these should be taken into due consideration in the revision and optimisation of the process in the particular locale in question. Where literacy levels are low, iconic/pictogramme-based GPS systems which use pictures and colour-codes rather than text are recommended, so that community members are not disadvantaged in the mapping process. Smartphone software provide a widely available and cheap way of recording and mapping data simultaneously.

Best practices in participatory mapping

- Agree the team of community representatives for the participatory mapping
- Hold community meetings to agree what are the key values in the landscape that need mapping and agree symbols ('legend') chosen by the community
- Train community and company personnel in how to make maps using handheld GPS devices or smart-phones as appropriate
- Establish the boundaries of lands used and claimed by communities
- Carry out finer land use and rights mapping where community lands and claims overlap areas being considered by company (or within company lease/ permit area)
- Distinguish between areas of collective rights, areas where persons or families have rights but subject to community oversight and areas where individuals have unencumbered rights
 - Ensure that the maps are made with the full awareness and agreement, and under the control of, the communities involved
 - Involve members of the communities at all stages of the mapping from deciding what information is relevant, through gathering the information in the field, to recording and displaying the information on the base maps
 - Record both land uses and boundaries, wherever possible. Put the indigenous peoples' own location names, land use categories and terms for vegetation types onto the maps
 - Seek to ensure that all generations are involved. Elders are often the most knowledgeable about sites of historical and cultural importance
 - Involve both men and women in mapping. Men and women tend to use lands and resources differently – both systems are valid and need protection
 - Where two or more ethnic groups use the same area, involve both in the mapping. Both have rights. Asserting the rights of only one group is likely to lead to conflict.
 - Involve neighbouring communities in mapping boundaries that run alongside their lands. If boundaries are later disputed by neighbours, further conflicts may arise.
 - Neighbouring communities may share an open boundary, whereby certain land use activities of one community are permitted on territory otherwise controlled by the other community and vice versa. In many cases, detailed boundaries have not been established. Mapping efforts should not force a fixed boundary between community lands where one does not exist.
 - Ensure that draft maps are carefully checked over by community members and neighbouring groups, and revised if necessary, before being used in Free, Prior and Informed Consent negotiations.
 - Take measures to protect the use of the information, so it is not misrepresented or distorted by other interests.

Importantly, verification and validation of the maps, ESIA and HCVA should be carried out upon finalisation through consultations. Copies or summaries of each should be provided to communities in appropriate forms and languages and in a timely manner. Where several maps have been produced (eg community-made maps, participatory maps, government maps, company concession maps, government spatial planning maps), these should be overlaid and possible contradictions discussed with the community to agree how to incorporate these within the final map. Validation should include neighbouring group signing off on the validity of borders/common resources. Beyond the immediate needs of the company to identify land for planting, linking the maps to tenure reforms and resource planning for sustainable livelihoods is highly recommended. Where possible, a copy of the maps should be given to each family or household, in addition to the community’s representatives, to ensure transparency and allow individuals to feedback on the documents and refer to them in ensuing stages of the process.

Diagram 3



‘Users’ rights’ and FPIC

The new Principles and Criteria extend the requirement for FPIC to land ‘users’, a broad term that accommodates the fact that those who work the land may be very different from those who own the land. The addition also takes account of the fact that, while both owners and users may be affected by oil palm plantings, those most directly affected are likely to be those who actually make their livelihoods direct from the land as users. RSPO defines users’ rights as ‘Rights for the use of land and resources that can be defined by local custom, mutual agreements, or prescribed by other entities holding access rights.’

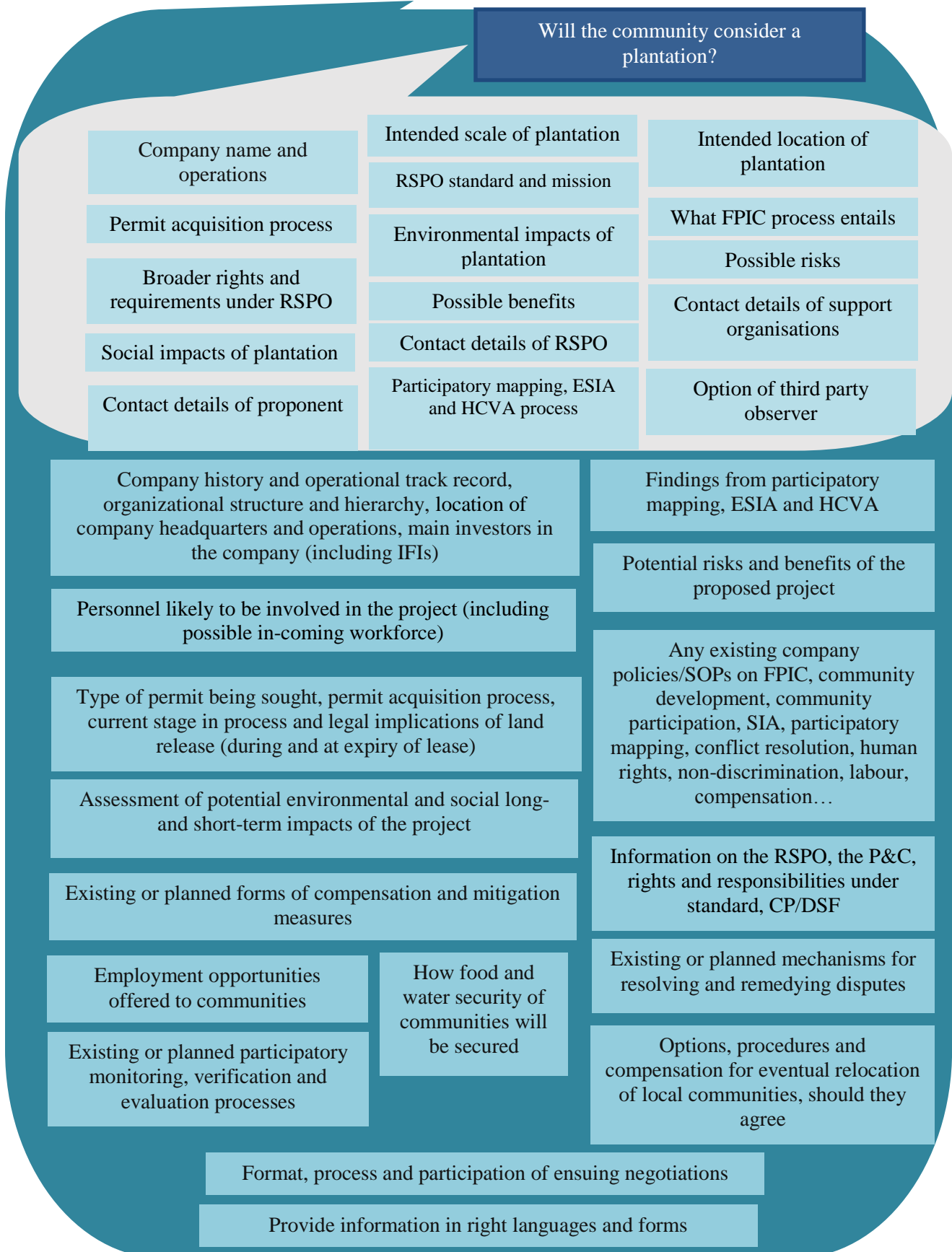
The Roundtable on Sustainable BioMaterials has this definition of land use rights:

Land use rights are recognised in situations where the owner of the land and the user of the land are different actors. The persons or entity with land use rights may include... tenants, sharecroppers, farm-workers and companies with leases on State lands or in public forests. Forms of tenancy vary widely, ranging from transferable and inheritable rights which approach full ownership, to much more limited rights which endure for a specific term and / or for a specific use. Tenancies may be defined by statutory law, contracts with the owner (including the State) and / or formal or informal arrangements with the owners. Leaseholds held by corporate entities on State or public lands are also a form of land use right. Land use rights may be narrowly defined as rights, for example, to collect defined forest products, transit, seasonal occupation and use of defined assets for specified purposes. Land use rights may derive from statutory laws and ordinances, local regulations and bylaws, contracts with owners and from customary law and informal agreements. Sometimes the term ‘access’ or ‘access rights’ is used to encompass such use rights.


Source: RSB 2012.

Diagram 4

**Information Sharing:
information communities need in order to be informed**



Guide 4: Ensuring consent is informed

 REQUIREMENTS UNDER THE RSPO STANDARD			
Principle	Criteria	Indicator	Guidance & Specific Guidance
1 Commitment to transparency	1.1 Growers and millers provide adequate information to relevant stakeholders on environmental, social and legal issues relevant to RSPO Criteria, in appropriate languages and forms to allow for effective participation in decision making.	1.1.1: There shall be evidence that growers and millers provide adequate information on (environmental, social and/or legal) issues relevant to RSPO Criteria to relevant stakeholders for effective participation in decision making. 1.1.2 Records of requests for information and responses shall be maintained.	For 1.1.1: Evidence should be provided that information is received in appropriate form(s) and language(s) by relevant stakeholders. Information will include information on the RSPO mechanisms for stakeholder involvement, including information on their rights and responsibilities. For 1.1: Growers and millers should have a Standard Operating Procedure (SOP) to respond constructively to stakeholders, including a specific timeframe to respond to requests for information. Growers and millers should respond constructively and promptly to requests for information from stakeholders. Growers and millers should ensure that sufficient objective

	<p>1.2 Management documents are publicly available, except where this is prevented by commercial confidentiality or where disclosure of information would result in negative environmental or social outcomes.</p>	<p>1.2.1: Publicly available documents shall include, but are not necessarily limited to:</p> <ul style="list-style-type: none"> • Land titles/user rights (Criterion 2.2); • Occupational health and safety plans (Criterion 4.7); • Plans and impact assessments relating to environmental and social impacts (Criteria 5.1, 6.1, 7.1 and 7.8); • HCV documentation (Criteria 5.2 and 7.3); • Pollution prevention and reduction plans (Criterion 5.6); • Details of complaints and grievances (Criterion 6.3); • Negotiation procedures (Criterion 6.4); • Continual improvement plans (Criterion 8.1); • Public summary of certification assessment report; • Human Rights Policy (Criterion 6.13). 	<p>evidence exists to demonstrate that the response is timely and appropriate.</p> <p>See Criterion 1.2 for requirements relating to publicly available documentation. See Criterion 6.2 on consultation. See Criterion 4.1 on SOPs.</p> <p>For 1.2: This concerns management documents relating to environmental, social and legal issues that are relevant to compliance with RSPO Criteria.</p> <p>Management documents will include monitoring reports.</p> <p>The auditors will comment on the adequacy of each of the documents listed in the public summary of the assessment report.</p> <p>Examples of commercially confidential information include financial data such as costs and income, and details relating to customers and/or suppliers. Data that affects personal privacy should also be confidential.</p> <p>Ongoing disputes (within or outside of a legal mechanism) can</p>
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	<p>1.3 Growers and millers commit to ethical conduct in all business operations and transactions.</p>	<p>1.3.1: There shall be a written policy committing to a code of ethical conduct and integrity in all operations and transactions, which shall be documented and communicated to all levels of the workforce and operations.</p>	<p>be considered as confidential information where disclosure could result in potential negative outcomes for all parties involved. However, affected stakeholders and those seeking resolution to conflict should have access to relevant information.</p> <p>Examples of information where disclosure could result in potential negative environmental or social outcomes include information on sites of rare species where disclosure could increase the risk of hunting or capture for trade, or sacred sites which a community wishes to maintain as private.</p> <p>For National Interpretation: Specific approaches to personal privacy safeguards, including any legal requirements, will be considered.</p>
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<p>2 Compliance with applicable laws and regulations</p>	<p>2.1 There is compliance with all applicable local, national and ratified international laws and regulations.</p> <p>2.2 The right to use the land is demonstrated, and is not legitimately contested by local people who can demonstrate that they have legal, customary or user rights.</p> <p>2.3 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.</p>	<p>1.3: The policy should include as a minimum: [...]</p> <ul style="list-style-type: none"> • A proper disclosure of information in accordance with applicable regulations and accepted industry practices. <p>2.1.2: A documented system, which includes written information on legal requirements, shall be maintained.</p> <p>2.2.3: Where there are or have been disputes, additional proof of legal acquisition of title and evidence that fair compensation has been made to previous owners and occupants shall be available, and that these have been accepted with free, prior and informed consent (FPIC).</p> <p>2.3.1: Maps of an appropriate scale showing the extent of recognised legal, customary or user rights (Criteria 2.2, 7.5 and 7.6) shall be developed through participatory mapping involving affected parties (including neighbouring communities where applicable, and relevant authorities).</p> <p>2.3.2: Copies of negotiated agreements detailing the process of free, prior and informed consent (FPIC) (Criteria 2.2, 7.5 and 7.6) shall be available and shall include:</p> <p>a) Evidence that a plan has been developed through consultation and</p>	<p>For 2.3: All indicators will apply to current operations, but there are exceptions for long-established plantations which may not have records dating back to the time of the decision making, in particular for compliance with Indicators 2.3.1 and 2.3.2.</p>
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		<p>discussion with all affected groups in the communities, and that information has been provided to all affected groups, including information on the steps that shall be taken to involve them in decision making;</p> <p>b) Evidence that the company has respected communities' decisions to give or withhold their consent to the operation at the time that this decision was taken;</p> <p>c) Evidence that the legal, economic, environmental and social implications for permitting operations on their land have been understood and accepted by affected communities, including the implications for the legal status of their land at the expiry of the company's title, concession or lease on the land.</p> <p>2.3.3: All relevant information shall be available in appropriate forms and languages, including assessments of impacts, proposed benefit sharing, and legal arrangements.</p> <p>2.3.4: Evidence shall be available to show that communities are represented through institutions or representatives of their own choosing, including legal counsel.</p>	<p>For 2.3.4: Evidence should be available from the companies, communities or other relevant stakeholders.</p> <p>Where there are legal or customary rights over land, the grower should demonstrate that these rights are</p>
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		<p>understood and are not being threatened or reduced. This Criterion should be considered in conjunction with Criteria 6.4, 7.5 and 7.6. Where customary rights areas are unclear these should be established through participatory mapping exercises involving affected parties (including neighbouring communities and local authorities).</p> <p>This Criterion allows for sales and negotiated agreements to compensate other users for lost benefits and/ or relinquished rights. Negotiated agreements should be non-coercive and entered into voluntarily, carried out prior to new investments or operations, and based on an open sharing of all relevant information. The representation of communities should be transparent and in open communication with other community members. Adequate time should be given for customary decision making and iterative negotiations allowed for, where requested. Negotiated agreements should be binding on all parties</p>
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<p>5 Environmental responsibility and conservation of natural resources and biodiversity</p>	<p>5.2 The status of rare, threatened or endangered species and other High Conservation Value habitats, if any, that exist in the plantation or that could be affected by plantation or mill management, shall be identified and operations managed to best ensure that they are maintained and/or enhanced.</p>	<p>5.2.5: Where HCV set-asides with existing rights of local communities have been identified, there shall be evidence of a negotiated agreement that optimally safeguards both the HCVs and these rights.</p>	<p>and enforceable in the courts. Establishing certainty in land negotiations is of long-term benefit for all parties.</p> <p>For 5.2: [...] Where communities are asked to relinquish rights so that HCVs can be maintained or enhanced by the companies or State agencies, then great care needs to be taken to ensure that communities retain access to adequate land and resources to secure their basic needs; all such relinquishment of rights must be subjected to their free, prior, and informed consent (see Criteria 2.2 and 2.3).</p>
<p>6 Responsible consideration of employees, and of individuals and communities affected by growers and mills</p>	<p>6.1 Aspects of plantation and mill management that have social impacts, including replanting, are identified in a participatory way, and plans to mitigate the negative impacts and promote the positive ones are made, implemented and monitored, to demonstrate continual improvement.</p>	<p>6.1.1: A social impact assessment (SIA) including records of meetings shall be documented.</p> <p>6.1.2: There shall be evidence that the assessment has been done with the participation of affected parties.</p> <p>6.1.3: Plans for avoidance or mitigation of negative impacts and promotion of the positive ones, and monitoring of impacts identified, shall be developed in consultation with the affected parties, documented and timetabled, including</p>	<p>For 6.1: Identification of social impacts should be carried out by the grower with the participation of affected parties, including women and migrant workers as appropriate to the situation. The involvement of independent experts should be sought where this is considered necessary to ensure that all impacts (both positive and negative) are identified.</p> <p>Potential social impacts may result</p>

		<p>responsibilities for implementation.</p>	<p>from activities such as: building new roads, processing mills or other infrastructure; replanting with different crops or expansion of planting area; disposal of mill effluents; clearing of remaining natural vegetation; changes in employee numbers or employment terms; smallholder schemes.</p> <p>Plantation and mill management may have social impacts (positive or negative) on factors such as:</p> <ul style="list-style-type: none"> • Access and use rights; • Economic livelihoods (e.g. paid employment) and working conditions; • Subsistence activities; • Cultural and religious values; • Health and education facilities; • Other community values, resulting from changes such as improved transport /communication or arrival of substantial migrant labour force. <p>The review can be done (once every two years) internally or externally.</p> <p>For National Interpretation: As social impacts are particularly dependent on local social conditions,</p>
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	<p>6.2 There are open and transparent methods for communication and consultation between growers and/or millers, local communities and other affected or interested parties.</p>	<p>6.2.1: Consultation and communication procedures shall be documented.</p> <p>6.2.2: A management official responsible for these issues shall be nominated.</p> <p>6.2.3: A list of stakeholders, records of all communication, including confirmation of receipt and that efforts are made to ensure understanding by affected parties, and records of actions taken in response to input from stakeholders, shall be maintained.</p>	<p>National Interpretation will identify the important issues, and methodologies for collecting data and using the results. This should include adequate consideration of the impacts on the customary or traditional rights of local communities and indigenous people, where these exist (Criteria 2.3 and 6.4).</p> <p>For 6.2: Decisions that the growers or mills are planning to make should be made clear, so that local communities and other interested parties understand the purpose of the communication and/or consultation.</p> <p>Communication and consultation mechanisms should be designed in collaboration with local communities and other affected or interested parties. These should consider the use of appropriate existing local mechanisms and languages. Consideration should be given to the existence/formation of a multi-stakeholder forum. Communications should take into account differential</p>
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	<p>6.3 There is a mutually agreed and documented system for dealing with complaints and grievances, which is implemented and accepted by all affected parties.</p> <p>6.4 Any negotiations concerning compensation for loss</p>	<p>6.3.2: Documentation of both the process by which a dispute was resolved and the outcome shall be available.</p> <p>6.4.1: A procedure for identifying legal, customary or user rights, and a procedure for identifying people entitled</p>	<p>access to information by women as compared to men, village leaders as compared to day labourers, new versus established community groups, and different ethnic groups.</p> <p>Consideration should be given to involving third parties, such as disinterested community groups, NGOs, or government (or a combination of these), to facilitate smallholder schemes and communities, and others as appropriate, in these communications.</p> <p>For National Interpretation: National Interpretation will consider issues such as appropriate levels of consultation and the types of organisation or individuals that should be included.</p> <p>For 6.3: Dispute resolution mechanisms should be established through open and consensual agreements with relevant affected parties.</p>
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<p>7 Responsible development of new plantings</p>	<p>of legal, customary or user rights are dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions.</p> <p>7.1 A comprehensive and participatory independent social and environmental impact assessment is undertaken prior to establishing new plantings or operations, or expanding existing ones, and the results incorporated into</p>	<p>to compensation, shall be in place.</p> <p>6.4.2: A procedure for calculating and distributing fair compensation (monetary or otherwise) shall be established and implemented, monitored and evaluated in a participatory way, and corrective actions taken as a result of this evaluation. This procedure shall take into account: gender differences in the power to claim rights, ownership and access to land; differences of transmigrants and long-established communities; and differences in ethnic groups' proof of legal versus communal ownership of land.</p> <p>6.4.3: The process and outcome of any negotiated agreements and compensation claims shall be documented, with evidence of the participation of affected parties, and made publicly available.</p> <p>7.1.1 An independent social and environmental impact assessment (SEIA), undertaken through a participatory methodology including the relevant affected stakeholders, shall be documented.</p> <p>7.1.2 Appropriate management planning and operational procedures shall be developed and implemented to avoid or mitigate identified</p>	<p>For 7.1: See also Criteria 5.1 and 6.1. The terms of reference should be defined and impact assessment should be carried out by accredited independent experts, in order to ensure an objective process. Both should not be done by the same body. A participatory</p>
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	<p>planning, management and operations.</p>	<p>potential negative impacts.</p> <p>7.1.3 Where the development includes an outgrower scheme, the impacts of the scheme and the implications of the way it is managed shall be given particular attention.</p>	<p>methodology including external stakeholder groups is essential to the identification of impacts, particularly social impacts.</p> <p>Stakeholders such as local communities, government departments and NGOs should be involved through the use of interviews and meetings, and by reviewing findings and plans for mitigation.</p> <p>It is recognised that oil palm development can cause both positive and negative impacts. These developments can lead to some indirect/secondary impacts which are not under the control of individual growers and millers. To this end, growers and millers should seek to identify the indirect/secondary impacts within the SEIA, and where possible work with partners to explore mechanisms to mitigate the negative indirect impacts and enhance the positive impacts.</p> <p>The potential impacts of all major proposed activities should be assessed in a participatory way prior to development. The assessment</p>
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		<p>should include, in no order of preference and as a minimum:</p> <ul style="list-style-type: none"> • Assessment of the impacts of all major planned activities, including planting, mill operations, roads and other infrastructure; • Assessment, including stakeholder consultation, of High Conservation Values (see Criterion 7.3) that could be negatively affected; • Assessment of potential effects on adjacent natural ecosystems of planned developments, including whether development or expansion will increase pressure on nearby natural ecosystems; • Identification of watercourses and wetlands and assessment of potential effects on hydrology and land subsidence of planned developments. Measures should be planned and implemented to maintain the quantity, quality and access to water and land resources; • Baseline soil surveys and topographic information, including the identification of steep slopes,
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			<p>marginal and fragile soils, areas prone to erosion, degradation, subsidence, and flooding;</p> <ul style="list-style-type: none"> • Analysis of type of land to be used (forest, degraded forest, cleared land); • Analysis of land ownership and user rights; • Analysis of current land use patterns; • Assessment of potential social impacts on surrounding communities of a plantation, including an analysis of potential effects on livelihoods, and differential effects on women versus men, ethnic communities, and migrant versus long-term residents; • Identification of activities which may generate significant GHG emissions. <p>For National Interpretation: [...] National Interpretation will consider setting an appropriate threshold for the size of new plantings, below which an internal assessment is allowed, and above which an independent SEIA is required. This will list negative social impacts (e.g. displacement, loss of the livelihoods of local peoples, etc.) in</p>
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	<p>7.3 New plantings since November 2005 have not replaced primary forest or any area required to maintain or enhance one or more High Conservation Values.</p> <p>7.5 No new plantings are established on local peoples' land where it can be demonstrated that there are legal, customary or user rights, without their free, prior and informed consent. This is dealt with through a documented system that enables these and other stakeholders to express their views</p>	<p>7.3.2: A comprehensive HCV assessment, including stakeholder consultation, shall be conducted prior to any conversion or new planting. This shall include a land use change analysis to determine changes to the vegetation since November 2005. This analysis shall be used, with proxies, to indicate changes to HCV status.</p> <p>7.3.5: Areas required by affected communities to meet their basic needs, taking into account potential positive and negative changes in livelihood resulting from proposed operations, shall be identified in consultation with the communities and incorporated into HCV assessments and management plans (see Criterion 5.2).</p> <p>7.5.1: Evidence shall be available that affected local peoples understand they have the right to say 'no' to operations planned on their lands before and during initial discussions, during the stage of information gathering and associated consultations, during negotiations, and up until an agreement with the grower/miller is signed and ratified by these local peoples. Refer also to criteria 2.2, 2.3, 6.2, 6.4 and 7.6 for Indicators and Guidance on compliance.</p>	<p>the national context.</p> <p>For 7.3: The HCV assessment process requires appropriate training and expertise, and will include consultation with local communities, particularly for identifying social HCVs.</p> <p>For 7.3.5: The management plan will be adaptive to changes in HCV 5 and 6. Decisions will be made in consultation with the affected communities.</p> <p>For 7.5: This activity should be integrated with the Social and Environmental Impact Assessment (SEIA) required by Criterion 7.1.</p> <p>Where new plantings are considered to be acceptable, management plans and operations should maintain sacred sites. Agreements with indigenous peoples, local communities and other</p>
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	<p>through their own representative institutions.</p> <p>7.6 Where it can be demonstrated that local peoples have legal, customary or user rights, they are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements.</p>	<p>7.6.5: The process and outcome of any compensation claims shall be documented and made publicly available.</p> <p>7.6.6: Evidence shall be available that the affected communities and rights holders have access to 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.</p>	<p>stakeholders should be made without coercion or other undue influence (see Guidance for Criterion 2.3).</p> <p>Relevant stakeholders include those affected by or concerned with the new plantings.</p> <p>Free, prior and informed consent (FPIC) is a guiding principle and should be applied to all RSPO members throughout the supply chain. Refer to RSPO approved FPIC guidance (<i>'FPIC and the RSPO; A Guide for Companies'</i>, October 2008).</p> <p>Customary and user rights will be demonstrated through participatory user mapping as part of the FPIC process.</p>
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Guidance:

Ensuring that rights-holders are adequately informed prior to any negotiated agreements is a crucial part of FPIC. The RSPO P&C&I already make a large number of requirements of growers and millers which help ensure this and the existing Guidance and Specific Guidance already provides useful advice on how these requirements are best met. These requirements include in particular the need for transparency and information sharing and for participatory social and HCV assessments. Both these assessments and environmental impact assessments need to be completed prior to land acquisition and land clearance and the information shared with those likely to be affected to ensure that any relinquishment of rights is fully informed. As noted above, participatory mapping, ESIA and HCVA taken together should provide much of the contextual information that communities need to make informed decisions about whether or not to accept oil palm developments on their lands.

Diagrams 4 and 6 provide suggested minimum information that should be shared with the communities. The provision of an information package including these elements is highly recommended. The purpose, process and expected outcomes of both mapping, ESIA and HCVA, and management and access options, should be clearly explained to communities prior to being carried out, and time should be given to communities to digest this information and come back with any questions or required clarifications if needed. Likewise, FPIC timescales and deadlines must be commensurate with the time needed for communities to absorb and discuss information, to consult and engage in decision-making processes, and to locate and benefit from suitable independent legal and technical advice. Generally, it is not appropriate for companies to expect a decision from communities at the end of a meeting, and so it is important to leave time for internal discussion and decision. A minimum ‘two-step procedure’ is advisable for such key decisions – questions and issues discussed at a first meeting, with community decision confirmed at a second meeting later on. When communities have not been able to come to an agreement, companies should give the community more time if the community requests it, and come back at an arranged future date. If there is a consistent pattern of disagreement expressed through the community’s self-chosen representatives or through the community’s self-chosen decision-making mechanism, companies will have to accept that an agreement with the community is not possible (but see ‘ensuring there is consent’ below).

Particular attention should be paid to explaining the legal implications of land surrenders or excisions, the legal permit acquisition process (and the current stage in the process) and implications for land use and ownership upon the expiry or renewal of the lease/concession. MoUs, where developed with the communities, should include as much information as possible about these legal implications and any conditionalities, and the pre-finalisation stage should ensure that these are fully understood and accepted by the community members. Importantly also, communities should be informed from the earliest stages of their rights under the RSPO standard, the responsibilities of the project proponent as a member of the RSPO and the mechanisms of the RSPO that they can resort to if needed.

Maintaining transparency and accountability in the process requires that all meetings, consultations and outcomes are thoroughly documented, either in written form, recorded, video-taped, or a combination of these, where so as agreed beforehand by the community. Wherever possible and agreed, provision of information should be complemented by direct meetings and efforts made to ensure the involvement of all groups within the affected communities. Where taken, notes should be shared with all the community representatives and open to revisions and amendments before signing off. Community representatives should be encouraged to share such information as widely as possible in their communities, through

such means as reading at subsequent community meetings. Communities should also be informed that their participation in such consultations does not imply their consent to anything beyond that which has been agreed in that meeting (if anything), and that it is not automatically to be interpreted as consent to the broader project going ahead. Third-party independent observers should be encouraged to attend consultations and negotiations, provided that communities wish or allow them to do so. An assessment matrix of the pros and cons of the project for the community and company could be developed through consultations and then used as the basis for ensuing discussions.

In some cases, the company may offer, or the community may request, a visit to other oil palm plantations owned by the proponent or other actors, or other land developments, in order to be better informed as to the impacts, benefits and risks that land conversion may entail, and alternative development options. While this can be an important step in guiding the communities' decision-making, it should be ensured that communities are given a range of possible areas to visit, have access to independent sources of information to select which sites to visit, and have the option of visiting the areas with the knowledge of, but independent of, the project proponent itself. The proponent may offer to facilitate such visits financially and logistically, but the objectivity of the visits is better achieved through communities learning directly from other communities without the presence of interested parties, about both the positive and negative aspects of the operation.

A key part of informed consent is the ability of communities to both consult internally, independently of the project proponent in between consultations and negotiations, and the ability and means to contact other third parties to obtain assistance, further information, alternative perspectives, clarifications or advice. Lack of such communications mechanisms is a key source of problems later down the line, and to remedy this, a communications strategy including mechanisms for communicating with and obtaining independent information and advice, should be established early on in the process, to ensure that queries and information needs are addressed appropriately and in good time. Early consultations with each of the individual towns in a clan, or hamlets in a village, should focus on the fundamental questions: Do the communities want to talk to the company at all, and if so, how do the communities want to make and communicate decisions as a community (including how do they want to give and receive information and negotiate)? If communities do wish to talk, and have identified the community unit, further key initial decisions need to be made with the same level of care: how is the community going to communicate with the company? If the community wants to communicate with the company through community representatives – who will those representatives be? For key decisions, how will the community validate and confirm that those key decisions being communicated to the company are the true and legitimate decisions of the whole community? What are the 'key decisions'? How will those key decisions be legally authorised by the community, where they will result in a legally binding agreement with the community?

FPIC and the right to development

It has been argued that recognition of the duty to obtain the FPIC of indigenous peoples poses an obstacle to national development by ‘granting’ them the right to veto proposed developments, and that this may undermine economic growth, modernisation and investment, as well as hinder the realisation of other individual and groups’ right to development, as recognised in the 1986 UN Declaration on the Right to Development. However, human rights norms are explicit in stating that indigenous peoples’ rights are under no circumstances to be construed as being contrary to the principles and purposes of the United Nations, such as the United Nations Declaration on Human Rights and the International Covenants on Human Rights.

As the 1993 Vienna World Conference on Human Rights declared:

‘while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.’

Indeed far from being contrary to indigenous peoples’ rights, the Declaration on the Right to Development notes in Article 1 that:

The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

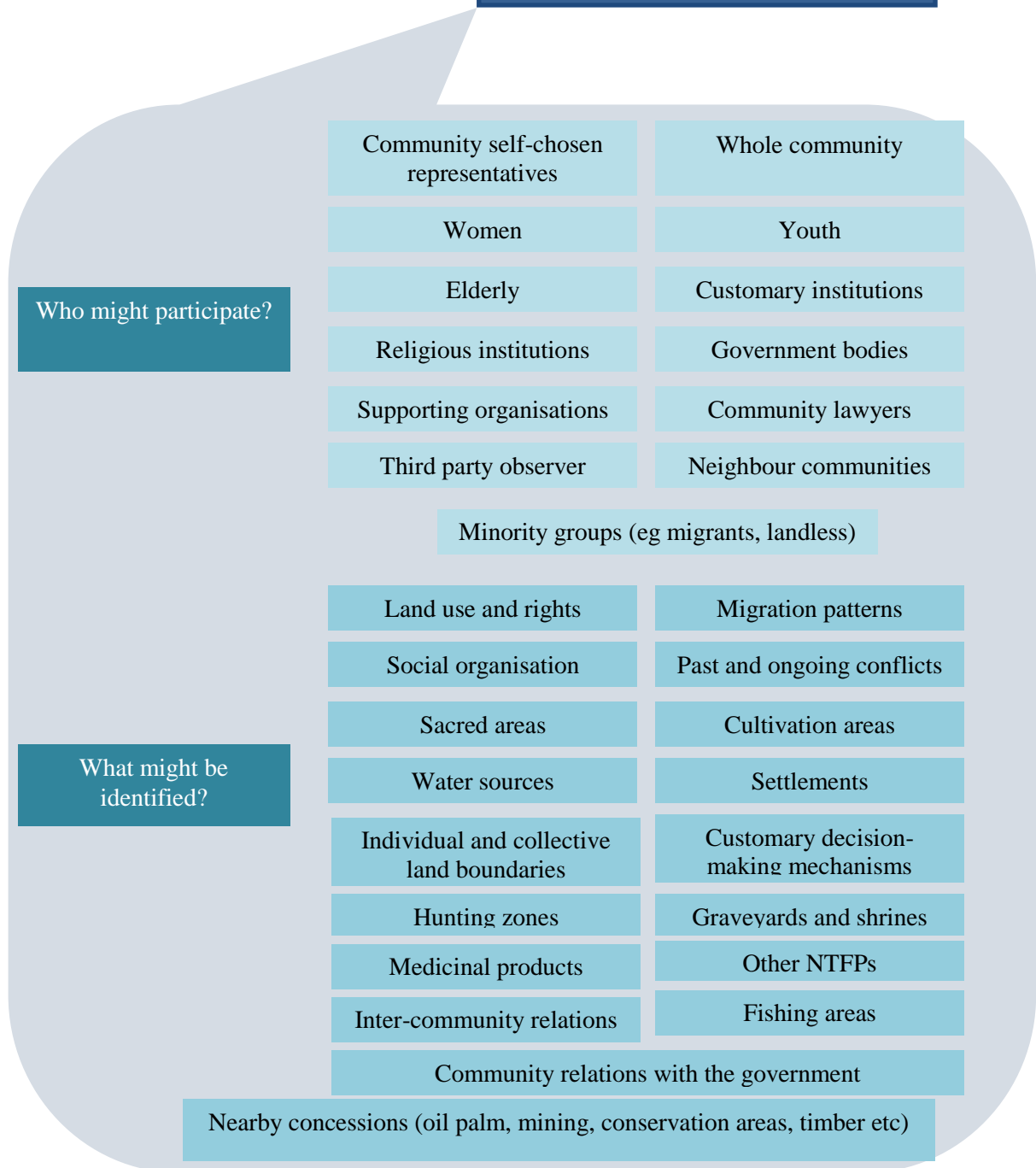
Thus, in the normal course of things, where private sector developers have proposals for the development of indigenous peoples’ lands, recognition of their right to free, prior and informed consent does mean that indigenous peoples have the right to say ‘yes’ or ‘no’ to such proposals. Where they say ‘no’, such decisions should be respected.

Even in ‘exceptional circumstances’ where the State may seek access to and use of indigenous territories and the resources therein, it must satisfy a number of additional requirements... In sum, State intervention cannot override indigenous peoples’ rights and their right to FPIC just by invoking the national interest alone (Colchester 2010: 11-12).


When holding consultations with local communities, avoid simple explanations which equate oil palm expansion with development or the lack of expansion to poverty. The project and project related information should not be presented in the form of propaganda or marketing material, nor as a *fait accompli* (e.g. “*a done deal*” that already has the authorisation from government), nor otherwise just aim at promoting acceptance of the project. Consultations should allow for the community and company to explore in an informed way how the project may or may not best realise the communities’ development aspirations.

Diagram 5

Participatory mapping, ESIA and HCVA



Guide 5: Ensuring consent is freely given

 REQUIREMENTS UNDER THE RSPO STANDARD			
Principle	Criteria	Indicator	Guidance & Specific Guidance
1 Commitment to transparency	1.1 Growers and millers provide adequate information to relevant stakeholders on environmental, social and legal issues relevant to RSPO Criteria, in appropriate languages and forms to allow for effective participation in decision making .	1.1.1 There shall be evidence that growers and millers provide adequate information on (environmental, social and/or legal) issues relevant to RSPO Criteria to relevant stakeholders for effective participation in decision making. 1.1.2 Records of requests for information and responses shall be maintained.	For 1.1.1: Evidence should be provided that information is received in appropriate form(s) and language(s) by relevant stakeholders. Information will include information on the RSPO mechanisms for stakeholder involvement, including information on their rights and responsibilities. Growers and millers should have a Standard Operating Procedure (SOP) to respond constructively to stakeholders, including a specific timeframe to respond to requests for information. Growers and millers should respond constructively and promptly to requests for information from stakeholders. Growers and millers should ensure that sufficient objective evidence exists to demonstrate that the

<p>2 Compliance with applicable laws and regulations</p>	<p>1.3 Growers and millers commit to ethical conduct in all business operations and transactions.</p> <p>2.2 The right to use the land is demonstrated, and is not legitimately contested by local people who can demonstrate that they have legal, customary or user rights.</p>	<p>1.3.1: There shall be a written policy committing to a code of ethical conduct and integrity in all operations and transactions, which shall be documented and communicated to all levels of the workforce and operations.</p> <p>2.2.3: Where there are or have been disputes, additional proof of legal acquisition of title and evidence that fair compensation has been made to previous owners and occupants shall be available, and that these have been accepted with free, prior and informed</p>	<p>response is timely and appropriate. See Criterion 1.2 for requirements relating to publicly available documentation. See Criterion 6.2 on consultation. See Criterion 4.1 on SOPs.</p> <p>For 1.3: All levels of the operations will include contracted third parties (e.g those involved in security). The policy should include as a minimum:</p> <ul style="list-style-type: none"> • A respect for fair conduct of business; • A prohibition of all forms of corruption, bribery and fraudulent use of funds and resources; • A proper disclosure of information in accordance with applicable regulations and accepted industry practices. <p>The policy should be set within the framework of the UN Convention Against Corruption, in particular Article 12.</p> <p>For 2.2.6: Company policy should prohibit the use of mercenaries and para-militaries in their operations. Company policy should prohibit extra-judicial intimidation and harassment by contracted security</p>
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	<p>2.3 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.</p>	<p>consent (FPIC).</p> <p>2.2.6: To avoid escalation of conflict, there shall be no evidence that palm oil operations have instigated violence in maintaining peace and order in their current and planned operations.</p> <p>2.3.2: Copies of negotiated agreements detailing the process of free, prior and informed consent (FPIC) (Criteria 2.2, 7.5 and 7.6) shall be available and shall include: [...] b) Evidence that the company has respected communities' decisions to give or withhold their consent to the operation at the time that this decision was taken;</p> <p>2.3.4: Evidence shall be available to show that communities are represented through institutions or representatives of their own choosing, including legal counsel.</p>	<p>forces (see Criterion 6.13).</p> <p>For 2.3: Where there are legal or customary rights over land, the grower should demonstrate that these rights are understood and are not being threatened or reduced.</p> <p>This Criterion allows for sales and negotiated agreements to compensate other users for lost benefits and/ or relinquished rights. Negotiated agreements should be non-coercive and entered into voluntarily, carried out prior to new investments or operations, and based on an open sharing of all relevant information. The representation of communities should be transparent and in open communication with other community members. Adequate time should be given for customary decision making and iterative negotiations allowed for, where requested.</p> <p>Companies should be</p>
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<p>6 Responsible consideration of employees, and of individuals and communities affected by growers and mills</p>	<p>6.1 Aspects of plantation and mill management that have social impacts, including replanting, are identified in a participatory way, and plans to mitigate the negative impacts and promote the positive ones are made, implemented and monitored, to demonstrate continual improvement.</p> <p>6.3 There is a mutually agreed and documented system for dealing with complaints and grievances, which is implemented and accepted by all affected parties.</p> <p>6.13 Growers and millers respect human rights.</p>	<p>6.1.1 A social impact assessment (SIA) including records of meetings shall be documented.</p> <p>6.1.2 There shall be evidence that the assessment has been done with the participation of affected parties.</p> <p>6.3.1: The system, open to all affected parties, shall resolve disputes in an effective, timely and appropriate manner, ensuring anonymity of complainants and whistleblowers, where requested.</p> <p>6.13.1: A policy to respect human rights shall be documented and communicated to all levels of the workforce and operations (see Criteria 1.2 and 2.1).</p>	<p>especially careful where they are offered lands acquired from the State by its invoking the national interest (also known as ‘eminent domain’).</p> <p>For 6.1: Participation in this context means that affected parties are able to express their views through their own representative institutions, or freely chosen spokespersons, during the identification of impacts, reviewing findings and plans for mitigation, and monitoring the success of implemented plans.</p> <p>For 6.3: See also to Criterion 1.2. Dispute resolution mechanisms should be established through open and consensual agreements with relevant affected parties.</p> <p>For 6.3.1: The system should aim to reduce the risks of reprisal.</p> <p>For 6.13: See also Criterion 6.3. All levels of operations will include contracted third parties (e.g those involved in security). Note: From the UN</p>
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<p>7 Responsible development of new plantings</p>	<p>7.5 No new plantings are established on local peoples’ land where it can be demonstrated that there are legal, customary or user rights, without their</p>	<p>7.5.1: Evidence shall be available that affected local peoples understand they have the right to say ‘no’ to operations planned on their lands before and during initial discussions, during the stage of</p>	<p>Guiding Principles on Business and Human Rights: <i>“The responsibility of business enterprises to respect human rights refers to internationally recognised human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work” (“The corporate responsibility to respect human rights” in Guiding Principles on Business and Human Rights).</i> The RSPO WG on Human Rights will provide a mechanism to identify, prevent, mitigate and address human rights issues and impacts. The resulting Guidance will identify the relevant issues on human rights to all RSPO Members.</p> <p>For 7.5: Where new plantings are considered to be acceptable, management plans and operations should maintain sacred sites. Agreements with</p>
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	<p>free, prior and informed consent. This is dealt with through a documented system that enables these and other stakeholders to express their views through their own representative institutions.</p> <p>7.6 Where it can be demonstrated that local peoples have legal, customary or user rights, they are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements.</p>	<p>information gathering and associated consultations, during negotiations, and up until an agreement with the grower/miller is signed and ratified by these local peoples. Refer also to criteria 2.2, 2.3, 6.2, 6.4 and 7.6 for Indicators and Guidance on compliance.</p> <p>7.6.1 Documented identification and assessment of demonstrable legal, customary and user rights shall be available.</p> <p>7.6.2 A system for identifying people entitled to compensation shall be in place.</p> <p>7.6.3 A system for calculating and distributing fair compensation (monetary or otherwise) shall be in place.</p> <p>7.6.4 Communities that have lost access and rights to land for plantation expansion shall be given opportunities to benefit from plantation development.</p> <p>7.6.5 The process and outcome of any compensation claims shall be documented and made publicly available.</p> <p>7.6.6 Evidence shall be available that the affected communities and rights holders have access to 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.</p>	<p>indigenous peoples, local communities and other stakeholders should be made without coercion or other undue influence (see Guidance for Criterion 2.3).</p> <p>For 7.6.1: This activity shall be integrated with the social and environmental impact assessment (SEIA) required by Criterion 7.1.</p> <p>For 7.6.6: Growers and millers will confirm that the communities (or their representatives) gave consent to the initial planning phases of the operations prior to the new issuance of a concession or land title to the operator.</p> <p>Refer to Criteria 2.2, 2.3 and 6.4 and associated Guidance. This requirement includes indigenous peoples (see Annex 1).</p>
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Guidance:

A vital part of consent for it to be meaningful is that in the process towards reaching any decisions the members of the community feel that they are free from any external pressure or coercion, intimidation, duress and manipulation, and also free from internal pressures from co-opted leaders. Typical examples of manipulation occur if companies or other agencies offer bribes, gifts, inducements, incentives or other unregulated or questionable patronage to community leaders or individuals to accede to relinquish land without the wider communities' knowledge or agreement. Typical examples of coercion occur if companies or others pay government or private security forces to intimidate or pressure communities into releasing lands. If there has been either coercion or manipulation, decisions so taken tend to be resented and often later repudiated and this can lead to subsequent disputes over land, over smallholdings, over profit sharing and over other benefits and impacts. As such it is critical to actively refrain from actions taken in the FPIC process that may exploit the absence of equal bargaining power, compromise the exercise of the communities' collective, self-determined and autonomous control and decision-making, or increase inter/intra-community divisions. At each stage in the process, the project proponent should reflect on whether anything is happening that may undermine communities' collective, self-determined and autonomous control and decision making, how the project proponent might be unfairly benefiting from an unequal bargaining position, and what can be done to prevent this.

In consultations with the project proponent, clear and defined terms of reference should be mutually agreed as to which actors participate in which meetings at which points in the process, which will often require making time for break-out groups for community members to confer among themselves during these meetings in between plenaries. It is also important that participation in each stage of the FPIC process is agreed to in advance with the community.


A first step in ensuring that communities are free to give or to withhold their consent to any stage of the process and to participate in negotiating the terms of the project, is informing the entire community (not just its representatives) of its rights under the RSPO standard and establishing a mechanism to raise and address complaints or grievances if this freedom is felt to be violated. This clarification, and in fact information about the requirements of FPIC within the RSPO standard more broadly, should be given not only to communities but also explained to relevant government bodies early in the process. In some countries, communities feel intimidated by the very presence of government agencies in meetings but the government may not only insist on being present but may insist on the presence of security forces. In some areas, military units are stationed in every sub-district and village. Equally, in other places, communities may welcome the presence of government officials, who may also be community members or widely trusted. These local dynamics need to be explored and forms of participation mutually agreed between the company and the communities in advance to ensure that the modalities of consultations and negotiations are acceptable to all parties. Explaining RSPO requirements to the government, to politicians, to NGOs, to community segments and to local elites and what is not acceptable practice can help to ensure that freedom of expression is protected and, more generally, that enabling conditions for compliance with those obligations are created.

Freedom in decision-making also means allowing communities time and space to convene their own internal meetings in order to reach decisions through internal deliberations, with the support of third party entities, if wanted. For instance, if companies start giving out jobs in anticipation of agreement with the community, but before they have the consent of the

community and a legally binding land use agreement, then this can create division and make a collective FPIC process impossible for communities. The decision to accept jobs is normally made by individuals within the community, not via a collective decision. Companies should avoid proposing employment to individuals in anticipation of proposed agreements, before there is community consent and a legally binding land use agreement in place. Indeed negotiations about the number, terms and conditions of employment are very often issues that communities wish to negotiate over as part of their giving consent to any relinquishment of rights.

Where threats of intimidation or coercion are felt and/or expressed, communities may need to consider postponing the meeting until a more suitable time or inviting in a third party of their choice to observe meetings. If intimidation, coercion or bribery are serious, the community, of course, has the right to inform higher level authorities or initiate criminal proceedings.

Guide 6: Ensuring consent is prior

 REQUIREMENTS UNDER THE RSPO STANDARD			
Principle	Criteria	Indicator	Guidance & Specific Guidance
2 Compliance with applicable laws and regulations	2.2 The right to use the land is demonstrated, and is not legitimately contested by local people who can demonstrate that they have legal, customary or user rights.	2.2.3: Where there are or have been disputes, additional proof of legal acquisition of title and evidence that fair compensation has been made to previous owners and occupants shall be available, and that these have been accepted with free, prior and informed consent (FPIC).	For 2.3: This Criterion allows for sales and negotiated agreements to compensate other users for lost benefits and/ or relinquished rights. Negotiated agreements should be non-coercive and entered into voluntarily, carried out prior to new investments or operations, and based on an open sharing of all relevant information.
	2.3 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.	2.3.2: Copies of negotiated agreements detailing the process of free, prior and informed consent (FPIC) (Criteria 2.2, 7.5 and 7.6) shall be available and shall include: [...] b) Evidence that the company has respected communities' decisions to give or withhold their consent to the operation at the time that this decision was taken ; [...]	
5 Environmental responsibility and conservation of natural resources and biodiversity	5.2 The status of rare, threatened or endangered species and other High Conservation Value habitats, if any, that exist in the plantation		For 5.2 Note: [...] Where communities are asked to relinquish rights so that HCVs can be maintained or enhanced by the

<p>7 Responsible development of new plantings</p>	<p>or that could be affected by plantation or mill management, shall be identified and operations managed to best ensure that they are maintained and/or enhanced.</p> <p>7.1 A comprehensive and participatory independent social and environmental impact assessment is undertaken prior to establishing new plantings or operations, or expanding existing ones, and the results incorporated into planning, management and operations.</p> <p>7.3 New plantings since November 2005 have not replaced primary forest or any area required to maintain or enhance one or more High Conservation Values.</p> <p>7.5 No new plantings are established on local peoples' land where it can be</p>	<p>7.3.2: A comprehensive HCV assessment, including stakeholder consultation, shall be conducted prior to any conversion or new planting. [...]</p> <p>7.5.1: Evidence shall be available that affected local peoples understand they have the right to say</p>	<p>companies or State agencies, then great care needs to be taken to ensure that communities retain access to adequate land and resources to secure their basic needs; all such relinquishment of rights must be subjected to their free, prior, and informed consent (see Criteria 2.2 and 2.3).</p> <p>For 7.1: The potential impacts of all major proposed activities should be assessed in a participatory way prior to development. [...]</p> <p>For 7.3: Where land has been cleared since November 2005, and without a prior and adequate HCV assessment, it will be excluded from the RSPO certification programme until an adequate HCV compensation plan has been developed and accepted by the RSPO.</p>
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	<p>demonstrated that there are legal, customary or user rights, without their free, prior and informed consent. This is dealt with through a documented system that enables these and other stakeholders to express their views through their own representative institutions.</p> <p>7.6 Where it can be demonstrated that local peoples have legal, customary or user rights, they are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements.</p>	<p>'no' to operations planned on their lands before and during initial discussions, during the stage of information gathering and associated consultations, during negotiations, and up until an agreement with the grower/miller is signed and ratified by these local peoples.</p> <p>Refer also to criteria 2.2, 2.3, 6.2, 6.4 and 7.6 for Indicators and Guidance on compliance.</p>	<p>For 7.6.6: Growers and millers will confirm that the communities (or their representatives) gave consent to the initial planning phases of the operations prior to the new issuance of a concession or land title to the operator.</p>
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Guidance:

A fundamental aspect of any participatory process is that involvement must be able to meaningfully affect outcomes. Where consultation is pro forma and outcomes are pre-determined, such participation only generates a sense of powerlessness. Where consent is required it is even more imperative that this is done prior to any decision to invest and take over land. In some countries where national laws or administrative practice classify much land as State land or Crown land and consider communities to have few if any rights to such lands, the legal process for the issuance of permits or concessions may itself preclude the involvement of the communities in decision-making. The fact that in some countries permits, fiscal arrangements and investment terms and conditions are achieved through several stages further influences the question of when in the process is 'prior enough'. All these factors have implications for RSPO member companies seeking to comply with the requirements of the RSPO P&C. These issues and opportunities should be clarified in National Interpretations.

The field studies show that communities often feel outmaneuvered and undermined when they discover in their very first meetings with investors that companies already have permits over the lands the communities use and to which they have customary rights. Less scrupulous companies use such permits to pressurize communities into acceding to their planned operations, but even where companies don't exert such pressure, the very fact that the

government has issued permits prior to community involvement creates a very unlevel playing field for communities.

One way to address this issue is to clarify the legal permit acquisition process in detail with the communities, along with the legal requirements on the part of the government and the project proponent, and what stage of the permit acquisition should coincide with which stages in the FPIC process. As noted earlier, explaining the requirement to seek FPIC to the government should also help ensure that FPIC can be accommodated in the permit acquisition process in ways that give sufficient leverage to communities in the negotiation process. The FPIC process in itself should require that consent for each stage as delineated in the flowchart is sought and received before moving on to the ensuing phase (if consent is given).

Given that large areas cannot be cleared and planted all at once, the project proponent could consider adopting a phased approach to consent-seeking, whereby it can demonstrate that a) those communities in areas to be cleared and planted first have given or withheld their consent b) that there is a clear timeline and plan to seek the consent of those communities in areas to be cleared and planted at a later stage c) that these communities have already been contacted and informed of the project in advance and d) have consented to and joined in the participative studies such as the Environmental and Social Impact Assessment and the High Conservation Values Assessment, and have reviewed the draft reports, and have been further consulted on the reports before finalization, and have participated in the planning of monitoring and management, prior to the RSPO New Planting Procedure filings, noting that such information and participation does not yet amount to Free Prior Informed Consent, which consent shall need to be subsequently explicitly given to be valid.

Guide 7: Ensuring there is consent

Guidance:

Once all the elements of a fair consent process outlined above are in place, then there should be an adequate basis for communities to make up their minds and, where they so choose, to further engage with the company to negotiate any details. It is important to ensure iterative engagement, space for separate deliberations, access to independent advice including legal counsel chosen by the communities, and inclusive processes that ensure that teams negotiating for communities do not go further than they are mandated without returning to the community for further internal discussions. Consent to each anticipated stage of the FPIC process should be secured before proceeding any further. To avoid undermining a good faith dialogue and to accommodate community views, industry should avoid inflexibly adhering to a single model of plantation development, presented on a ‘take it or leave it’ basis. Flexibility in accommodating community views and proposals must be meaningful, not tokenistic. Respecting FPIC does not preclude holding one-to-one meetings or small group meetings to address specific viewpoints, proposals or concerns but these should be done transparently and according to procedures endorsed by the community.

As part of the negotiation process ([Diagram 6](#)), consent should be sought to the whole range of issues (social, economic, legal, environmental etc.) that the project implies, including but not limited to: land deals and ‘excisions’ (agreements to remove community lands from areas under company licences or titles), benefit-sharing, compensation^{vi}, mitigation, protections of rights-holders, complainants and whistle-blowers, financial and legal arrangements, information sharing, divestments ([Box ‘Legacies, divestments and handovers’](#)), dispute resolution, MoUs/agreements, outgrower/smallholder schemes and monitoring options. Detailed documentation of these negotiations should be maintained throughout (eg recorded, validated, notarised and distributed).

FPIC is not only about communities saying ‘yes’ or ‘no’ to a project. Where communities withhold consent to a project, alternatives should be discussed in terms of land use, access and management, particularly where land is to be ‘excised’ or ‘enclaved’ (i.e. excluded from a concession but enclosed within it). Without discussion on alternatives, communities may feel pressured into giving consent but then reject agreements later on. However, while parties are free and encouraged to consider and discuss alternatives, neither party is obliged to agree to any one alternative. Cultural norms will play a key role in how decision-making takes place within any particular community, and how consent is expressed and validated. These need to be taken into consideration and adhered to if the community so wishes. For consent to be meaningful it should be given through procedures acceptable to and agreed by the community and not according to imposed norms of decision making and for assessing people’s views. Some communities may not be comfortable with systems that require ballots or open voting, or the setting a fixed percentage majority vote or threshold. ([Box ‘Quantitative and qualitative measures of consent’](#)).

^{vi} The legal definition of ‘compensation’ is a payment for **damages** necessary to restore an injured party to his/her former position. As such, the term cannot be used to describe a land release contract, an employment contract or a smallholder contract. Likewise, it is unhelpful to refer to employment or land surrender contracts as ‘benefit-sharing’ given that they are essentially an exchange of goods and services for a fair price.

Securing consent is generally a protracted, iterative process. In some cases, communities may be unable to reach a general agreement about a proposed project or an element therein. Adequate time should be assured for open and constructive suggestions and exchanges of opinion by any of those involved to reconsider options or terms and reach a majority view as defined by the community. This should be done through procedures mutually agreed between the majority of the community and the company. However, if a community makes clear that it cannot accept the plantation on the terms being offered (even after negotiation), the company must accept that ‘No’ mean no. Repeated returns to communities, without following mutually agreed procedures, to pressure individuals or sub-groups to relinquish lands constitute coercion and violate the RSPO standard.

Where an agreement is reached, then it should be legalised (e.g. by a notary) and officially endorsed by local government. Many communities will also want to see the agreement publicly affirmed through a ceremony or other culturally appropriate event. This is important to ensure the full community is aware not only that the company is binding itself to uphold the agreement but so also are all the community members.

Quantitative and qualitative measures of consent

Rather than imposing a minimum percentage or threshold for consent or what counts as a significant majority/minority, the community itself should decide in advance what mechanisms it will use to reach and verify collective consent, as this will vary depending on the composition and culture of the community in question. Given that FPIC is a collective right, any thresholds or decision-points should be discussed with and mutually agreed with the community as part of the consent-seeking process (not just the negotiation phase, as communities should give their consent to all stages and interactions in the process). Reaching consent will require time, resources, information and the ability of communities to consult among themselves independent of the company, in addition to consultations. One way of ensuring that this happens is for communities to invite the project proponent to ensuing consultations when they feel ready to do so and have reached consensus among themselves over the particular issue in question. Where a group is opposed to the project, it is still important as far as possible to invite them to continue to participate in the FPIC process as observers with those groups who wish to proceed to negotiations, as these negotiations may have implications for them as well. If the project proponent is aware that a significant minority are opposed to the project going ahead, or that consensus over the project is proving impossible to reach within the community, it may be sensible to assume that implementation will face similar if not exacerbated problems, and thus may be best not to go ahead. The decision whether to go ahead with a project or not, where there is community consent but also dissenting views from a minority, should be made jointly by the community and the investor and in line with mutually agreed procedures.

Smallholder agreements

A common grievance of local communities relates to smallholder schemes and contracts which lack clarity and detail on the terms and implications of the scheme and timeline of implementation. It is crucial to include as part of consultations and negotiations prior to agreement-signing, as detailed as possible a discussion on this issue, including but not limited to: whether the smallholdings will be located within or outside the concession, the expected timeline and stages of implementation, the financing of the scheme (eg bank loan terms and conditions), the exact location of the smallholdings, how and on what basis these will be allocated to community members, the implications of lease expiry for the scheme, provision and distribution modalities, procedures for adjustment in case of unforeseen changes out of the parties' sphere of control or influence (eg market changes), arrangements for project closure (eg procedures governing how the party relationship is brought to an end) and what happens to moveable and non-moveable assets etc).

Diagram 6

Issues to address during
Iterative Negotiation

Land deals and excisions: boundaries (refer to maps), terms of surrender (who, for how long, in exchange for what, terms of access and use), agreement with adjacent rights-holders (eg downstream)...

Benefit-sharing: benefit for what, from whom and to whom, timelines, conditions of access to benefits ...

Compensation: compensation for what (eg forests, lands and crops) and to whom (community, family, individuals), compensation mechanism and monitoring, timelines (when and how much), conditions for compensation...

Mitigation: social and environmental mitigation measures, timeline of implementation, stakeholders involved, responsibilities...

Protections: legal and para-legal support, judicial procedures, third party facilitation, points of contact for protections...

Financial and legal arrangements: for land deals and excisions, benefit-sharing, compensation, third party support, legal support, outgrower/smallholder schemes, agreements and maps finalisation and government endorsement ...

Information sharing: who holds what documents, means of access to information, agreements on confidentiality, transparency, anonymity ...

Divestments: agreement on information-sharing, consultation, legal and financial implications, conditions for divestments...

Dispute resolution: existing or planned SOPs (develop or amend with community), form and process of dispute resolution mechanism, stakeholders to be involved, access to mechanism, protections (anonymity of complainants and whistleblowers), timelines for dispute resolution, typology of disputes (eg intra/inter-community, with company, over land, smallholdings, HCVs, FPIC, human rights abuse, coercion or intimidation, criminal action, corruption, bribery)...

MoUs/agreements: format, process and content, witnesses, timeline of development and implementation, options for revocation or amendment, legalisation options...

Outgrower/smallholder schemes: model, terms and conditions, rights and responsibilities, implications at lease expiry, location of plots, timeline of implementation...

Monitoring options: participatory options (eg HCV monitoring and management), benefits, responsibilities, timelines, training needs, redress mechanisms...

CSR: who benefits, under what terms, timeline of implementation

Guide 8: Ensuring agreements are upheld

Guidance:

The FPIC process does not end with the signing of an agreement between the project proponent and the community. Implementation, monitoring and verification are all organic to the process. The forms that these will take should be discussed and agreed to during the negotiation process, as well as incorporated in agreements, as should the development of conflict resolution mechanisms and sanction mechanisms (see below). Periodic multi-stakeholder evaluations of agreement implementation should also be planned on a regular basis, to allow parties to feedback on any emerging issues and concerns.

The extent to which agreements are upheld in practice will be found to depend a lot on the extent to which FPIC has been properly implemented in the first place (ie whether and how far the communities signed agreements in an informed and free way prior to implementation of the project, hence the long-term importance of doing FPIC properly). Where agreements have been pre-written by the project proponent and simply signed by communities, or where these have been signed in the presence of unwanted actors (eg military, police), or where agreements have not been physically given to communities but simply read out, or where a ‘take it or leave it’ approach to the agreement has been adopted, it is very unlikely that communities will want to uphold it or cooperate in its implementation.

The extent to which agreements will be upheld will also depend a lot on the form of the agreement itself, for instance, whether it is in line with customary agreement-making processes, rituals and traditions, as this will affect the agreement’s legitimacy and validity. The community needs to be informed of the legally binding effect of an agreement and the consequences of not upholding an agreement should be agreed by both parties prior to signing. It should be agreed as early as possible with the community what form final consent-giving will take. This should be taken into consideration in parallel to the formal endorsement of the agreement by the government or a notary, with independent third party witnesses present (eg IMO, lawyers, government officers, international organizations etc) as agreed by the community. Those agreements that are individual should be clearly distinct from those that are collective, particularly when it comes to land surrender and terms of use. It is recommended that a pre-finalisation meeting be held, as a last opportunity for both parties to make amendments and revisions to the text, and also a chance to clarify which parts of the agreement cannot be re-negotiated after finalisation and under what terms, and which may not.

Participatory monitoring and evaluation should also be an intrinsic part of the agreement and carried out regularly. This will allow both the company and the community to identify where either party is falling behind or not complying with agreed actions. Early identification of emerging problems, and then agreeing and quickly taking actions to address these, will help maintain good relations and avoid grievances escalating into disputes.

Guide 9: Resolving conflicts and providing remedy

! REQUIREMENTS UNDER THE RSPO STANDARD			
Principle	Criteria	Indicator	Guidance & Specific Guidance
1 Commitment to transparency	1.2 Management documents are publicly available, except where this is prevented by commercial confidentiality or where disclosure of information would result in negative environmental or social outcomes.	1.2.1: Publicly available documents shall include, but are not necessarily limited to: [...] • Details of complaints and grievances (Criterion 6.3); [...]	For 1.2: Ongoing disputes (within or outside of a legal mechanism) can be considered as confidential information where disclosure could result in potential negative outcomes for all parties involved. However, affected stakeholders and those seeking resolution to conflict should have access to relevant information. Examples of information where disclosure could result in potential negative environmental or social outcomes include information on sites of rare species where disclosure could increase the risk of hunting or capture for trade, or sacred sites which a community wishes to maintain as private.
2 Compliance with applicable laws and regulations	2.2 The right to use the land is demonstrated, and is	2.2.3: Where there are or have been disputes, additional proof of legal	For 2.2: Where there is a conflict on the condition of land use

<p>6 Responsible consideration of employees, and of individuals and communities affected by</p>	<p>not legitimately contested by local people who can demonstrate that they have legal, customary or user rights.</p> <p>6.3 There is a mutually agreed and documented system for dealing with complaints and grievances, which is implemented and</p>	<p>acquisition of title and evidence that fair compensation has been made to previous owners and occupants shall be available, and that these have been accepted with free, prior and informed consent (FPIC).</p> <p>2.2.4: There shall be an absence of significant land conflict, unless requirements for acceptable conflict resolution processes (see Criteria 6.3 and 6.4) are implemented and accepted by the parties involved.</p> <p>2.2.5: For any conflict or dispute over the land, the extent of the disputed area shall be mapped out in a participatory way with involvement of affected parties (including neighbouring communities where applicable).</p> <p>2.2.6: To avoid escalation of conflict, there shall be no evidence that palm oil operations have instigated violence in maintaining peace and order in their current and planned operations.</p> <p>6.3.1 The system, open to all affected parties, shall resolve disputes in an effective, timely and appropriate manner, ensuring anonymity of complainants and</p>	<p>as per land title, growers should show evidence that necessary action has been taken to resolve the conflict with relevant parties.</p> <p>A mechanism should be in place to resolve any conflict (Criteria 6.3 and 6.4).</p> <p>Where operations overlap with other rights holders, companies should resolve the issue with the appropriate authorities, consistent with Criteria 6.3 and 6.4.</p> <p>For 2.2.6: Company policy should prohibit the use of mercenaries and para-militaries in their operations. Company policy should prohibit extra-judicial intimidation and harassment by contracted security forces (see Criterion 6.13).</p> <p>For 6.3: See also to Criterion 1.2. Dispute resolution mechanisms should be established through open and consensual</p>
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<p>growers and mills</p>	<p>accepted by all affected parties.</p>	<p>whistleblowers, where requested.</p> <p>6.3.2 Documentation of both the process by which a dispute was resolved and the outcome shall be available.</p>	<p>agreements with relevant affected parties.</p> <p>Complaints should be dealt with by mechanisms such as Joint Consultative Committees (JCC), with gender representation as necessary. Grievances may be internal (employees) or external.</p> <p>For scheme and independent smallholders, refer to <i>'Guidance for Independent Smallholders under Group Certification'</i>, June 2010, and <i>'Guidance on Scheme Smallholders'</i>, July 2009.</p> <p>Where a resolution is not found mutually, complaints can be brought to the attention of the RSPO Complaints System.</p> <p>Refer to helpful texts for guidance, such as the Human Rights Commission (HRC) endorsed <i>'Guiding Principles on Business and Human Rights: Implementing the UN "Protect, Respect and Remedy" Framework'</i>, 2011.</p> <p>For 6.3.1: The system should aim to reduce the risks of reprisal.</p>
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<p>7 Responsible development of new plantings</p>	<p>6.4 Any negotiations concerning compensation for loss of legal, customary or user rights are dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions.</p> <p>7.6 Where it can be demonstrated that local peoples have legal, customary or user rights, they are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements.</p>	<p>6.4.1 A procedure for identifying legal, customary or user rights, and a procedure for identifying people entitled to compensation, shall be in place.</p> <p>6.4.2 A procedure for calculating and distributing fair compensation (monetary or otherwise) shall be established and implemented, monitored and evaluated in a participatory way, and corrective actions taken as a result of this evaluation. [...]</p> <p>6.4.3 The process and outcome of any negotiated agreements and compensation claims shall be documented, with evidence of the participation of affected parties, and made publicly available.</p> <p>7.6.1 Documented identification and assessment of demonstrable legal, customary and user rights shall be available.</p> <p>7.6.2 A system for identifying people entitled to compensation shall be in place.</p> <p>7.6.3 A system for calculating and distributing fair compensation (monetary or otherwise) shall be in place.</p> <p>7.6.4 Communities that have lost access and rights</p>	
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		<p>to land for plantation expansion shall be given opportunities to benefit from plantation development.</p> <p>7.6.5 The process and outcome of any compensation claims shall be documented and made publicly available.</p>	
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Guidance:

The establishment of a mutually agreed and documented system for dealing with complaints and grievances, which is implemented and accepted by all affected parties, and implemented in a timely and effective manner, is critical to ensuring that parties involved can raise concerns that may arise through the project’s lifetime, and that the project maintains its transparency, accountability and legitimacy. Providing access to conflict resolution mechanisms is essential to fulfill the right to remedy of actors who feel their rights have been violated by other parties ([Box ‘The right to remedy’](#)). As with anticipating and establishing grievance mechanisms, conflict resolution mechanisms should be discussed and developed early on rather than left until breakdowns of consent or disputes occur. The history of prior and outstanding conflicts should be thoroughly documented in the initial FPIC stages as part of the social and tenure survey, during detailed participatory mapping and during actual development. Conflicts may only surface when concerned parties realize the value and importance of the development being proposed and being implemented. It is common that conflict over borders or land rights emerge when communities become aware of agreed terms, job opportunities and benefits negotiated by their neighbours. Any outstanding obligations of previous operators as documented should inform consultations with local communities, and forms of remedy should be discussed in the consent- and agreement- reaching stages. Outstanding obligations should be fulfilled once consent has been given for the project to go ahead.

To be accountable and transparent, conflict resolution mechanisms can include third party observers to the resolution process, should this be desired and agreed to by both parties in dispute, and ease of access to these mechanisms by all parties. Access to information and updates on the process should be made public as far as possible, taking of course into consideration security and privacy concerns. An appeals process should also be established where the conflict resolution mechanism is felt to have been ineffective or partial by one or both of the parties in dispute. Communities should be provided comprehensive information on the RSPO’s Complaints Panel and Dispute Settlement Facility, as well as be free to choose their own legal and para-legal support organisations in submitting and following up complaints.

Basic information on the Complaints Panel and Dispute Settlement Facility can be accessed from the RSPO website:

Complaints Panel:

<http://www.rspo.org/members/complaints>

Dispute Settlement Facility:

<http://www.rspo.org/members/dispute-settlement-facility>

<http://www.rspo.org/members/dispute-settlement-facility/workflow>

For a useful guide see in English and Bahasa Indonesia:

<http://www.forestpeoples.org/sites/fpp/files/publication/2013/02/rspocomplaintsresolutionguidancesenglishfeb2013.pdf>

<http://www.forestpeoples.org/sites/fpp/files/publication/2013/02/rspocomplaintsresolutionguidancesbahasafeb2013.pdf>

The protection of whistleblowers and the anonymity of complainants should be protected as part of company SOPs, which ideally should be developed together with the community. One option could be a box in the village where community members can drop their complaints, which can then be addressed as part of community-wide consultations rather than on a one-on-one basis. At the same time, individuals targeted by complaints or whistleblowing must be protected from false accusations and considered innocent until proven guilty.

Where compensation is agreed as part of the resolution process, it is important that monetary compensation not be taken as the default mode of compensation. Communities may choose other forms of compensation including restitution of lands, assistance with land titling, changed terms of land rental or lease, restoration of damages and rehabilitation of degraded habitat, allocation of smallholdings, as well as compensation through the provision of services, infrastructures or other assistance. Where compensation in cash is agreed, it is important to ensure the compensation goes to the right hands (e.g. the collective community rather than particular individuals for a collective grievance). Otherwise, cash payments may end up aggravating disputes and fostering intra-community disagreements, corruption and opportunism. Other alternatives (e.g. co-management, community share-holdings, community development, land restitution, land excision, land swaps, rehabilitation, guarantees of non-repetition) need to be explored to reach longer-term sustainable solutions.

A key concern of communities where oil palm concessions on their lands have been sold and bought several times by different operators over time is that communities often are not informed of these handovers prior to the agreement, are unclear as to who exactly owns the concession, whether the concession's boundaries will change (and what these are in the first place), whether the new holder is an RSPO member, if there is any relationship between the new and former holder (eg same group or subsidiary or supplier), whether the former holder will ensure to resolve any outstanding disputes and uphold existing agreements, and whether the new holder will take on these responsibilities.

While legal frameworks will provide information as to whether responsibility is inherited by the buyer as part of the transaction, it is in the interests of the buyer, and a demonstration of good will, to ensure that they are fully aware of any ongoing disputes within the concession and any outstanding obligations or agreements, what actions have been taken to address this, and how they will seek to consult communities as to follow-up prior to the transaction finalisation. Communities need to be informed of the possibility and implications of the handover as early as possible, before the transaction takes place, rather than placed on a *fait accompli* once it is completed, and ideally in a three-way discussion with the community, the seller and the buyer. Consulting the local government is also recommended, as they may be able to play a role in addressing outstanding concerns. The buyer should ensure to inform the communities of its responsibilities as an RSPO member, clarify its relation (if any) to the former holder, and agree with the community as to which aspects of outstanding issues can and cannot be taken forward. Investors and international financing institutions may also have requirements and standards pertinent to divestments: these should be consulted thoroughly prior to the transaction to ensure compliance.

In sum, transparency and good faith should determine the approach of the buyer, and the decision as to whether or not the risks being inherited justify the purchase. Where land conflicts are long-standing and unresolved, it must also be borne in mind that communities will be less willing to cooperate due to negative precedents, and time and effort will need to be invested in rebuilding relations of trust and cooperation. If conflict is rife and disputes have proved impossible to resolve in the past, and if the buyer does not deem it feasible to address these adequately, then it is highly unlikely that FPIC can be properly implemented as required by the RSPO standard, and as such it is probably wiser to reconsider the transaction's sustainability, and the ability of the buyer to comply with the P&C under such circumstances, although the seller may have no obligation to ensure compliance.

The right to remedy

The right to remedy is clearly established under international law, whereby the violation of a human right gives rise to a right of reparation for the victim(s):

Reparation is intended to relieve the suffering of and afford justice to victims "by removing or redressing to the extent possible the consequences of the wrongful acts and by preventing and deterring violations". In human rights law, the availability of effective remedies is a right in and of itself that complements other recognized rights. Remedies include: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Source: MacKay 2012.

Guide 10: Some lessons learned from ESIA

Guidance:

There is a very extensive literature on ESIA, which makes clear that ESIA can be undertaken for a number of purposes and with correspondingly different emphases^{vii}. For RSPO, with its strong emphasis on participation and the need to respect rights to land and FPIC, ESIA are required to place an emphasis on involving rights-holders. This participation is needed in: the design of the ESIA; the definition of baselines; the development of plans to avoid, find alternatives to, mitigate and/ or compensate for any negative impacts and optimise positive ones, and; in monitoring and evaluation of the implementation of agreed plans and their effectiveness. The key question that the ESIA is designed to answer is: *what differences will there be in the quality of life of the communities as a result of the proposed action*, and as the RSPO Guidance for 6.1 notes the assessment should seek to identify both positive and negative impacts.

Just as for a process of FPIC, a successful participatory ESIA involves the communities likely to be affected by the proposed development in the earliest stages of the ESIA which should itself be undertaken prior to the development.

A first stage^{viii} is for the parties to agree the process by which the assessment will be undertaken, which not only helps ensure that the right issues are assessed but also helps create a relationship of trust. A key matter to agree at the outset is how the local communities will be involved in the ESIA at all stages from design, through assessment, to analysis, information sharing, developing an action plan and subsequent monitoring and evaluation.

A crucial second stage for an ESIA is to ensure adequate participation in establishing baselines. This means, first, agreeing on which issues should be studied and, second, directly involving community members in the data collection. This helps ensure that there is convergence between the parties about both what is studied and what the findings are. Experiences shows that, if community members are involved, they can ensure that baseline studies take stock of the matters that concern them most and, later, when and if problems arise, then all parties have a shared understanding of how much things have changed for better or worse since the original joint assessment. Developers may also propose themselves, which issues to develop baselines for so that they can later assess whether or not there have been improvements in those aspects the development aims to address (eg jobs or income).

An indicative list of the kinds of issues that baseline studies should establish data for include the following: population, cultural identity, social institutions, social diversity and stratification, livelihoods, local food security, water (drinking, bathing, fisheries, irrigation), transport and infrastructure, land tenure and land use, access and / rights to wider natural resources, employment, income generation, cash cropping, trade, credit schemes, health and safety, education, housing.

^{vii} Barrow 2000:2.

^{viii} The following paragraphs are compiled from a number of sources for more detail see, for example, Barrow 2000; IFC nd; IFC 2012a, 2012b; Vanclay 2003; Centre for Good Governance 2006.

Why do Social Impact Assessments?

‘Social Impact Assessment includes the processes of analysing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions. **Its primary purpose is to bring about a more sustainable and equitable biophysical and human environment.**’

‘The goal of SIA is to determine the likely winners and losers from the direct and indirect effects of a given policy reform. It uses different methods to do this: impact assessment examines the first-order positive and negative effects of a reform on different stakeholders, while opportunity analysis studies how stakeholders choose to respond to such effects. In both its data collection and analysis, SIA is often very participatory, drawing upon the perceptions and experiences of affected stakeholders. Analytically, it provides an understanding of the social context, institutions and coping strategies that affect social behaviour and policy impacts.’

‘To be effective SIA demands as good a set of baseline data as possible, without this it is difficult if not impossible to establish the current situation from which likely changes by different development options (including no development) can be judged.’

Sources cited: World Bank 2003; Barrow 2004:74.

The core part of an ESIA is then to seek to predict what might be the most likely impacts, both positive or negative, of the proposed intervention, a procedure that can be quite subjective and which is best made more precise by drawing from the previous experience of like projects. To our knowledge this has yet to be done systematically for palm oil development. Key questions include determining what will be impacted (‘profiling’), who is most likely to be affected (‘projecting’) and then working out how much they are likely to be affected (‘assessing’).

The rapidly expanding number of case studies of palm oil developments gives us a good basis to list (‘profile’) some of the most common impacts (including of the activities listed in the RSPO Guidance for 6.1).

- Access to game and forest products (land clearance reduces access)
- Access to farmland and reserved land (land sales or leases to companies reduce access and or rights to land and thus limit alternative livelihoods and income opportunities)
- Introduction of land market (commodification of common properties, impact on customary laws and rights)
- Clean water for drinking bathing and fisheries (mill effluent and agrochemicals may pollute waterways, clearance and mono-cropping may impact hydrology)
- Accelerated migration (inwards and outwards may change numbers and resilience of social institutions)
- Changes in disease ecology (land clearance and migration changes disease vectors)
- Relations with migrant workers (inter-community tensions, social diseases)
- Access to markets (improved road access)
- Access to credit (increased monetization and increased indebtedness)
- Employment and smallholdings (changes in cash income)
- Economic orientation (transition from self-provisioning to shop bought food and goods; impact on local crafts and traditional knowledge)

- Changes in local values and cultural norms (religious change and inter-generational tension)

ESIA need to carefully ‘project’ and ‘assess’ which sections of society are likely to be winners and losers from such changes. For example the available case studies literature suggest that men get more direct benefits than women from allocating lands to oil palm, while long term studies by the ANU suggest that over time rich farmers tend to expand their holdings at the expense of poorer farmers who become landless^{ix}.

Getting a full range of community views about these likely impacts, whether positive or negative and whether for some or all, is hard to achieve but is an important part of ESIA. Commonly used methods include public meetings, focus groups, workshops and discussion groups, interviews, house to house surveys, use of questionnaires, and various means to gather comments like comment boxes or phone ins. Targeted efforts may be needed to get the views of more politically marginal or less vocal groups – women, youth, lower castes, poorer sections, landless workers.

Once the main likely impacts are identified and it is clearer who will most likely be affected, the next key phase is to propose how to avoid or minimise such impacts. An emerging industry best practice is the development of a ‘mitigation hierarchy’^x: operators first seek to avoid the impact altogether, if that is considered not possible then they seek alternatives, if there is still negative impact, then measures are included to minimise the impact while a compensatory options are deployed to ensure no net loss.

Most ESIA propose an implementation plan for addressing identified impacts (which may include the ‘no development’ option if impacts are judged too severe). ESIA then need to be revisited every year or two to assess, first, whether impacts had been properly identified in the first place and second to assess actual impacts against the base lines recorded at the outset: have things improved or worsened? Who has been affected? How can those negative effects be remedied? Involving communities directly in Monitoring, Evaluation, and agreeing remedies, helps maintain good relation and secure favourable outcomes.

An important lesson from the literature on SIA is that where governments are authoritarian they may actively discourage participatory approaches to development. RSPO member field experiences show this to be the case when they seek to adhere to the requirements of the P&C. In Indonesia, there are cases where even the largest companies have faced problems being allowed to carry out participatory mapping with the local communities. In the early phases of oil palm development in one country, the government at the highest levels sought to prevent companies from engaging in dialogue and negotiations with communities over land acquisition and to resolve land disputes.

^{ix} McCarthy 2010.

^x See BBOP 2014 at http://bbop.forest-trends.org/pages/mitigation_hierarchy

Can the RSPO develop a ‘mitigation hierarchy’ for social impacts?

Example:

The SIA identifies that two planned plantation blocks will affect valued sources of water that the community uses for drinking and bathing.

- The parties agree to avoid developing one block but open the second block.
- The parties agree to develop an alternative third block of land which will not affect the communities’ water.
- The parties agree to mitigate the impact of the second block by piping clean waters direct to the village.
- The parties agree to contribute to a community compensation fund to make up for the reduced access to clean river waters for bathing.

Contributions for community participation

Whether or not to provide a contribution to communities for participating in HCVA, ESIA, participatory mapping and consultations, can be a problematic issue. On the one hand, this could lead community members to feel obliged or indebted to the company for cultural reasons, to lose legitimacy in their own community, or lead to co-optation, opportunism and corruption. On the other hand, community members will be giving their time and energy to the process, which impacts on their daily lives and livelihoods, and some sort of contribution would be good practice. As such it might be seen as appropriate for community representatives to receive recompense for their time and also for their community to receive recompense.

In any case, such a decision needs to be made with the community in question as a collective, and great care taken to ensure that giving contributions enables rather than impedes or prejudices a transparent, open and free process. Contributions if given will need to take a form that is suited to local cultural norms and traditions. This could include company contributions in kind rather than in cash, such as food, transport to meetings, or contributions for customary rituals, and preferably not cash payments. If cash compensation is chosen by the community, this contribution should ideally be given to the community as a collective, rather than to particular individuals.

Concluding reflections

The review undertaken in developing this revised Guide brings out some wider lessons for the RSPO on how to ensure that RSPO members comply with the RSPO P&C and ensure respect for the right to FPIC.

Strengthen training of company staff

First, this review, and previous case studies it draws on, show that what progress there has been in delivering an FPIC-based processes of land acquisition has depended substantially on committed leadership by senior company staff. Model operations have delivered greater compliance with the RSPO P&C thanks to strong direction, sometime in response to complaints and international censure. However, broader compliance across the full range of operations of the larger companies has proved elusive. Our conclusion is that such compliance cannot be achieved without much more, in depth training of middle-level staff and field managers ^{xi}. The RSPO should consider institutionalising regular training programmes for RSPO members in FPIC, land tenure laws, land acquisition and conflict resolution.

Clarify FPIC requirements during New Plantings Procedure

A second conclusion is that assessments of FPIC-compliance during the New Plantings Procedure (NPP) need to be tightened up so that companies can be helped to spot, and thus quickly correct, any implementation failures. As noted, the RSPO P&C and the previous Guide for Companies envisage FPIC being assured through an iterative process of engagement between company and communities. It has thus been agreed that it is neither realistic nor desirable that, at the stage in plantation development when a company submits to the requirements of the NPP stage, the company has completed FPIC and carried out all land acquisition.

However, certain minimum building blocks for an adequate FPIC process should be in place and verified at the time of the NPP. We suggest that these are:

- There is evidence that companies have been informed by the communities of the composition of their self-selected designated representatives and or representative institutions where land acquisition is planned
- There is evidence that communities have meaningfully participated in the elaboration of the Environmental and Social Impact Assessment and the High Conservation Value Assessment;
- The HVC Assessment has clearly recommended which areas need to be managed to maintain and enhance the full range of HCVs including HCVs 4, 5 and 6;
- There are plans, mutually agreed by the company and the communities as represented through their self chosen representatives or directly in broad community meetings, on how land tenure assessments, participatory community mapping and negotiations over

^{xi} Daemeter (2013) has reached somewhat similar conclusions.

land will be carried out.

Provide capacity-building and counsel to local communities

Field reviews carried out to date show that very few communities have had the key RSPO requirements, that companies must respect their land rights and assure FPIC, explained to them prior to the land acquisition process. This makes it possible for companies to persuade communities to accede to sub-optimal land acquisition processes unaware that they entitled to more. This points to the need for a much wider system for ensuring that communities are independently informed of their rights and entitlements, and have access to legal counsel and technical advice. How may this be assured? Given the voluntary nature of the RSPO system it cannot be expected that government agencies have capacity to secure rights and provide advice and extension. On the other hand, the RSPO secretariat as presently composed also lacks the capacity to reach communities. The RSPO is currently undertaking a review to ascertain to what extent so-called ‘intermediary organisations’ such as IMOs, legal support organisations and other elements of civil society can help fulfil such needs. It is also recommended that community-oriented materials be developed by the RSPO or by relevant CSOs, to familiarise communities with the nature and objectives of the RSPO and its standard, as well as the mechanisms of recourse available under its ambit. Such materials can complement the Guidance provided in this document and should be developed in appropriate forms and languages, with suggested formats including comics, posters, videos and radio programmes.

Strengthen auditing of FPIC and land acquisition

A more tentative conclusion reached by this review is that the RSPO should also assess whether or not there is a need to strengthen the requirements for demonstrable capacity in audit teams to assess company compliance with the RSPO P&C requirements regarding FPIC and land acquisition. It is our impression, and our evidence base is too narrow to feel sure of this, that some audit teams are not carrying out interviews in communities to assess their satisfaction with company compliance and are not even checking that basic requirements for an FPIC-based process have been undertaken, such as participatory mapping and land tenure assessments.

Encourage legal harmonisation with the RSPO standard

Where national laws and regulations fail to provide adequate recognition and protection to the rights of indigenous peoples and local communities, where international human rights instruments are poorly enforced, and where national and international legal frameworks are not harmonised, the ability of companies to abide by certification standards such as the RSPO is hindered, and their efforts towards sustainability requirements at times penalised rather than encouraged as a result. The RSPO and oil palm companies themselves can play a pivotal role in pushing for legal reform by engaging with national governments to revise laws and regulations so that RSPO members can respect the rights of communities to their customary lands and to FPIC. The example set by the HCV Indonesia Task Force of the RSPO, which seeks to better accommodate the concept of HCVs by suggesting revisions to relevant Indonesian legislation, should be replicated for other issues (including FPIC) and across other countries, to encourage the harmonisation of the law with the RSPO standard and engage strategically with ongoing and anticipated legal reforms at the national level. [See Annex 4 for Further Resources.](#)

Annex 1: Key revisions to the RSPO P&C

The key amendments (both revisions and additions) to the RSPO P&C relevant to FPIC are provided below in *italics*. These include changes to Criteria, Indicators, Specific Guidance, Guidance, Definitions and cited international instruments.

Criteria:

1.3	<i>Growers and millers commit to ethical conduct in all business operations and transaction.</i>
2.2	The right to use the land is demonstrated, and is not legitimately contested by local people who can demonstrate that they have <i>legal, customary or user rights</i> .
2.3	Use of the land for oil palm does not diminish the <i>legal, customary or user rights</i> of other users without their free, prior and informed consent.
5.2	The status of rare, threatened or endangered species and <i>other</i> High Conservation Value habitats, if any, that exist in the plantation or that could be affected by plantation or mill management, shall be identified <i>and operations managed to best ensure that they are maintained and/or enhanced</i> .
6.4	Any negotiations concerning compensation for loss of legal, customary <i>or user rights</i> are dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions.
6.13	<i>Growers and millers respect human rights.</i>
7.5	No new plantings are established on local peoples' land <i>where it can be demonstrated that there are legal, customary or user rights</i> , without their free, prior and informed consent. This is dealt with through a documented system that enables these and other stakeholders to express their views through their own representative institutions.
7.6	<i>Where it can be demonstrated that local peoples have legal, customary or user rights</i> , they are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements.

Indicators:

1.1.1	<i>There shall be evidence that growers and millers provide adequate information on (environmental, social and/or legal) issues relevant to RSPO Criteria to relevant stakeholders for effective participation in decision-making.</i>
1.2.1	<i>Publicly available documents shall include, but are not necessarily limited to:</i> <ul style="list-style-type: none"> • <i>Occupational health and safety plans (Criterion 4.7);</i> • <i>HCV documentation (Criteria 5.2 and 7.3);</i> • <i>Pollution prevention and reduction plans (Criterion 5.6);</i> • <i>Public summary of certification assessment report;</i> • <i>Human Rights Policy (Criterion 6.13).</i>
1.3.1	<i>There shall be a written policy committing to a code of ethical conduct and integrity in all operations and transactions, which shall be documented and communicated to all levels of the workforce and operations.</i>
2.1.1	Evidence of compliance with relevant legal requirements <i>shall be available</i> .
2.1.2	A documented system, which includes written information or legal requirements, <i>shall be maintained</i> .
2.1.4	A system for tracking any changes in the law <i>shall be implemented</i> .

2.2.1	Documents showing legal ownership or lease, history of land tenure and the actual legal use of the land <i>shall be made available</i> .
2.2.2	Legal boundaries <i>shall be</i> clearly demarcated and visibly maintained.
2.2.3	Where there are or have been disputes, additional proof of legal acquisition of title and <i>evidence that</i> fair compensation has been made to previous owners and occupants <i>shall be available</i> , and that these have been accepted with free, prior and informed consent (FPIC).
2.2.4	<i>There shall be an absence of significant land conflict [...]</i>
2.2.5	<i>For any conflict or dispute over the land, the extent of the disputed area shall be mapped out in a participatory way with involvement of affected parties (including neighbouring communities where applicable).</i>
2.2.6	<i>To avoid escalation of conflict, there shall be no evidence that palm oil operations have instigated violence in maintaining peace and order in their current and planned operations.</i>
2.3.2	Maps of an appropriate scale showing the extent of recognised <i>legal, customary or user rights</i> (Criteria 2.2., 7.5 and 7.6) shall be developed through participatory mapping involving affected parties (including neighbouring communities where applicable, and relevant authorities).
2.3.2	Copies of negotiated agreements detailing the process of free, prior and informed consent (FPIC) (Criteria 2.2, 7.5 and 7.6) <i>shall be available and shall include:</i> <ul style="list-style-type: none"> • <i>Evidence that a plan has been developed through consultation and discussion with all affected groups in the communities, and that information has been provided to all affected groups, including information on the steps that shall be taken to involve them in decision-making;</i> • <i>Evidence that the company has respected communities' decisions to give or withhold their consent to the operation at the time that this decision was taken;</i> • <i>Evidence that the legal, economic, environmental and social implications for permitting operations on their land have been understood and accepted by affected communities, including the implications for the legal status of their land at the expiry of the company's title, concession or lease on the land.</i>
2.3.3	<i>All relevant information shall be made available in appropriate forms and languages, including assessments of impacts, proposed benefit sharing, and legal arrangements.</i>
2.3.4	<i>Evidence shall be made available to show that communities are represented through institutions or representatives of their own choosing, including legal counsel</i>
5.1.1	<i>An environmental impact assessment (EIA) shall be documented.</i>
5.1.2	Where the identification of impacts requires changes in current practices, in order to mitigate negative effects, a timetable for changes <i>shall be developed and implemented within a comprehensive management plan. The management plan shall identify the responsible person/persons.</i>
5.1.3	<i>This plan shall incorporate a monitoring protocol, adaptive to operational changes, which shall be implemented to monitor the effectiveness of the mitigation measures. The plan shall be reviewed as a minimum every two years to reflect the results of monitoring and where there are operational changes that may have positive and negative environmental impacts.</i>
5.2.2	Information shall be collated <i>in a High Conservation Value (HCV) assessment [...]</i>
5.2.2	Where rare, threatened or endangered (RTE) species, or HCVs, are present or are affected by plantation or mill operations, <i>appropriate measures that are expected to maintain and/or enhance them shall be implemented through a management plan.</i>
5.2.5	<i>Where HCV set-asides with existing rights of local communities have been identified, there shall be evidence of a negotiated agreement that optimally safeguards both the HCVs and these rights.</i>
6.1.3	<i>Plans for avoidance or mitigation of negative impacts and promotion of the positive ones, and monitoring of impacts identified, shall be developed in consultation with the affected parties, documented and timetabled, including responsibilities for implementation.</i>

6.1.4	<i>The plans shall be reviewed as a minimum once every two years and updated as necessary, in those cases where the review has concluded that changes should be made to current practices. There shall be evidence that the review includes the participation of affected parties.</i>
6.1.5	Particular attention shall be paid to the impacts of <i>smallholder schemes</i> (where the plantation includes such a scheme).
6.2.1	Consultation and communication procedures <i>shall be</i> documented.
6.2.2	A management official responsible for these issues <i>shall be</i> nominated.
6.2.3	A list of stakeholders, records of all communication, including confirmation of receipt and that efforts are made to ensure understanding by affected parties, and records of actions taken in response to input from stakeholders, <i>shall be maintained</i> .
6.3.1	The system, <i>open to all affected parties</i> , shall resolve disputes in an effective, timely and appropriate manner, <i>ensuring anonymity of complainants and whistleblowers, where requested</i> .
6.3.2	Documentation of both the process by which a dispute was resolved and the <i>outcome shall be available</i> .
6.4.1	A procedure for identifying legal, customary or user rights, and a procedure for identifying people entitled to compensation, <i>shall be</i> in place.
6.4.2	A procedure for calculating and distributing fair compensation (monetary or otherwise) <i>shall be</i> established and implemented, monitored and evaluated in a participatory way, and corrective actions taken as a result of this evaluation. This procedure shall take into account: gender differences in the power to claim rights, ownership and access to land; differences of transmigrants and long-established communities; and differences in ethnic groups' proof of legal versus communal ownership of land.
6.4.3	The process and outcome of any negotiated agreements and compensation claims <i>shall be</i> documented, with evidence of the participation of affected parties, and made publicly available.
6.8.1	A publicly available equal opportunities policy including identification of relevant/affected groups in the local environment shall be documented.
6.8.2	Evidence <i>shall be</i> provided that employees and groups including <i>local communities, women, and migrant workers have not been discriminated against</i> .
6.8.3	<i>It shall be demonstrated that recruitment selection, hiring and promotion are based on skills, capabilities, qualities, and medical fitness necessary for the jobs available.</i>
6.13.1	<i>A policy to respect human rights shall be documented and communicated to all levels of the workforce and operations (see Criteria 1.2 and 2.1).</i>
7.1.1	An independent social and environmental impact assessment (SEIA), undertaken through a participatory methodology including <i>the relevant affected stakeholders</i> , shall be documented.
7.1.2	Appropriate management planning and operational procedures <i>shall be developed and implemented to avoid or mitigate identified potential negative impacts</i> .
7.3.1	<i>There shall be evidence that no new plantings have replaced primary forest, or any area required to maintain or enhance one or more High Conservation Values (HCVs), since November 2005. New plantings shall be planned and managed to best ensure the HCVs identified are maintained and/or enhanced (see Criterion 5.2).</i>
7.3.2	A <i>comprehensive</i> HCV assessment, including stakeholder consultation, <i>shall be</i> conducted prior to any conversion or new planting. <i>This shall include a land use change analysis to determine changes to the vegetation since November 2005. This analysis shall be used, with proxies, to indicate changes to HCV status.</i>
7.3.4	<i>An action plan shall be developed that describes operational actions consequent to the findings of the HCV assessment, and that references the grower's relevant operational procedures (see Criterion 5.2).</i>
7.3.5	<i>Areas required by affected communities to meet their basic needs, taking into account potential positive and negative changes in livelihood resulting from proposed operations, shall be identified in consultation with the communities and incorporated into HCV assessments and management plans (see Criterion 5.2).</i>

7.5	<i>Evidence shall be available that affected local peoples understand they have the right to say 'no' to operations planned on their lands before and during initial discussions, during the stage of information gathering and associated consultations, during negotiations, and up until an agreement with the grower/miller is signed and ratified by these local peoples.</i>
7.6.1	<i>Documented identification and assessment of demonstrable legal, customary and user rights shall be available.</i>
7.6.2	<i>A system for identifying people entitled to compensation shall be in place.</i>
7.6.4	<i>Communities that have lost access and rights to land for plantation expansion shall be given opportunities to benefit from plantation development. [...]</i>
7.6.6	<i>Evidence shall be available that the affected communities and rights holders have access to 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.</i>

Specific guidance:

For 1.1.1	<i>Evidence should be provided that information is received in appropriate form(s) and language(s) by relevant stakeholders. Information will include information on the RSPO mechanisms for stakeholder involvement, including information on their rights and responsibilities.</i>
For 2.1.4	<i>The systems used for tracking any changes in laws and regulations should be appropriate to the scale of the organisation.</i>
For 2.2.2	<i>Plantation operations should cease on land planted beyond the legally determined area and there should be specific plans in place to address such issues for associated smallholders.</i>
For 2.2.6	<i>Company policy should prohibit the use of mercenaries and para-militaries in their operations. Company policy should prohibit extra-judicial intimidation and harassment by contracted security forces (see Criterion 6.13).</i>
For 2.3.4	<i>Evidence should be made available from the companies, communities or other relevant stakeholders.</i>
For 5.2.5	<i>If a negotiated agreement cannot be reached, there should be evidence of sustained efforts to achieve such an agreement. These could include third party arbitration (see Criteria 2.3, 6.3 and 6.4).</i>
For 6.3.1	<i>The system should aim to reduce the risks of reprisal.</i>
For 6.4.2	<i>Companies should make best efforts to ensure that equal opportunities have been provided to both female and male heads of households to hold land titles in smallholder schemes.</i>
For 7.3.1	<i>Evidence should include historical remote sensing imagery which demonstrates that there has been no conversion of primary forest or any area required to maintain or enhance one or more HCV. Satellite or aerial photographs, land use maps and vegetation maps should be used to inform the HCV assessment. Where land has been cleared since November 2005, and without a prior and adequate HCV assessment, it will be excluded from the RSPO certification programme until an adequate HCV compensation plan has been developed and accepted by the RSPO.</i>
For 7.3.5	<i>The management plan will be adaptive to changes in HCV 5 and 6. Decisions will be made in consultation with the affected communities.</i>
For 7.6.1	<i>This activity shall be integrated with the social and environmental impact assessment (SEIA) required by Criterion 7.1.</i>
For 7.6.6	<i>Growers and millers will confirm that the communities (or their representatives) gave consent to the initial planning phases of the operations prior to the new issuance of a concession or land title to the operator.</i>

Guidance:

<p>Criterion 1.1</p>	<p><i>Growers and millers should have a Standard Operating Procedure (SOP) to respond constructively to stakeholders, including a specific timeframe to respond to requests for information. [...]</i></p> <p><i>Growers and millers should ensure that sufficient objective evidence exists to demonstrate that the response is timely and appropriate. [...]</i></p> <p><i>See Criterion 4.1 on SOPS.</i></p>
<p>Criterion 1.2</p>	<p><i>This concerns management documents relating to environmental, social and legal issues that are relevant to compliance with RSPO Criteria. Management documents will include monitoring reports. The auditors will comment on the adequacy of each of the documents listed in the public summary of the assessment report. [...]</i></p> <p><i>Ongoing disputes (within or outside of a legal mechanism) can be considered as confidential information where disclosure could result in potential negative outcomes for all parties involved. However, affected stakeholders and those seeking resolution to conflict should have access to relevant information. [...]</i></p> <p><i>Growers and millers should ensure that sufficient objective evidence exists to demonstrate that the level of measuring and monitoring of the management plan, and information, is appropriate and made available.</i></p>
<p>Criterion 1.3</p>	<p><i>All levels of the operations will include contracted third parties (e.g those involve in security). The policy should include as a minimum:</i></p> <ul style="list-style-type: none"> <i>• A respect for fair conduct of business;</i> <i>• A prohibition of all forms of corruption, bribery and fraudulent use of funds and resources;</i> <i>• A proper disclosure of information in accordance with applicable regulations and accepted industry practices.</i> <p><i>The policy should be set within the framework of the UN Convention Against Corruption, in particular Article 12.</i></p>
<p>Criterion 2.1</p>	<p><i>[...] Relevant legislation [...] also includes laws made pursuant to a country’s obligations under international laws or conventions (e.g. the Convention on Biological Diversity (CBD), ILO core Conventions, UN Guiding Principles on Business and Human Rights). Furthermore, where countries have provisions to respect customary law, these will be taken into account. [...] Contradictions and inconsistencies should be identified and solutions suggested.</i></p>
<p>Criterion 2.3</p>	<p><i>All indicators will apply to current operations, but there are exceptions for long-established plantations which may not have records dating back to the time of decision-making, in particular for compliance with Indicators 2.3.1 and 2.3.2.</i></p> <p><i>Where there are legal or customary rights over land, the growers should demonstrate that these rights are understood and are not being threatened or reduced. This Criterion should be considered in conjunction with Criteria 6.4, 7.5 and 7.6. Where customary rights areas are unclear these should be established through participatory mapping exercises, involving affected parties (including neighbouring communities and local authorities). [...]</i></p> <p><i>Companies should be especially careful where they are offered lands acquired from the State by its invoking the national interest (also known</i></p>

	<p>as ‘<i>eminent domain</i>’).</p> <p><i>Growers and millers should refer to the RSPO approved FPIC guidance (‘FPIC and the RSPO: A Guide for Companies’, October 2008.</i></p>
Criterion 5.1	<p>The EIA should cover the following activities, where they are undertaken:</p> <ul style="list-style-type: none"> • [...]; • <i>Management of mill effluents (Criterion 4.4);</i> • [...]; • <i>Management of pests and diseased palms by controlled burning (Criteria 5.5 and 7.7).</i> <p>[...] Environmental impacts <i>should be</i> identified on soil and water resources (Criteria 4.3 and 4.4), air quality, <i>greenhouse gases (Criterion 5.6), [...].</i></p> <p>[...] For smallholder schemes, the scheme management has the responsibility to undertake impact assessment and to plan and operate in accordance with the results (<i>refer to ‘Guidance for Independent Smallholders under Group Certification’, June 2010, and ‘Guidance on Scheme Smallholders’, July 2009).</i></p>
Criterion 5.2	<p>[...] <i>Wherever HCV benefits can be realised outside of the management unit, collaboration and cooperation between other growers, governments and organisations should be considered.</i></p> <p><i>Note: Operators need to consider a variety of land management and tenure options to secure HCV management areas in ways that also secure local peoples’ rights and livelihoods. Some areas are best allocated to community management and secured through customary or legal tenures, in other cases co-management options can be considered. Where communities are asked to relinquish rights so that HCVs can be maintained or enhanced by the companies or State agencies, then great care needs to be taken to ensure that communities retain access to adequate land and resources to secure their basic needs; all such relinquishment of rights must be subjected to their free, prior, and informed consent (see Criteria 2.2 and 2.3).</i></p>
Criterion 6.1	<p>[...] <i>Participation in this context means that affected parties are able to express their views through their own representative institutions, or freely chosen spokespersons, during the identification of impacts, reviewing findings and plans for mitigation, and monitoring the success of implemented plans.</i></p> <p>Potential social impacts may result from activities such as: building new roads, processing mills or other infrastructure; replanting with different crops or expansion of planting area; disposal of mill effluents; clearing of remaining natural vegetation; changes in employee numbers or employment terms; <i>smallholder schemes.</i></p> <p>[...] <i>The review can be done (once every two years) internally or externally.</i></p>
Criterion 6.3	<p>[...] <i>For scheme and independent smallholders, refer to ‘Guidance for Independent Smallholders under Group Certification’, June 2010, and ‘Guidance on Scheme Smallholders’, July 2009.</i></p> <p><i>Where a resolution is not found mutually, complaints can be brought to the attention of the RSPO Complaints System.</i></p> <p><i>Refer to helpful texts for guidance, such as the Human Rights Commission (HRC) endorsed ‘Guiding Principles on Business and Human Rights: Implementing the UN “Protect, Respect and Remedy” Framework’, 2011.</i></p>
Criterion 6.8	<p><i>Examples of compliance can be appropriate documentation (e.g. job advertisements, job descriptions, appraisals, etc.), and/or information obtained via interviews with relevant stakeholders such as affected groups which may include women, local communities, foreign workers, and</i></p>

	<p><i>migrant workers, etc.</i></p> <p><i>Notwithstanding national legislation and regulation, medical conditions should not be used in a discriminatory way.[...]</i></p>
Criterion 6.13	<p><i>See also Criterion 6.3.</i></p> <p><i>All levels of operations will include contracted third parties (e.g those involved in security).</i></p> <p><i>Note: From the UN Guiding Principles on Business and Human Rights: “The responsibility of business enterprises to respect human rights refers to internationally recognised human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work” (“The corporate responsibility to respect human rights” in Guiding Principles on Business and Human Rights).</i></p> <p><i>The RSPO WG on Human Rights will provide a mechanism to identify, prevent, mitigate and address human rights issues and impacts. The resulting Guidance will identify the relevant issues on human rights to all RSPO Members.</i></p>
Criterion 7.1	<p><i>It is recognised that oil palm development can cause both positive and negative impacts. These developments can lead to some indirect/secondary impacts which are not under the control of individual growers and millers. To this end, growers and millers should seek to identify the indirect/secondary impacts within the SEIA, and where possible work with partners to explore mechanisms to mitigate the negative indirect impacts and enhance the positive impacts.</i></p> <p><i>The potential impacts of all major proposed activities should be assessed in a participatory way prior to development.</i></p>
Criterion 7.3	<p><i>[...] Once established, new developments should comply with Criterion 5.2.</i></p>
Criterion 7.5	<p><i>[...] Free, prior and informed consent (FPIC) is a guiding principle and should be applied to all RSPO members throughout the supply chain. Refer to RSPO approved FPIC guidance (‘FPIC and the RSPO; A Guide for Companies’, October 2008).</i></p> <p><i>Customary and user rights will be demonstrated through participatory user mapping as part of the FPIC process.</i></p>
Criterion 7.6	<p><i>[...] Refer to RSPO approved FPIC guidance (‘FPIC and the RSPO; A Guide for Companies’, October 2008).</i></p>

New definitions:

Family farm	A farm operated and mostly owned by a family, for the growing of oil palm, sometimes along with subsistence production of other crops, and where the family provides the majority of the labour used. Such farms provide the principal source of income, and the planted area of oil palm is below 50 hectares in size. Work by children is acceptable on family farms, under adult supervision; when not interfering with education programmes; when children are part of the family and when they are not exposed to hazardous working conditions.
Livelihood	<p>A person's or a group's way of making a living, from their environment or in the economy, including how they provision their basic needs and assure themselves and following generations secure access to food, clean water, health, education, housing and the materials needed for their life and comfort either through their own direct use of natural resources or through exchange, barter, trade or engagement in the market. A livelihood includes not just access to resources but the knowledge and institutions that make this possible such as time for community participation and integration, personal, local or traditional ecological knowledge, skills, endowments and practices, the assets that are intrinsic to that way of making a living (e.g. farms, fields, pastures, crops, stock, natural resources, tools, machinery and intangible cultural properties) and their position in the legal, political and social fabric of society.</p> <p>The risk of livelihood failure determines the level of vulnerability of a person or a group to income, food, health and nutritional insecurity. Therefore, livelihoods are secure when they have secure ownership of, or access to, resources and income earning activities, including reserves and assets, to offset risks, ease shocks and meet contingencies.</p> <p>(Compiled from various definitions of livelihoods from DfID, IDS and FAO and academic texts from http://www.fao.org/docrep/X0051T/X0051t05.htm).</p>
Rights	<p>Rights are legal, social, or ethical principles of freedom or entitlement:</p> <ul style="list-style-type: none"> • Customary rights: Patterns of long-standing community land and resource usage in accordance with indigenous peoples' customary laws, values, customs and traditions, including seasonal or cyclical use rather than formal legal title to land and resources issued by the State. (From World Bank Operational Policy 4.10 - http://go.worldbank.org/6L01FZTD20). • Legal rights: Rights given to individual(s), entities and others through applicable local, national or ratified international laws and regulations • User rights: Rights for the use of land and resources that can be defined by local custom, mutual agreements, or prescribed by other entities holding access rights. These rights may restrict the use of particular resources to specific levels of consumption or particular harvesting techniques. (From FSC Principles & Criteria: https://ic.fsc.org/download.revised-fsc-pc-v-5-0-high-resolution.a-871.pdf) • Demonstrable rights are those rights that are demonstrated through participatory user mapping as part of an FPIC process.
Smallholders	<p>Farmers growing oil palm, sometimes along with subsistence production of other crops, where the family provides the majority of labour and the farm provides the principal source of income and where the planted area of oil palm is usually below 50 hectares in size.</p> <ul style="list-style-type: none"> • Scheme smallholders – Smallholders that may be structurally bound by contract, credit agreement or by planning to a particular mill, but the association is not necessarily limited to such linkages. Other terms commonly used for scheme smallholders include associated and/or plasma smallholders. • Independent smallholders – Smallholders that are not bound by any contract, credit agreement or planning to a particular mill

New international laws and conventions cited:

Instrument	Summary of protections
United Nations Convention Against Corruption (2000)	Promoting the development of standards and procedures to safeguard the integrity of private entities, including codes of conduct for business activities and preventing conflicts of interest. Promoting transparency. Ensuring that companies have sufficient internal auditing controls to prevent corruption.
United Nations Guiding Principles on Business and Human Rights (2011)	Businesses should respect human rights, by avoiding and/or mitigating negative impacts regardless of their size, sector of operation or ownership. They should have in place policies and procedures to ensure they respect human rights including conducting human rights due diligence which should be incorporated into how they conduct their business. They should monitor and report on the effectiveness of their operations in preventing human rights conflicts and remediate any negative impacts caused.

Annex 2: Verifiers of Compliance with Generic P&C&I

- Evidence of a social survey to identify local communities that live in or near areas of proposed concession / plantings
- Land tenure study or survey showing the company has sought to understand local systems of land ownership (especially where lands are mainly held by custom or under informal tenures and not through statutory land titling)
- Minutes or reports of meetings with local communities to identify which institutions they are choosing to represent themselves
- Evidence or letter of agreement showing company has accepted the self-chosen representatives as representing the communities
- Participatory maps showing the extent of customary lands and of any contested lands
- Survey lists of land owners, based on both customary rights mapping and land cadastres
- Participatory SEIAs
- Participatory High Conservation Value Assessment
- Evidence (letters etc.) showing that communities were provided participatory maps, SEIAs and HCV assessments in a timely fashion prior to negotiations
- Evidence that neighbouring communities (not those directly involved) have endorsed boundaries of land claims of affected groups
- Evidence that the affected communities have endorsed the maps and the findings of the SEIA and HCV assessments
- Evidence (eg signed agreement, letter of intent or Memorandum of Understanding) that the self-chosen representatives have agreed a process for FPIC-based negotiation
- Evidence that affected communities and rights-holders have access to independent information and advice concerning the legal, economic, environmental and social implications of the proposed operation
- Evidence that local peoples understand they have the right to say 'no' to operations planned on their lands at all stages of the FPIC process, from initial discussions up until an agreement is signed and ratified by these local peoples
- Drafts of negotiated texts showing there has been iterative engagement with the communities involved
- Signed agreement of acceptance by self-chosen representatives of negotiated outcome, signed and ratified by government and / or notary

- Documents showing lists of rights-holders who are entitled to compensation or other agreed benefits and payments
- Evidence that agreed compensation, payments and benefits have been made to these rights-holders
- Evidence of that benefit sharing payments are being made and/ or other elements in signed agreement
- Documents showing company has legal rights to operate in the area
- Standard Operating Procedures and/ or other documents which show that the company has a mechanism to address and resolve disputes
- Signed agreement or other proof that communities accept the conflict resolution mechanism
- Company human rights policy which includes reference to FPIC
- Evidence human rights policy has been communicated with all levels of the workforce and operations
- Evidence that the company has shared information on the RSPO mechanisms for stakeholder involvement, including on their rights and responsibilities
- Company SOP to respond constructively to stakeholders, including a specific timeframe to requests for information
- Company policy and system to ensure anonymity of complainants and whistleblowers which aims to reduce risks of reprisal

Annex 3: FPIC in international law

FPIC is a well-established principle under international law, most clearly articulated in the United Nations Declaration on the Rights of Indigenous Peoples, adopted in 2007. Some of the key articles in the Declaration are summarised below.

Free Prior and Informed Consent:

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Lands and Territories:

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

No removal and right to restitution and redress:

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Representation:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Consent based on custom:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

“... principles of consultation and consent are aimed at avoiding the imposition of the will of one party over the other, and at instead striving for mutual understanding and consensual decision-making”

Special Rapporteur on the Rights of Indigenous Peoples (2009)

Other international law instruments that also affirm the right to FPIC include the following, *inter alia*:

- **ILO Convention 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries** (1957) prohibits the removal of indigenous and tribal populations from their territories without their ‘free consent’ except ‘in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations’.
- **Convention on the Elimination of All Forms of Racial Discrimination** (1965) requires the express consent of individuals who have submitted communications (complaints) concerning state parties to reveal their identities.
- **International Covenant on Civil and Political Rights** (1966) requires consent for medical or scientific experimentation and free and full consent to enter into marriage.
- **International Covenant on Economic, Social and Cultural Rights** (1966) also requires free consent to enter into marriage.
- **The International Labour Organisation’s Convention No. 169 on Indigenous and Tribal Peoples** (1989) requires governments to carry out good faith consultations with a view to securing consent. The Convention also requires respect for indigenous peoples’ own institutions in decision-making and provides for the exercise of customary law.
- **The Convention on Biological Diversity** (1992) and its subsidiary instruments have been interpreted by state parties as requiring FPIC for the use of indigenous peoples’ and local communities’ traditional knowledge, cultural heritage, and genetic resources, and in the establishment, expansion, and management of protected areas.
- **Committee on the Elimination of Racial Discrimination** (General Recommendation No. 23, 1997) underscores that no decisions directly relating to indigenous peoples’ rights and interests can be taken without their informed consent.
- **Committee on Economic, Social and Cultural Rights** (Concluding Observations on Colombia, 2001) urged the state to consult and seek consent of indigenous peoples prior to timber, soil or subsoil projects and any public policy affecting them.
- **Akwé:Kon Guidelines for the conduct of Cultural, Environmental and Social Impact Assessments** (2004) under the Convention on Biological Diversity requires stakeholders to: use impact assessment tools at the earliest stage possible in a proposed project that may affect indigenous or local communities; ensure communities have the option to accept or oppose a proposed development; follow community protocols, customary laws and prior informed consent; and seek additional prior informed consent for any modifications to the initial proposal.
- **UN Human Rights Committee** (2006) confirmed the state obligation to seek indigenous peoples’ informed consent before adopting decisions that affect them.
- **UN Human Rights Committee** (2009) stated that effective participation of indigenous peoples in decision-making processes requires free, prior and informed consent, not mere consultation.
- **Special Rapporteur on the rights of Indigenous Peoples** (2009) acknowledged that the state duty to consult with indigenous peoples aims to reverse the historical pattern of exclusion from decision-making and that it applies whenever a state decision may affect indigenous peoples in ways not felt by others in society; the consultation or consent procedure (for example, design, implementation, and financial and technical assistance) should also be the product of consensus.
- **Nagoya Protocol on Access and Benefit Sharing** (2010) requires the establishment of prior informed consent and mutually agreed terms, considering customary laws and community protocols and procedures.
- **Expert Mechanism on the Rights of Indigenous Peoples** (2011) stated that the duty to obtain FPIC is both procedural and substantive and it must be undertaken in good faith and with mutual

trust and transparency; FPIC is a crucial element of the right to self-determination that entitles indigenous peoples to determine the outcome of decision-making, not just be involved. The constituent elements of FPIC are interrelated, and violation of one may invalidate the agreement.

- **UN Guiding Principles on Business and Human Rights** (2011) suggests that human rights due diligence before a proposed project assesses the actual and potential human rights impacts, including through meaningful consultation with affected groups, and requires consultation on the design and performance of non-judicial grievance mechanisms.
- **Special Rapporteur on the Rights of Indigenous Peoples** (2012) contended that consultation and FPIC are best conceptualised as “safeguards”, and that other safeguards include impact assessments, mitigation measures, benefit sharing, and compensation.
- **The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security** (2012) require good faith consultations before any project or legislative or administrative measures affecting communities’ rights or resources, through representative institutions, to obtain FPIC in line with UNDRIP.
- **International Finance Corporation’s Performance Standard 7 on Indigenous Peoples** (2012) requires FPIC when a project impacts or involves relocation from customary lands and resources, or significantly impacts cultural resources that are critical to the peoples’ identity and/or cultural, ceremonial, or spiritual aspects; it also requires engagement with representative bodies, sufficient time for decision-making, and inclusion of vulnerable groups such as women and youth.
- **UN Global Compact’s Draft Business Reference Guide to UNDRIP** (2012) states that if a group self-identifies as indigenous, companies should proceed on this basis with seeking FPIC, even if not required by the government, and that if FPIC is granted, engagement and communication must continue throughout.

In addition to international instruments, FPIC has been considered in a number of decisions of regional and national courts, particularly in the context of natural resource exploitation on indigenous peoples’ territories. They have fleshed out the parameters for consultation vis-à-vis FPIC and procedural requirements, and underscored that respecting and upholding international obligations requires a comprehensive and integrated rights-based approach. A few examples are set below:

- ***Saramaka v. Suriname*** (2006-2007): the Inter-American Commission on Human Rights underscored that given the developments in international human rights law, indigenous peoples’ consent to natural resource exploitation on their traditional territories is “always required by law”. The subsequent judgment of the Inter-American Court of Human Rights ordered Suriname to grant collective title and recognise communal property, stating that the Saramaka have the right to self-determination and to exclude any activities that adversely affect their lands and resources, and that FPIC is required for any large-scale project (or cumulative impact of small projects) that could affect the integrity of indigenous peoples’ lands and territories.
- ***Endorois Welfare Council v. Kenya*** (2010): the African Commission on Human and Peoples Rights confirmed that the state has a duty to consult and obtain FPIC according to the community’s customs and traditions for any activities that would have a major impact on their territory, that indigenous peoples who have lost possession of traditional lands maintain their property rights and are entitled to restitution, and that positive measures are needed to ensure effective participation of minority communities in decisions that affect them.
- ***Tsilhqot’in Nation v. British Columbia*** (2014): the Supreme Court of Canada granted the indigenous nation Aboriginal title and declared that British Columbia breached its duty to consult in good faith and accommodate Tsilhqot’in interests on land uses; declared that incursions on Aboriginal title land are only allowed with consent and that the Crown may need to reassess prior conduct (for example, cancel projects, revise inapplicable legislation).

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Annex 5: Challenges in practice

In 2012 – 2013, a coalition of NGOs including Forest Peoples Programme, carried out a comprehensive review of how FPIC is being applied in practice by oil palm companies in Asia (Malaysia, Indonesia, Thailand and the Philippines) and Africa (Cameroon, Liberia and Democratic Republic of Congo)^{xii}. This review involved fieldwork and research in the concessions in question, interviews with a range of stakeholders and analyses of relevant documentation and resources. Several of the revisions in the new RSPO standard with regards to FPIC and land rights find their rationale in the conclusions drawn from this review and a wider examination of how FPIC is (not) being put into practice by RSPO member companies. Notable improvements were identified in several of the examined cases, which can be summarised as follows^{xiii}:

- ❖ **Human rights awareness growing:** There is growing awareness among both companies and communities of the relevance of international human rights instruments to the operations and obligations of the private sector and the State with regards to indigenous peoples and local communities, particularly in relation to land rights and FPIC
- ❖ **Multi-stakeholder dialogue favoured:** Many companies have committed to dialogue, negotiation and consultation as a means of resolving disputes with, and remedying grievances of, local communities, which should pave the way for reaching mutually beneficial agreements, satisfactory to all parties
- ❖ **Company policies developed:** Some companies have now developed Codes of Conduct, conflict resolution mechanisms and Standard Operational Procedures (SOPs) in relation to human rights, land rights, FPIC, conflict resolution, social development and information sharing, to guide their activities and interaction with local communities. Some among these extend their sustainability requirements to their suppliers through regular and systematic audits of performance.
- ❖ **Guidance sought:** Some companies are seeking advice and guidance from expert organisations and individuals on human rights and FPIC, often in recognition of and to address existing conflicts resulting from previous irregularities in company practices, where these have failed to adequately take into consideration social and human rights elements in land acquisition and company operations
- ❖ **Compensation:** Compensation, largely in monetary form, for land and resources lost by local communities due to oil palm development is being paid more systematically by companies, and employment opportunities, sometimes in the form of smallholder schemes, are being offered to local communities as a means for them to benefit from this development. In some cases, lands have been enclaved from the concession area where communities have withheld their consent to oil palm.
- ❖ **Community welfare:** The provision of social welfare support, such as educational facilities, water supplies, medical health and village infrastructure, is now part of several

^{xii} Colchester & Chao 2013a.

^{xiii} For more, see FPP 2012.

companies' commitments towards local communities, as part of a broader commitment to the improvement of their wellbeing and environment

However, several challenges and weaknesses were also identified, which can be grouped as follows:

- ❖ **Representation:** Where communities are not fully informed of their right to freely choose their own representatives and representative institutions through their own decision-making processes, companies are either willingly or unwillingly consulting with individuals or institutions that do not represent the wider aspirations of the collective and lack decision-making authority and legitimacy. One-on-one consultations and consideration for individual land rights (including where these exist within broader collective tenures ie 'nested rights') are routinely prioritised over collective consultations and mapping, leading to intensified horizontal land contestations as well as tensions between companies and communities.
- ❖ **Land tenure and social surveys:** Land tenure and social surveys are rarely being carried out to identify who is living in the area and how they use and manage the land, as part of the permit acquisition process. The lack of clarity over land rights and users facilitates spurious and illegitimate claims, but also creates difficulty in distinguishing these from genuine claims, and disagreement over the basis for the distinction.
- ❖ **Collective rights in land:** Collective rights in land are not being adequately identified or participatorily mapped with local communities. Where this is done, it is often late in the land acquisition process and sometimes after permit acquisition and land conversion, or as part of conflict resolution processes once disputes over overlapping land claims have already arisen (ie mitigation rather than prevention).
- ❖ **Consent vs consultation:** Consultation with communities is widely considered as tantamount to conducting FPIC, rather than seen as a means towards seeking FPIC, with the withholding of consent accepted as a real and possible outcome of this step. In many cases, communities are finding themselves in negotiation with companies over the type and conditions for their giving consent, rather than respect for their right to say 'no' to the project going ahead on their lands. In other cases, community participation in consultations is seen as constituting consent to the wider project, rather than a means to that (possible) end.
- ❖ **Field-level FPIC awareness:** Understanding of the principle and practice of FPIC at the level of field and operational management remains low, as does understanding of the RSPO P&C more generally. Likewise, awareness of the principle and of the requirements of the RSPO by affected communities and relevant local government bodies remains low, at times hindering companies' efforts to abide by the standard, at others, undermining communities' ability to raise complaints and seek remedy where the standard has been violated.
- ❖ **Freedom of choice:** While direct coercion and intimidation may not be prominent, pressures on communities to give consent have been documented in a number of more subtle forms, including through the presence of security personnel and the army at consultations, a 'take it or leave it' approach to deals offered by the company, repeated attempts to convince communities to give their consent even where they have already said 'no', and the signing of contracts with communities where communities are not fully

informed of the contents and implications of the agreements signed. Insufficient provisions are set in place to avoid negative repercussions on whistle-blowers and complainants.

- ❖ **Access to information:** Insufficient and/or partial information is being shared with communities to inform their decision-making, and often without sufficient time given for them to digest this information, consult internally as a community, and arrive at a collective decision through their own decision-making mechanisms. Provision of access to independent legal and non-legal support and expertise for communities is also regularly lacking, and often information and resource persons are only shared once a problem has arisen, rather than pro-actively and pre-emptively as part of broader transparency and accountability principles.
- ❖ **Remedy and conflict resolution:** Few companies have developed grievance mechanisms that are accessible to local communities in cases of conflict and disputes, and even fewer have been developed in cooperation with communities to ensure that the mechanism is mutually satisfactory. Where conflict resolution is underway, the focus on company practice improvement in the future sometimes leads to a tendency for remedy for past wrongs to be insufficiently taken into account (for instance, increase in smallholdings but no remedy for formerly destroyed community property and crops). A limitation of the standard itself is the fact that efforts towards conflict resolution are considered as sufficient basis for compliance with the P&C in certification audits, rather than outcomes of the conflict resolution process itself^{xiv}.
- ❖ **Compensation:** Compensation, where given, tends to be understood only in terms of monetary compensation, rather than alternative options that communities may voice preference for, such as land restitution or excision. The broader range of possible forms of compensation (eg rehabilitation, satisfaction and guarantees of non-repetition, co-management models) has been insufficiently explored to date.
- ❖ **Community ESIA participation:** Social Impact Assessments and HCV Assessments are generally failing to sufficiently involve local communities and to represent the wide range of interests and land uses that each and different neighbouring communities may embody. These include the interests of women, the landless, youth, the elderly, migrants and other groups. In some cases, and due to lack of time and resources, SIAs and HCVAs have focused on specific areas within targeted concession areas and extrapolated the results to the wider concession, without wider field surveys or direct interaction with all affected communities through their self-chosen representatives. HCVAs are generally failing to survey loss of areas critical to local economies (HCV5) and culture (HCV6) that resulted from previous conversion of community forests and gardens to oil palm plantations.
- ❖ **FPIC as a process:** There is a tendency to perceive FPIC as a one-off ‘tick the box’ process, rather than an iterative process of consultation, negotiation, framing and reaching agreement, monitoring, verification and evaluation. The signing of agreements with communities, for instance, is often seen as the final step of the process, rather than one stage in a longer term interaction, where actors, needs and grievances may arise and change over time.

^{xiv} See Annex 1 for language pertinent to conflict resolution in revised RSPO standard.

- ❖ **The role of NGOs:** While NGOs are in some cases playing an important and necessary role as advisors and facilitators to local communities in their decision-making process, weaknesses in community representation (whether arising from within the community itself or resulting from the way FPIC is carried out by companies as per point 1 above) can lead to the risk of NGOs being perceived as speaking on behalf, or as representatives, of communities, without the necessary mandate. At the same time, the lack of access to information and company grievance mechanisms contributes to the ongoing fact that without NGO engagement, most communities are unable to activate such mechanisms or seek redress where rights have been violated.

- ❖ **Inherited legacies:** When companies acquire concessions where there is ongoing conflict with local communities as a result of the operations and lack of FPIC by the previous concession owners/managers, there is lack of clarity as to the obligations of the new concession holders to provide remedy for past wrongs that do not result from their own activities. This is a significant challenge that has yet to be addressed directly in the RSPO standard.

Annex 6: FAQs

? What percentage should consent be set at?

Rather than imposing a minimum percentage or threshold for consent or what counts as a significant majority/minority, the project proponent should ascertain what are the community's own mechanisms for reaching and verifying collective consent, as this is likely to vary depending on the composition and culture of the community in question. Given that FPIC is a collective right, any thresholds should be discussed with and mutually agreed with the community as part of the consent-seeking process (not just the negotiation phase, as communities should give their consent to all stages and interactions in the process). Such thresholds can be formalised following broad consultations, and can be made specific to particular aspects of the FPIC process as well as in terms of overall consent to the project. As a general rule, if the project proponent is aware that a significant minority are opposed to the project going ahead, or that consensus over the project is proving impossible to reach within the community, it is wiser to assume that implementation will face similar if not exacerbated problems, and thus it is probably best not to go ahead. [For more, see Box 'Quantitative and qualitative measures of consent' and Guide 7 'Ensuring there is consent'.](#)

? What if communities' land rights are not recognised by the government?

The RSPO standard requires that RSPO companies identify and document the rights of indigenous peoples and other local communities, regardless of whether these are formally recognised by the government or not. Where local people can demonstrate that they have either legal (rights given to individual(s), entities and others through applicable local, national or ratified international laws and regulations), customary (patterns of long-standing community land and resource usage in accordance with indigenous peoples' customary laws, values, customs and traditions, including seasonal or cyclical use rather than formal legal title to land and resources issued by the State) and/or user (rights for the use of land and resources that can be defined by local custom, mutual agreements, or prescribed by other entities holding access rights. These rights may restrict the use of particular resources to specific levels of consumption or particular harvesting techniques) rights, then these need to be taken into account in participatory mapping, ESIA, HCVA, consultations, negotiations and compensation agreements. Efforts should be made to inform the local government bodies of the requirements upon companies under the RSPO standard to recognise informal and customary rights even where titles are not held by those communities. [See Guide 3 'Identifying prior rights to land' and Diagram 2 'Possible types of land users'.](#)

? Is consultation, or *sosialisasi*, the same as FPIC?

No: consultation is an important element in the consent-seeking process, and should be carried out iteratively, but is not in itself sufficient to demonstrate that the right of communities to give or withhold their consent has been respected. Even after extensive consultation, communities still have the right to say 'no' to the proposed project, and

participation in consultation in itself should not be taken as indicative of consent to the project, but rather an essential dimension in the seeking of this consent. [For more, see ‘What is Free, Prior and Informed Consent?’ in Guide.](#)

? Is FPIC a right to veto?

No: FPIC is a collective right under international law and as such the will of collective community should prevail. The question for the people themselves is to decide how their will is expressed – ie through which decision-making processes within the community do they reach a decision and through which institutions do they express their view to the outsiders. FPIC is not a right for individuals to ‘veto’ the choices of their wider group. However, it does mean that both minority and majority views needs to be understood, and that the responsibility lies with the community itself to decide which view will prevail, based on their own decision-making mechanisms. [For more, see ‘What is Free, Prior and Informed Consent?’ and ‘Who are ‘indigenous peoples’ and ‘local communities?’ in Guide.](#)

? What sources should be consulted as part of the social and land tenure surveys?

The social and land tenure surveys are critical to understanding who lives in, and uses, the area in question, to what ends, under what forms of tenures, and the socio-cultural, ethnic, economic, political, historical and economic make-up of the area. A wide range of sources should also be consulted, including but not limited to: existing social and tenure surveys, maps, government censuses and statistics and other publications, CSO publications, aerial/satellite photos and ethnographies. This should of course be complemented by on-site field visits across the targeted area and interviews with local communities, government bodies and other relevant stakeholders, such as CSOs, trade unions, women’s organisations, the police, local political parties and/or religious institutions. [See Guide 3 ‘Identifying prior rights to land’ and diagram 2 ‘Are there any local communities in or using the general area?’.](#)

? How should the FPIC process be documented?

Part of maintaining transparency and accountability in the FPIC process is to ensure that all meetings, consultations and outcomes are thoroughly documented, either in written form, recorded, video-taped, or a combination of these, as agreed beforehand with the community. The way different forms of information are publicised, where agreed, should also be agreed to with the community. Where taken, notes should be shared with the community and open to revisions and amendments before signing off, and should be shared with all the community representatives. The same goes for documents that need to be shared eg maps, MoUs, ESIA, HCVA, negotiated agreements, compensation claims and so forth. Procedures should be encouraged whereby community representatives summarise the outcomes of meetings and make information accessible to all community members. Third-party independent observers, chosen by the community, should be encouraged to attend consultations and negotiations, where agreed to by the community. Evidence should be shown that throughout the documentation of the FPIC process, indigenous peoples, local communities and other stakeholders have been enabled to express their views through their own representative institutions, in open and transparent communication with other community members. [For more, see diagrams ‘Information-sharing’, ‘Participatory mapping, ESIA and HCVA’ and](#)

[‘Negotiation’ in Guide \[RSPO requirements: Criteria 6.3, 6.4, 7.5, Indicators 6.1.1, 6.1.3, 6.2.1, 6.2.2, 6.2.3, 6.3.2, 6.4.3, 7.1.1, 7.6.1, 7.6.5\].](#)



If one purchases a concession where FPIC has not been done properly, or where there is unresolved conflict, is it the buyer’s responsibility to address and resolve these issues?

While legal frameworks will provide information as to whether responsibility is inherited by the buyer as part of the transaction, it is in the interests of the buyer, and a demonstration of good will, to ensure that they are fully aware of any ongoing disputes within the concession and any outstanding obligations or agreements, what actions have been taken to address this, and how they will seek to consult communities as to follow-up prior to the transaction finalisation. Communities need to be informed of the possibility and implications of the handover as early as possible, before the transaction takes place, rather than placed on a fait accompli once it is completed, and ideally in a three-way discussion with the community, the seller and the buyer. Consulting the local government is also recommended, as they may be able to play a role in addressing outstanding concerns. If conflict is rife and disputes have proved impossible to resolve in the past, and if the buyer does not deem it feasible to address these adequately, then it is highly unlikely that FPIC can be properly implemented as required by the RSPO standard, and as such it is probably wiser to reconsider the transaction’s sustainability, and the ability of the buyer to comply with the P&C under such circumstances. [For more, see Box ‘Legacies, divestments and handovers’ in Guide.](#)



Who are ‘indigenous peoples’ and ‘local communities’?

The term ‘local communities’ can be used to refer to a community in a particular place, where local people share common concern around local facilities, services and environment and which may at times depart from traditional or State definitions. The term ‘indigenous peoples’, as understood by modern international organisations and legal experts includes priority in time with respect the occupation and use of a specific territory; the voluntary perpetuation of cultural distinctiveness; self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and an experience of subjugation, exclusion or discrimination, whether or not these conditions persist. Both groups will tend to use and manage land in accordance with customary tenure systems and associated rights, and should therefore be treated as rights-holders over such lands and the natural resources therein, regardless of whether such rights are formal or informal. Voluntary standards such as the RSPO, which refer to both ‘indigenous peoples and local communities’, require the same processes and respect for rights of both groups by member companies, including notably in relation to respect for the right to give or withhold FPIC. [For more, see Box ‘Who are ‘indigenous peoples’ and ‘local communities?’ in Guide.](#)



Is development for communities not more important than rights?

International human rights norms are explicit in stating that indigenous peoples’ rights are under no circumstances to be construed as being contrary to the principles and purposes of the United Nations and that the lack of development may not be invoked to justify the abridgement of internationally recognized human rights. Even in ‘exceptional circumstances’ where the State may seek access to and use of indigenous territories and the resources therein,

it must satisfy a number of additional requirements. In sum, State intervention cannot override indigenous peoples' rights and their right to FPIC just by invoking the national interest alone. It is up to the community itself to decide what kind of development it wants, on what terms, and whether or not the proposed project is in line with their own aspirations and felt needs. [For more, see Box 'FPIC and the right to development' in Guide.](#)

? What are 'user' rights?

The new Principles and Criteria extend the requirement for FPIC to land 'users', a broad term that accommodates the fact that those who work the land may be very different from those who own the land. The addition also takes account of the fact that, while both owners and users may be affected by oil palm plantings, those most directly affected are likely to be those who actually make their livelihoods direct from the land as users. The RSPO defines users' rights as 'rights for the use of land and resources that can be defined by local custom, mutual agreements, or prescribed by other entities holding access rights.' The persons or entity with land use rights may include tenants, sharecroppers, farm-workers and companies with leases on State lands or in public forests. Forms of tenancy vary widely, ranging from transferable and inheritable rights which approach full ownership, to much more limited rights which endure for a specific term and / or for a specific use. Tenancies may be defined by statutory law, contracts with the owner (including the State) and / or formal or informal arrangements with the owners. Leaseholds held by corporate entities on State or public lands are also a form of land use right. Land use rights may be narrowly defined as rights, for example, to collect defined forest products, transit, seasonal occupation and use of defined assets for specified purposes. Land use rights may derive from statutory laws and ordinances, local regulations and bylaws, contracts with owners and from customary law and informal agreements. [For more, see Guide 3 'Identifying prior rights in land', 'Users' rights' and FPIC' and diagram 2 'Possible types of land users' in Guide.](#)

? Should communities be paid for their participation in the FPIC process?

Whether or not to provide a contribution to communities for participating in HCVA, ESIA, participatory mapping and consultations, can be problematic. On the one hand, this could lead community members to feel obliged or indebted to the company for cultural reasons, to lose legitimacy in their own community, or lead to co-optation, opportunism and corruption. On the other hand, community members will be giving their time and energy to the process, which impacts on their daily lives and livelihoods, and some sort of contribution would be good practice. As such it might be seen as appropriate for community representatives to receive recompense for their time and also for their community to receive recompense. In any case, such a decision needs to be made with the community in question as a collective, and great care taken to ensure that giving contributions enables rather than impedes or prejudices a transparent, open and free process. Contributions where given will need to take a form that is suited to local cultural norms and traditions. This could include company contributions in kind rather than in cash, such as food, transport to meetings, or contributions for customary rituals, and preferably not cash payments. If cash compensation is chosen by the community, this contribution should ideally be given to the community as a collective, rather than to particular individuals. [For more, see Box 'Contributions for community participation' in Guide.](#)

? When should the FPIC process end?

Rather than a linear, tick-the-box exercise, the FPIC process is an iterative one that should last throughout the lifetime of the project. FPIC does not end with the signing of an agreement by the community. Rather, it guarantees indigenous peoples and local communities a voice at every stage of development planning and implementation for projects that may affect their wider rights. Throughout project operation, the ongoing participation of communities, participatory monitoring and robust verification are required for FPIC to be upheld, as well as iterative consultations with communities to ensure that agreements made are implemented by all parties, and there are opportunities to either raise grievances or review these agreements if needed. [For more, see ‘What is Free, Prior and Informed Consent?’ and diagram ‘FPIC flowchart’ in Guide.](#)

? What if the village chief is not supported by his community?

FPIC a collective right of indigenous peoples and local communities and therefore must be sought not on a one-to-one basis but through wide consultation and community participation. While it is important to engage with local village heads, note that these should not be treated as the only or primary community representatives by default. In areas where tribal or caste systems are in place, for instance, it may be that each tribe and caste has its own representative body, who is considered more legitimate than government official village heads. In some cases, village heads are elected by the government and not by the community itself, and they should be included in consultations with the broader community, rather than engaged with on a one-to-one basis without broader involvement. Opportunism, spurious claims, elite co-optation and corruption on the part of village heads for instance can be avoided by regularly requesting to hold broad consultations with the wider community, rather than on a one-to-one basis with selected representatives, as the social pressure of a collective setting often tends to limit individual decision-making based on self-interest rather than the collective will. [For more, see Guide 2 ‘Engaging with representative organisations’.](#)

? What if the community cannot reach consent?

The consent-seeking process requires that timescales and deadlines be commensurate with the time needed for communities to absorb and discuss information, to consult and engage in decision/consensus-making processes, and to locate and benefit from suitable independent legal and technical advice. Generally, it is not appropriate for companies to expect a decision from communities at the end of a meeting, and so it is important to leave time for internal discussion and decision. A minimum ‘two-step procedure’ is advisable for such key decisions – questions and issues discussed at a first meeting, with community decision confirmed at a second meeting later on. When communities have not been able to come to an agreement, companies should give the community more time if the community requests it, and come back at an arranged future date. If inter/intra-community dissent is strong, if the community representative(s) prove to be failing the community in conveying its views and aspirations, and if the consent-seeking process is seen to be causing more trouble than productive consensus, then it is probably wisest to assume that the project should not go ahead, as these

issues are likely to aggravate and undermine the viability of the operation. [For more, see Guide 7 ‘Ensuring there is Consent’.](#)

? Legal frameworks and government demands are making it difficult to implement FPIC.

What should be done?

In some sense the *raison d’être* of voluntary schemes such as the RSPO lies in the deficiency or lack of implementation, of existing laws and regulations at the national level to secure rights, prevent deforestation and generally ensure the sustainability of private sector operation. In practice, however, this requires dialogue with the government to create enabling conditions for companies to go beyond national laws, without contravening them. Explaining the RSPO requirements to the government and what is not acceptable practice can play a key role in establishing basic rules or terms of reference to allow companies to comply with the RSPO standard. The land acquisition process, for instance, should be discussed in detail with the communities and government, along with the legal requirements on the part of the government and the project proponent, and what stage of the permit acquisition should coincide with which stages in the FPIC process. Explaining the requirement to seek FPIC to the government should also help find ensure that FPIC can be accommodated in the permit acquisition process in ways that give sufficient leverage to communities in the negotiation process. The RSPO and oil palm companies themselves can play a pivotal role in pushing for legal reform by engaging with national governments to revise laws and regulations so that RSPO members can respect the rights of communities to their customary lands and to FPIC. The example set by the HCV Indonesia Task Force of the RSPO, which seeks to better accommodate the concept of HCVs by suggesting revisions to relevant Indonesian legislation, should be replicated for other issues (including FPIC) and across other countries, to encourage the harmonisation of the law with the RSPO standard and engage strategically with ongoing and anticipated legal reforms at the national level. [See Guide 5 ‘Ensuring consent is freely given’ and ‘Concluding reflections’ in Guide.](#)

? When is ‘no’ a final ‘no’, and ‘yes’ a final ‘yes’?

Communities have the right to give or to withhold their consent at each and every stage of the FPIC process ([see ‘FPIC flowchart’ and Guide 5 ‘Ensuring consent is prior’](#)). This should be clarified to communities from the outset of interactions and reiterated throughout consultations and negotiations. It should also be agreed with the community as early as possible, where and when consent is considered to be final and the form that final consent-giving will take, which could feature a combination of customary and legal endorsement, in the presence of third parties. To ensure that consent given or withheld represents the collective will of the community where it comes to collective rights and decision-making, it is important to leave adequate time and provide comprehensive resources to communities to reflect, digest information and consult internally prior to the final consent stage. Thorough documentation of stages of consent given and withheld over each issue discussed is an important part of maintaining the transparency and accountability of the process, and avoiding problematic repercussions at later stages in the process.

The RSPO is an international non-profit organization formed in 2004 with the objective to promote the growth and use of sustainable oil palm products through credible global standards and engagement of stakeholders.

www.rspo.org

RSPO SECRETARIAT SDN BHD

(787510-K)

Unit A-37-1, Level 37, Tower A,
Menara UOA Bangsar
No. 5 Jalan Bangsar Utama 1,
59000 Kuala Lumpur

T +603 2302 1500

F +603 2302 1542

E rspo@rspo.org

RSPO

Roundtable on Sustainable Palm Oil