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**RSPO FREE, PRIOR AND  
INFORMED CONSENT (FPIC)  
GUIDE (2022)**

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## Contents

LIST OF ABBREVIATIONS .....	v
GLOSSARY.....	vi
NOTE FOR USERS .....	9
Who is the Guide for?.....	9
Purpose of the FPIC Guide .....	9
How to Read the FPIC Guide.....	10
FPIC IN THE 2018 RSPO PRINCIPLES AND CRITERIA (P&C) .....	11
The New Planting Procedure (NPP) .....	11
PART A: OVERVIEW OF FPIC.....	12
Introduction to FPIC .....	12
What is FPIC? .....	12
Why is FPIC important?.....	12
When is FPIC Required?.....	13
Who is Responsible for FPIC? .....	13
Key Roles of Participants Involved in FPIC.....	13
Engagement with Indigenous Peoples and Local Communities .....	15
The Elements of Consent.....	16
Ensuring Consent is Freely Given.....	16
Ensuring Consent is Prior.....	16
Ensuring Consent is Informed.....	17
Ensuring there is Consent.....	18
PART B: IMPLEMENTATION OF THE FPIC PROCESS.....	21
FPIC at a Glance .....	21
How to Carry out the FPIC process.....	21
STAGE 1: PREPARATION AND INVESTIGATION .....	26
Identify and Engage with any affected Indigenous Peoples and Local Communities, and other users .....	26
Early Consultations.....	26
Engaging Representative Organisations.....	27
STAGE 2: ASSESSMENTS.....	29
Identifying Prior Rights to Land and Other Resources.....	30
Land Tenure and Use Assessment.....	32
Participatory Mapping .....	34
Social and Environmental Impact Assessment (SEIA).....	36
Integrated High Conservation Value-High Carbon Stock Approach (HCV-HCSA) Assessment .....	39
High Conservation Values (HCV) .....	40
High Carbon Stock Approach (HCSA).....	41
STAGE 3: NEGOTIATION.....	43
Consultations in Good Faith .....	43
Signed Negotiated Agreements between Parties .....	44
STAGE 4: IMPLEMENTATION AND MONITORING .....	46
Participatory Monitoring.....	46
Grievance Mechanism.....	47
Conflict Resolution Mechanism.....	48
Operationalising the Grievance Mechanism and Conflict Resolution Mechanism.....	49
Social Remediation for Loss of HCVs .....	52

<b>STAGE 5: VERIFICATION .....</b>	<b>54</b>
<i>Internal Assessment of Compliance with RSPO FPIC Requirements.....</i>	<i>54</i>
<b>ANNEX 1: GUIDANCE ON BOUNDARIES AND BUFFER ZONES FOR FPIC .....</b>	<b>57</b>
<i>Buffer Zones .....</i>	<i>57</i>
<b>ANNEX 2: FPIC IN INTERNATIONAL LAW .....</b>	<b>59</b>
<b>ANNEX 3: FREQUENTLY ASKED QUESTIONS (FAQs).....</b>	<b>61</b>
<b>ANNEX 4: CHALLENGES AND CONCLUDING REFLECTIONS FROM STAKEHOLDERS IN THE DEVELOPMENT OF THIS GUIDANCE .....</b>	<b>62</b>

## LIST OF ABBREVIATIONS

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<b>ALS</b>	Assessor Licensing Scheme
<b>CB</b>	Certification Body
<b>CSO</b>	Civil Society Organisation
<b>FPIC</b>	Free, Prior and Informed Consent
<b>GHG</b>	Greenhouse Gas
<b>HCSA</b>	High Carbon Stock Approach
<b>HCV-HCSA</b>	High Conservation Value-High Carbon Stock Approach
<b>HCVN</b>	High Conservation Value Network
<b>ILO</b>	International Labour Organization
<b>ILO 169</b>	ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries
<b>MoU</b>	Memorandum of Understanding
<b>NGO</b>	Non-Governmental Organisation
<b>NPP</b>	New Planting Procedure
<b>P&amp;C</b>	Principles and Criteria
<b>RSPO</b>	Roundtable on Sustainable Palm Oil
<b>SEIA</b>	Social and Environmental Impact Assessment
<b>SOP</b>	Standard Operating Procedure
<b>UNDRIP</b>	United Nations Declaration on the Rights of Indigenous Peoples
<b>UoC</b>	Unit of Certification

<b>Affected Communities<sup>1</sup></b>	All communities that are likely to be affected directly and significantly by the proposed development, i.e. those with land holdings and usage rights within the affected area must be included in the assessment and FPIC process. Other communities that are likely to be affected only indirectly, such as by possible longer-term changes to the ecosystem services provision due to the water usage of the operation for example, also need to be taken into account.
<b>Associated Development<sup>2</sup></b>	Development includes establishing mills, kernel crushers, nurseries, housing/camps and offices, roads/tracks, drainage, effluent treatment plants, fruit collection centres, terracing, earthworks, scheme smallholdings/outgrower plots and any other development relevant to the operations of the new oil palm development.
<b>Development Activities</b>	Refer to any new plantings or plantation-related operations, expansions or infrastructure managed by the UoC that may affect or concern indigenous peoples, local communities and/or other land users.
<b>High Conservation Value (HCV) areas<sup>3</sup></b>	<p>The areas necessary to maintain or enhance one or more High Conservation Values (HCVs):</p> <p><b>HCV 1 – Species diversity:</b> Concentrations of biological diversity, including endemic species and rare, threatened or endangered (RTE) species that are significant at global, regional or national levels.</p> <p><b>HCV 2 – Landscape-level ecosystems, ecosystem mosaics and Intact Forest Landscapes (IFL):</b> Large landscape-level ecosystems, ecosystem mosaics and IFL that are significant at global, regional or national levels, and that contain viable populations of the great majority of the naturally occurring species in natural patterns of distribution and abundance.</p> <p><b>HCV 3 – Ecosystems and habitats:</b> RTE ecosystems, habitats or refugia.</p> <p><b>HCV 4 – Ecosystem services:</b> Basic ecosystem services in critical situations, including protection of water catchments and control of erosion of vulnerable soils and slopes.</p> <p><b>HCV 5 – Community needs:</b> Sites and resources fundamental for satisfying the basic necessities of local communities or indigenous peoples (for livelihoods, health, nutrition, water, etc.), identified through engagement with these communities or indigenous peoples.</p> <p><b>HCV 6 – Cultural values:</b> Sites, resources, habitats, and landscapes of global or national cultural, archaeological or historical significance, and/or of critical cultural, ecological, economic or religious/sacred importance for the traditional cultures of local communities or indigenous peoples, identified through engagement with these local communities or indigenous peoples.</p>
<b>Human Rights Defenders (HRD)<sup>4</sup></b>	Individuals, groups and associations who promote and protect universally recognised human rights and contribute to the effective elimination of all forms of violations of human rights and fundamental freedoms of individuals and peoples. This definition includes environmental HRD, whistleblowers, complainants, and community spokespersons. This definition does not include those individuals who commit or propagate violence.

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<sup>1</sup> Guide on the High Carbon Stock Approach Requirements for the RSPO (2022), Glossary, pg. 2.

<sup>2</sup> RSPO New Planting Procedure (NPP) 2021, Annex 1. Definitions, pg. 21.

<sup>3</sup> RSPO Principles and Criteria (2018), Annex 1: Definitions, pg. 71-72.

<sup>4</sup> RSPO Principles and Criteria (2018), Annex 1: Definitions, pg. 72.



<b>Independent Mill<sup>5</sup></b>	A mill operating independently and with no legal relationship to any specific plantation. This includes through parent or sister companies.
<b>Indigenous Peoples<sup>6</sup></b>	<p>Indigenous peoples are inheritors and practitioners of unique cultures and ways of relating to people and the environment. They have retained social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live. Despite their cultural differences, indigenous peoples from around the world share common problems related to the protection of their rights as distinct peoples.</p> <p>Indigenous peoples have sought recognition of their identities, way of life and their right to traditional lands, territories and natural resources for years, yet throughout history, their rights have always been violated. Indigenous peoples today are arguably among the most disadvantaged and vulnerable groups of people in the world. The international community now recognises that special measures are required to protect their rights and maintain their distinct cultures and way of life.</p>
<b>Local Communities<sup>7</sup></b>	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.
<b>New Planting<sup>8</sup></b>	Planned or proposed planting on land not previously cultivated with oil palm.
<b>Rights<sup>9</sup></b>	<p>Rights are legal, social or ethical principles of freedom or entitlement, in accordance with the International Bill of Rights and other relevant international human rights instruments, including the UN Declaration on the Rights of Indigenous Peoples, UN Guiding Principles on Business and Human Rights, the Global Compact for Safe, Orderly and Regular Migration.</p> <ol style="list-style-type: none"> <li>1. <u>Customary rights</u>: 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.</li> <li>2. <u>Legal rights</u>: Rights given to individual(s), entities and others through applicable local, national or ratified international laws and regulations.</li> <li>3. <u>User rights</u>: 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.</li> <li>4. <u>Demonstrable rights</u>: Indigenous peoples, local communities and users may have informal or customary rights in land that are not registered or recognised by the government or national laws. Demonstrable rights are distinguished from spurious claims by direct engagement with local communities, so they have adequate opportunities to justify their claims, and are best ascertained through participatory mapping with the involvement of neighbouring communities.</li> </ol>
<b>Stakeholders<sup>10</sup></b>	An individual or group with a legitimate and/or demonstrable interest in, or who is directly affected by, the activities of an organisation and the consequences of those activities.
<b>Unit of Certification (UoC)<sup>11</sup></b>	The Unit of Certification shall be the mill and its supply base and shall include both directly managed land (and estates) and scheme smallholders and outgrowers,

<sup>5</sup> RSPO Supply Chain Certification Systems 2020, 2. Definitions, pg. 4.

<sup>6</sup> RSPO Principles and Criteria (2018), Annex 1: Definitions, pg. 73.

<sup>7</sup> Free, Prior, and Informed Consent Guide for RSPO Members (2015), pg. 23.

<sup>8</sup> RSPO Principles and Criteria (2018), Annex 1: Definitions, pg. 76.

<sup>9</sup> RSPO Principles and Criteria (2018), Annex 1: Definitions, pg. 78 - 79.

<sup>10</sup> RSPO Principles and Criteria (2018), Annex 1: Definitions, pg. 81.

<sup>11</sup> RSPO Principles and Criteria (2018), Annex 1: Definitions, pg. 81.

where estates have been legally established with proportions of lands allocated to each of them.

### **Acknowledgement**

We are grateful for the wide network of RSPO members, civil society organisations (CSOs), and local communities across Southeast Asia, Africa and Latin America who have contributed significantly to the revision of the FPIC Guide by sharing their experiences, lessons learned and recommendations with us. Input from RSPO’s FPIC subgroup, certification bodies (CBs) and RSPO staff were also incorporated. The research and writing of this report were funded by the RSPO. This document has “open access” and may be reproduced with appropriate acknowledgements of RSPO. Prior to publication, this guide also incorporated further amendments based on the comments received and inputs from a public comment period held from April 2021 to May 2021, prior to submission to the RSPO Secretariat and the Standard Standing Committee for adoption.



## NOTE FOR USERS

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### Note:

- The recommendations provided in this guide are generic and intended for broad application by RSPO members. In each case, the local realities and contexts including the socio-economic, political, historical and cultural makeup of the region, local communities and country in question need to be considered, as well as the national interpretation requirement where applicable. Certain steps may require additional attention and time, depending on the context.
- This document is a revision of the Free, Prior, and Informed Consent Guide for RSPO Members (2015) and reflects the FPIC requirements of the 2018 P&C.

### WHO IS THE GUIDE FOR?

This guide is intended to be used by RSPO members, concessionaires and private landowners, and when opening land for new planting. Indigenous Peoples, Local Communities, and other users may also use this document (RSPO FPIC Guide 2022) as a reference in understanding RSPO's FPIC process and requirements.

Any RSPO member who is to comply with the RSPO's FPIC requirements shall refer to the most updated RSPO Principles and Criteria (P&C). A secondary reference shall be this document (RSPO FPIC Guide 2022), which provides guidelines and recommendations to assist members in achieving compliance to ease the planning and implementation of FPIC within their Unit of Certification (UoC).

In cases where there is doubt regarding the RSPO's FPIC requirements, the latest revision of RSPO's FPIC Guide and the most updated RSPO P&C should be the default reference. Recommendations as a result of approved HCV-HCSA assessments under the HCVN ALS quality review process should be taken into account by RSPO members.

### Note:

The RSPO Code of Conduct for Members of the Roundtable on Sustainable Palm Oil<sup>12</sup> states:

**3.2 Members to whom the P&C do not apply directly will implement parallel standards relevant to their own organisation, which cannot be lower than those set out in the P&C.**

### PURPOSE OF THE FPIC GUIDE

The purpose of the FPIC Guide is to assist members in understanding the **FPIC requirements of the 2018 P&C** in a simplified manner and to apply a practical approach in implementing FPIC. Following the steps provided in this guide, RSPO members will be able to:

- Understand and align with the new requirements of the FPIC principles in the updated 2018 P&C.
- Practically implement an effective and meaningful FPIC process with the communities affected by the development within the UoC.
- Overcome challenges faced in the implementation of the FPIC process with Affected Communities.
- Address and mitigate potential conflicts that may be faced during FPIC implementation and provide practical tools or methods to conduct FPIC.

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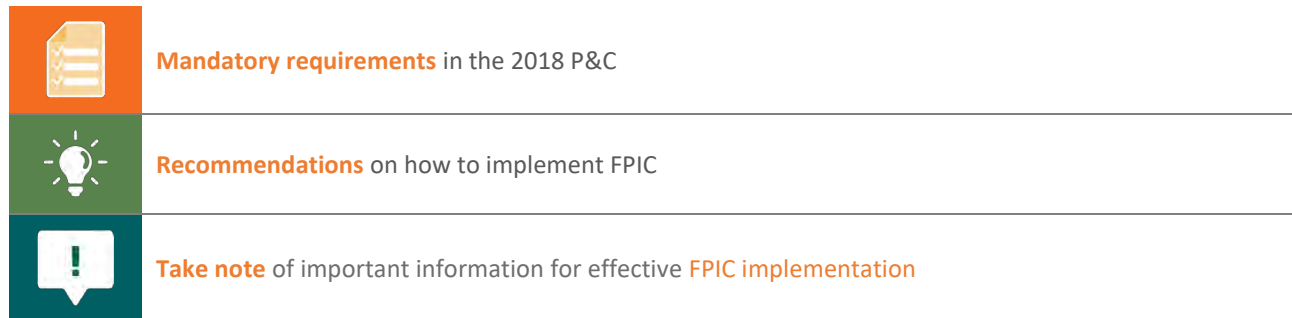
<sup>12</sup> RSPO Code of Conduct for Members 2017 - 3. Implementation, item 3.2, pg. 2.

## HOW TO READ THE FPIC GUIDE

This guide is set out in **two (2)** parts:

**Part A: Overview of FPIC** – introduces the concept of Free, Prior and Informed Consent (FPIC) and its respective elements.

**Part B: Implementation of the FPIC Process** – outlines a categoric and systematic approach to implementing FPIC. Figure 1 (below) outlines three (3) types of information that appear in boxes throughout the guide:



*Figure 1. How to read the FPIC Guide*

## FPIC IN THE 2018 RSPO PRINCIPLES AND CRITERIA (P&C)

- The FPIC requirements in the RSPO P&C apply to current operations and new plantings.
- The RSPO P&C apply to all production level companies, for example, all mills, which do not fall under the definition of independent mill as outlined in the RSPO Supply Chain Certification (SCC) Standard; and to all growers who do not meet the definition of Independent Smallholder, or the applicability requirements as outlined in the 2019 RSPO Independent Smallholder (ISH) Standard and therefore cannot apply the 2019 ISH Standard. These are referred to as the UoC. (Preamble 1. Scope).
- The primary requirement of FPIC is found in Criteria 4.4 of the 2018 RSPO P&C. Annex 2 states: “FPIC is a guiding principle and should be applied to all RSPO members throughout the supply chain”.
- Where RSPO standards differ from local laws, the higher/stricter of the two shall prevail, and national interpretations are required to develop a list of applicable laws. (Preamble 1. Scope).
- Compliance with the 2018 RSPO P&C and all requirements as outlined in associated documents are required for certification to be awarded.

### THE NEW PLANTING PROCEDURE (NPP)

The New Planting Procedure (NPP) consists of a set of processes that involves assessments to be conducted by the UoC followed by a verification by certification bodies (CB) prior to any new oil palm development. **The UoC shall** determine where the FPIC process is required to be applied to the plans for new plantings. **The UoC is required** to submit the NPP to RSPO prior to any new oil palm plantings and associated developments.

When a UoC submits the NPP report to RSPO, it shall demonstrate that the FPIC process is properly established, and the plan has been accepted by the Affected Communities. The community engagement and FPIC process **shall continue** during all steps of the NPP process, and local people should have free access to the results of the various assessments, studies and mapping exercises, which will inform their ultimate decision to grant or withhold consent for the planned development.

For further information, refer to 2.3 Stakeholder Engagement and FPIC Process in the **RSPO New Planting Procedure (2021)**.



#### Mandatory requirements

Key NPP References in the 2018 P&C

- **4.5** No new plantings are established on local peoples’ land where it can be demonstrated that there are legal, customary or user rights, without their FPIC. This is dealt with through a documented system that enables these and other stakeholders to express their views through their own representative institutions.
- **3.4** A comprehensive Social and Environmental Impact Assessment (SEIA) is undertaken prior to new plantings or operations, and a social and environmental management and monitoring plan is implemented and regularly updated in ongoing operations.
- **3.4.1 (C)** In new plantings or operations including mills, an independent SEIA, undertaken through a participatory methodology involving the affected stakeholders, and including the impacts of any smallholder/outgrower scheme is documented.
- **7.12.2 (C)** HCVs, HCS forests and other conservation areas are identified as follows:
  - b) Any new land clearing (in existing plantations or new plantings) after 15 November 2018 is preceded by an HCV-HCS assessment, using the HCSA Toolkit and the HCV-HCSA Assessment Manual. This will include stakeholder consultation and take into account wider landscape-level considerations.

#### Note:

- For 3.4.1 (C), SEIA may differ in forms in different regions to comply with the national requirements in terms of updating the assessment.
- For 7.12.2 (C) b), companies planning for new oil palm plantings (excluding land re-clearing and accepted scenarios<sup>13</sup>) and/or associated development shall conduct integrated HCV-HCSA assessments.

<sup>13</sup> Refer to the NPP 2021, pg. 5-6. See also: RSPO Principles and Criteria (2018), Annex 2: Guidance - Indicator 7.12.2, pg. 113 and Annex 5: Transition from HCV to HCV-HCS Assessment, pg. 133 - 134.

## PART A: OVERVIEW OF FPIC

### INTRODUCTION TO FPIC

#### What is FPIC?

FPIC is the right of Indigenous Peoples, Local Communities, and other users 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 may be communicated through communities' freely chosen representatives.

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 consultation and customary decision-making processes of Indigenous Peoples, Local Communities, and other users.

It should be **informed**, meaning that communities must have access to and be provided with comprehensive and impartial information on the project prior to providing their consent.



**FREE:** without any coercion



**PRIOR:** before any development



**INFORMED:** providing all relevant information in appropriate form and languages



**CONSENT:** right to say "no"

#### Why is FPIC important?

FPIC is like knocking on someone's door and asking for permission before you enter. The form of engagement that particular communities choose in order to represent themselves, carry out their internal deliberations and reach decisions, is their own choice and will be shaped by their traditions, cultural norms, customary laws and systems of organisation. The Standard Operating Procedures (SOPs) of the UoC need to be flexible enough to adapt to and respect such local variables.

- FPIC is an established principle in international law, articulated in the International Labour Organization Convention No. 169 (ILO 169) on Indigenous and Tribal Peoples, 1989,<sup>14</sup> and the United Nations Declaration on the Rights of Indigenous Peoples, 2007 (see Annex 2: *FPIC in International Law*).<sup>15</sup>
- International human rights laws and business best practice recognise that even though national legal frameworks may provide little to no protection of customary rights to land, development activities that may affect Indigenous Peoples shall not take place without first obtaining consent and allowing communities the recognition of their prior rights to the land and of their right to control what happens on that land.<sup>16</sup>

<sup>14</sup> International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169).

<sup>15</sup> United Nations Declaration on the Rights of Indigenous Peoples (2007).

<sup>16</sup> Adapted from United Nations Declaration on the Rights of Indigenous Peoples (2007).

Failing to respect Indigenous Peoples, Local Communities, and other users right to FPIC introduces significant risks to UoCs, as shown below:



### When is FPIC Required?


It is required only where legal, customary or user rights to the land (or water, passage, or other user rights related to the land) are going to be affected. In cases where no legal, customary or user rights are going to be affected, no FPIC is needed. The UoC should assume that if Indigenous Peoples and Local Communities are in an area to be used for palm oil production, then FPIC will be required. Refer to Annex 1: Guidance on Boundaries and Buffer Zones for FPIC.

### Who is Responsible for FPIC?



- The UoC is responsible for the implementation of FPIC prior to palm oil production. Assessment may be aided by consultancies to ensure the quality of assessments, but the ownership of the process and the awareness of the FPIC must be borne by the UoC.
- In relation to scheme smallholders and outgrowers, the UoC is responsible for ensuring FPIC is conducted, as it must obtain the certification related to scheme smallholders and outgrowers within three (3) years of obtaining its own certificate (see Section 5.1.3 in RSPO Certification Systems 2020).

### Key Roles of Participants Involved in FPIC<sup>17</sup>

Prior to beginning the FPIC process, it is important to identify all stakeholders involved to avoid costly reworking or additional processes required if done incorrectly from the start.

<p><b>Unit of Certification</b></p> 	<ul style="list-style-type: none"> <li>• The UoC plays the most active role in the process, as they have the ultimate responsibility to ensure that FPIC is obtained in good faith.</li> <li>• In countries where FPIC is a part of national or regional law and/or where FPIC processes are led by governments, to assess the legitimacy of processes that were followed.</li> <li>• Develop an engagement and consultation plan with Indigenous Peoples, Local Communities, and other users in the area of palm oil production.</li> <li>• Engage independent advisors, based on the specific concerns and needs of Indigenous Peoples, Local Communities, and other users in the area of palm oil production. Care must be taken to ensure that these parties understand the cultural context and have the necessary experience and trusted access to the Affected Communities.</li> </ul>
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<sup>17</sup> This list outlines the key roles and is not intended to be exhaustive.

	<ul style="list-style-type: none"> <li>• Provide all relevant information and documents to Affected Communities.</li> <li>• Ensure identification and assessment of impact on the rights of Indigenous Peoples, Local Communities, and other users through the participatory SEIA, participatory land tenure and use study, and participatory mapping.</li> <li>• Ensure documentation of discussions and consultations are recorded, including copies of documents evidencing agreement-making processes and negotiated agreements detailing the FPIC process.</li> </ul>
<p><b>Government Representatives</b></p> 	<ul style="list-style-type: none"> <li>• In some countries, specific government agencies are tasked with protecting the right to FPIC.</li> <li>• Provide data to assist the UoC to develop an effective FPIC implementation process.</li> </ul>
<p><b>Community Appointed Advisors</b></p> 	<p><b>Experts/Technical advice:</b></p> <ul style="list-style-type: none"> <li>• Examples of experts may include individuals/organisations well versed in social, cultural, economic, political, historical, land tenure and livelihoods aspects of communities and are equipped with a wide range of skills (for instance, a land expert, a social anthropologist, an economist, or a local person who speaks the local language).</li> <li>• The primary role of experts would be to provide Indigenous Peoples, Local Communities, and other users with relevant information so that they will be able to make an independent and informed decision on matters related to their land rights.</li> </ul> <p><b>Third Parties:</b></p> <ul style="list-style-type: none"> <li>• Examples of third parties include lawyers, NGOs and religious bodies, to help with assessments, contracts and technical parts of the negotiation process. The community may choose to invite them to assist in their decision-making process.</li> <li>• The primary role of third parties would be to assist Indigenous Peoples, Local Communities, and other users on representation, to allow for a more informed and independent voice, during communication with the UoC, and to ensure that negotiations are carried out fairly.</li> <li>• The roles of third parties may differ, depending on the nature and function of the third party, and the purpose of the communication or negotiation. <ul style="list-style-type: none"> <li>○ For example: <ul style="list-style-type: none"> <li>▪ An Intermediary Organisation (IMO) may assist Local Communities to facilitate information-sharing, legal and paralegal support, capacity building and access to the RSPO's conflict resolution mechanisms.</li> <li>▪ 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 it is recommended that these relationships be formalised to ensure the legitimacy and accountability of these IMOs towards the community (e.g., an MoU).</li> </ul> </li> </ul> </li> <li>• Anyone who offers advice or helps the local community in the decision-making process must be independent of the UoC involved to eliminate any bias and avoid a conflict of interest.</li> <li>• Where third parties are involved, it is important for communities to determine the role that third parties play, the extent of their mandate, and most</li> </ul>

importantly, whether the community wants them to represent them and, if so, under what circumstances and to what extent, from the onset.

## Engagement with Indigenous Peoples and Local Communities

- It is important to seek Indigenous Peoples' and Local Communities' participation in the design of their FPIC process. They should have the power to determine how they will be engaged over the course of the consultation process and to develop their own FPIC protocol (for example, where to meet and how often, to choose their own representatives, or how to receive information - indigenous languages, oral provision of information, etc.).
- It is up to the Indigenous Peoples and Local Communities to decide whether it is culturally appropriate for non-indigenous or non-local community members to participate in their own decision-making procedures and institutions. There are many reasons why Indigenous Peoples and Local Communities may decide that it is culturally appropriate to limit meeting participation to themselves. For example, in the participatory mapping processes, this may be for the protection of their cultural, intellectual, religious and spiritual property.<sup>18</sup> Traditional knowledge may be publicly disclosed, or disclosed with limited access, or disclosed within the community or held confidentially by some members of the community.<sup>19</sup>



### Recommendations

#### Meaningful stakeholder engagement

- A fundamental aspect of any participatory process is that stakeholder involvement must be able to meaningfully affect outcomes. Where consultation outcomes are predetermined, participation only generates a sense of false accomplishment.
- In situations where a UoC is considering potential investment and acquisition involving Indigenous Peoples, Local Communities, and other users lands and rights, meaningful stakeholder engagement and involvement and FPIC processes are imperative to be conducted prior to completion.
- To avoid undermining good faith dialogue and to accommodate community views, all parties must avoid inflexibility, presented as a "take it or leave it" basis.
- In some countries where national laws or administrative practice classify significant portions of 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.
- FPIC requires that consent is obtained at each stage of the process (*as shown in the FPIC flowcharts*).

<sup>18</sup> See UNDRIP, Articles 11 and 32.

<sup>19</sup> World Intellectual Property Organization (WIPO), *Intellectual Property and Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources*, pg. 16-17.



## THE ELEMENTS OF CONSENT



### Mandatory FPIC requirements

#### Consent

- **4.4.2** Copies of documents evidencing agreement-making processes and negotiated agreements detailing the FPIC process are available and include:
  - b) Evidence that the unit of certification has respected communities' decisions to give or withhold their consent to the operation at the time that these decisions were taken
- **4.5.6** Evidence is available that the communities (or their representatives) gave consent to the initial planning phases of the operations prior to the issuance of a new concession or land title to the operator.

### Ensuring Consent is Freely Given

**Free** means consent has been obtained, without any coercion, intimidation or manipulation. Communities are free to raise any negative or positive issues relating to the development.

At each stage in the process, the UoC must consider whether anything is happening that may undermine communities' collective, self-determined and autonomous control and decision-making. They must conduct due diligence to ensure that they are not unfairly benefiting from an unequal bargaining position, and what can be done to prevent this. The UoC must avoid the use of manipulation, coercion or intimidation throughout the FPIC process.

#### Example of manipulation:

- Offers of bribes, gifts, inducements, incentives or other unregulated or questionable patronage to community leaders or individuals to relinquish land without the wider communities' knowledge or agreement.

#### Example of coercion:

- The use of government or private security forces to pressure communities into relinquishing their lands.

#### Example of intimidation:

- In some situations, communities may feel intimidated by the very presence of government agencies in meetings.

### Ensuring Consent is Prior

**Prior** means undertaking the consultation process sufficiently in advance of the proposed project to allow the community to reach a decision in a timely manner using their customary decision-making process.

#### Consultations with each of the individual communities shall focus on the fundamental questions:

- Are the communities open to engaging with the UoC?
- If communities are open to engage, how do they want to communicate and reach decisions as a community (including how they want to give and receive information and negotiate)?
- If a local community is identified, further key initial decisions need to be made with the same level of care: how is the community going to communicate with the UoC?
- If the community wants to communicate with the UoC 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 UoC are the true and legitimate decisions of the whole community?
- What are the key decisions?
- How will those key decisions be formally authorised by the community where they will result in a negotiated agreement with the community?



## Mandatory FPIC requirements

### Right to Say “No”

- **4.5.3** Evidence is available that affected local peoples understand they have the right to say ‘no’ to operations planned on their lands before and during initial discussions, during the stage of information gathering and associated consultations, during negotiations, and up until an agreement with the unit of certification is signed and ratified by these local peoples. Negotiated agreements are non-coercive and entered into voluntarily and carried out prior to new operations.

In some countries, permits, fiscal arrangements and investment terms and conditions are achieved through several stages. This has implications for the question of when in the process is “prior enough”. For example, some communities may feel undermined when they discover in their very first meeting with the company that the company has already been awarded permits for the lands the communities use and to which they have customary rights. Companies must not use such permits to pressure communities into conceding to their planned operations.

### Ensuring Consent is Informed<sup>20</sup>

Informed consent refers to communication and type of information that should be provided prior to seeking consent and ensuring that this information and its implications are understood as part of the ongoing consent process.<sup>21</sup>

Information should be:

- Accessible, clear, consistent, accurate and transparent.
- Delivered in the local language and in a culturally appropriate format (including radio, traditional/local media, video, graphics, documentaries, photos, oral presentations or new media).
- Objective, covering both the positive and negative potential of the proposed activities and the consequences of giving or withholding consent.
- Complete, including a preliminary assessment of the possible economic, social, cultural and environmental impacts, including potential risks and benefits.
- Complete, including the nature, size, pace, duration, reversibility and scope of any proposed project, its purpose and the location of areas that will be affected.
- Delivered by culturally appropriate personnel, in culturally appropriate locations, and include capacity building of indigenous or local trainers.
- Delivered with sufficient time to be understood and verified.
- Accessible to the most remote, rural communities, including youth, women, the elderly and persons with disabilities, who are sometimes neglected. If the communities themselves culturally exclude certain parts of the community from decision-making processes, then the UoC should exercise caution on how inclusivity is approached in the FPIC process.

<sup>20</sup> Under the Free, Prior, and Informed Consent Guide for RSPO Members (2015) “informed” is defined as 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, pg. 6.

<sup>21</sup> Adapted from FAO, Free, Prior and Informed Consent (2016), pg. 15.

- Provided on an ongoing and continuous basis throughout the FPIC process, with a view to enhancing local communication and decision-making processes.

Information Sharing: what communities need to know in order to be informed					
Will the community consider a plantation?	What the FPIC process entails: provide information in languages and forms understood by the communities	Details on the UoC (name, contact details) and the proposed development (including legal and financial implications)	Map(s) of areas of proposed activities and operations (including the location, duration, and scope and boundaries of the plantation)	Permit acquisition process: Type of permit being sought, current stage in process and legal implications of land release	Potential risks and benefits of the proposed project (social, environmental, economic, etc.)
	Proposals developing participatory maps and conducting SEIA and integrated HCV-HCSA assessments	Proposals for smallholder and/or outgrower schemes	The role and option of a third-party observer	Information on the UoC's grievance mechanism	Contact details of RSPO

Figure 2. Relevant information for communities<sup>22</sup>

Particular attention must be paid to explaining the land acquisition process to communities, including:

- The legal permit acquisition process (and the current stage in the process).
- The legal implications of land surrenders, leases, rentals or excisions.
- The implications for land use and ownership upon the expiry or renewal of the lease/concession.
- Compensation and benefit-sharing.

### Ensuring there is Consent

FPIC is not only about communities saying “yes” or “no” to development activity. As part of the negotiation process, consent must be sought, documented in detail, and maintained throughout the whole range of issues that the development activity impacts, including but not limited to:

- Land deals and creation of “excisions” or “enclaves” (agreements to remove community lands from areas under company)
- Benefit-sharing
- Compensation<sup>23</sup>
- Mitigation
- Protections of rights holders
- Complainants and whistleblowers
- Financial and legal arrangements
- Information sharing
- Divestments
- Dispute resolution
- MoUs/agreements
- Outgrower/smallholder schemes and monitoring options

<sup>22</sup> Adapted from Free, Prior and Informed Consent Guide for RSPO Members (2015), pg. 19.

<sup>23</sup> Refer to elaboration of “Compensation” on page 52.

- Where Affected Communities withhold consent, alternatives must be discussed in terms of land use, access and management, particularly where land is to be “excised” or “enclaved” (excluded from a concession but enclosed within it). Without discussion of alternatives, Affected Communities may feel pressured to give consent, then reject the agreement later.
- It is important to keep in mind that neither party is obliged to agree to anything they do not want to, and communities have the right to say “no” to the proposed development at any time. This also means that the UoC is not compelled to meet community demands.
- Cultural norms will play a key role in how decision-making takes place within any particular affected community, and how consent is expressed and validated. These need to be taken into consideration and adhered to if the community so wishes. This includes where, for example, communities exclude certain parts of the community from decision-making, e.g., women, youth, certain castes, etc., and therefore requires extreme sensitivity from the UoC.
- For consent to be meaningful it must be given through procedures acceptable to and agreed to by the Affected Community and not according to imposed norms of decision-making. Some Affected Communities may not be comfortable with systems that require ballots or open voting or setting a fixed majority vote or threshold.<sup>24</sup>

### Case Study: Obtaining consent from multiple communities

There are 50 communities surrounding a plot of land that will be converted into a palm oil development. A few communities do not provide consent to the company to develop the land for that purpose. Does the company need to wait for 100% of the surrounding communities to agree or is 80% sufficient to satisfy the RSPO FPIC requirements?

#### Guidance:

- Percentage of agreement by the surrounding communities is not the prime factor in determining whether FPIC requirements have been met.
- RSPO FPIC requirements are meant for affected rights holders and to ensure current operations have a mechanism in place to monitor and ensure agreements between the UoC and the Indigenous Peoples, Local Communities, and other users, and that consent has been obtained prior to any development.
  - i. Identify which communities with demonstrable rights will be impacted by the UoC development, out of the 100% surrounding communities.
  - ii. Initiate an FPIC process with the identified Affected Communities based on the guidance and processes provided in this guide.
  - iii. If rights of the community are not impacted, FPIC does not have to be conducted.
- What if the Affected Communities withhold consent? – Refer to ***Ensuring there is Consent*** (pg. 18)
  - i. Where the Affected Communities withhold consent, alternatives may be discussed in terms of land use, access and management, particularly where land is to be “excised” or “enclaved” (excluded from a concession but enclosed within it).
  - ii. Without discussion of alternatives, the Affected Communities may feel pressured to give consent, and then reject the agreement later. Alternatives may also include providing compensation or altering project plans to eliminate impacts on the communities.
- If a large percentage of the Affected Communities does not agree to new plantations, mills and/or other Development Activities, it is advisable for the UoC to document reasons and inform others about the percentage of consent received and its plan to continue dialogue with the Affected Communities.
- Special cases will require more time between parties in verifying if rights are affected.
- Remember:
  - i. Different communities/villages might be affected in different ways by a development. It might come down to individually identifying or consulting with communities about where those rights are impacted and where the consent is withheld and proposing solutions rather than bringing the development to a complete stop.
  - ii. The consent of Indigenous Peoples, Local Communities, and other users should be determined in accordance with their customary laws and practices. This does not necessarily

<sup>24</sup> RSPO, FPIC – Community Consensus Building and FPIC.

mean that every single member must agree, but rather the consent process will be undertaken through procedures and institutions determined by Indigenous Peoples, Local Communities, and other users themselves. Indigenous Peoples should specify which representative institutions are entitled to express consent on behalf of the affected peoples or communities.

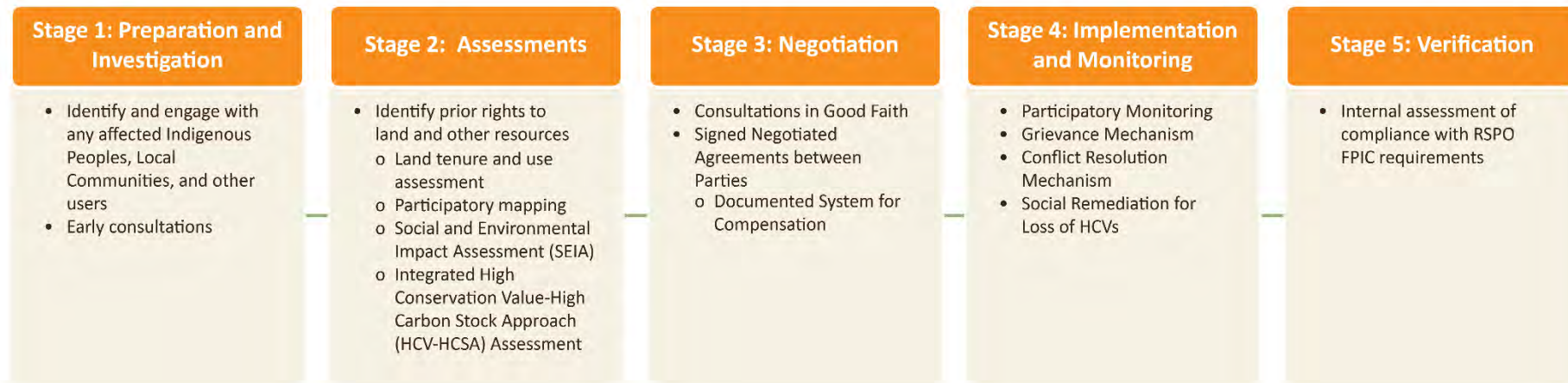
- In some cases, communities may be unable to reach a general agreement about a proposed development activity or an element therein. Therefore, adequate time must be allocated for open and constructive conversations and exchanges of opinion by the Affected Communities.
- The UoC shall not pressure the Indigenous Peoples, Local Communities, and other users to provide consent if they have expressed a clear “no” to proceeding with the development, as this may constitute coercion.
- In the event an agreement is reached, it is strongly recommended that the agreement is legalised (for example, by a notary), with independent third-party witnesses present (for example, third parties, lawyers, government officers, international organisations, etc.) as agreed upon by the community, and if relevant, endorsed by the local government.
- Communities may also want to see the agreement publicly affirmed through a ceremony or other culturally appropriate event. This is important to ensure that the full community is aware of the binding nature of the agreement.

## PART B: IMPLEMENTATION OF THE FPIC PROCESS

### FPIC AT A GLANCE

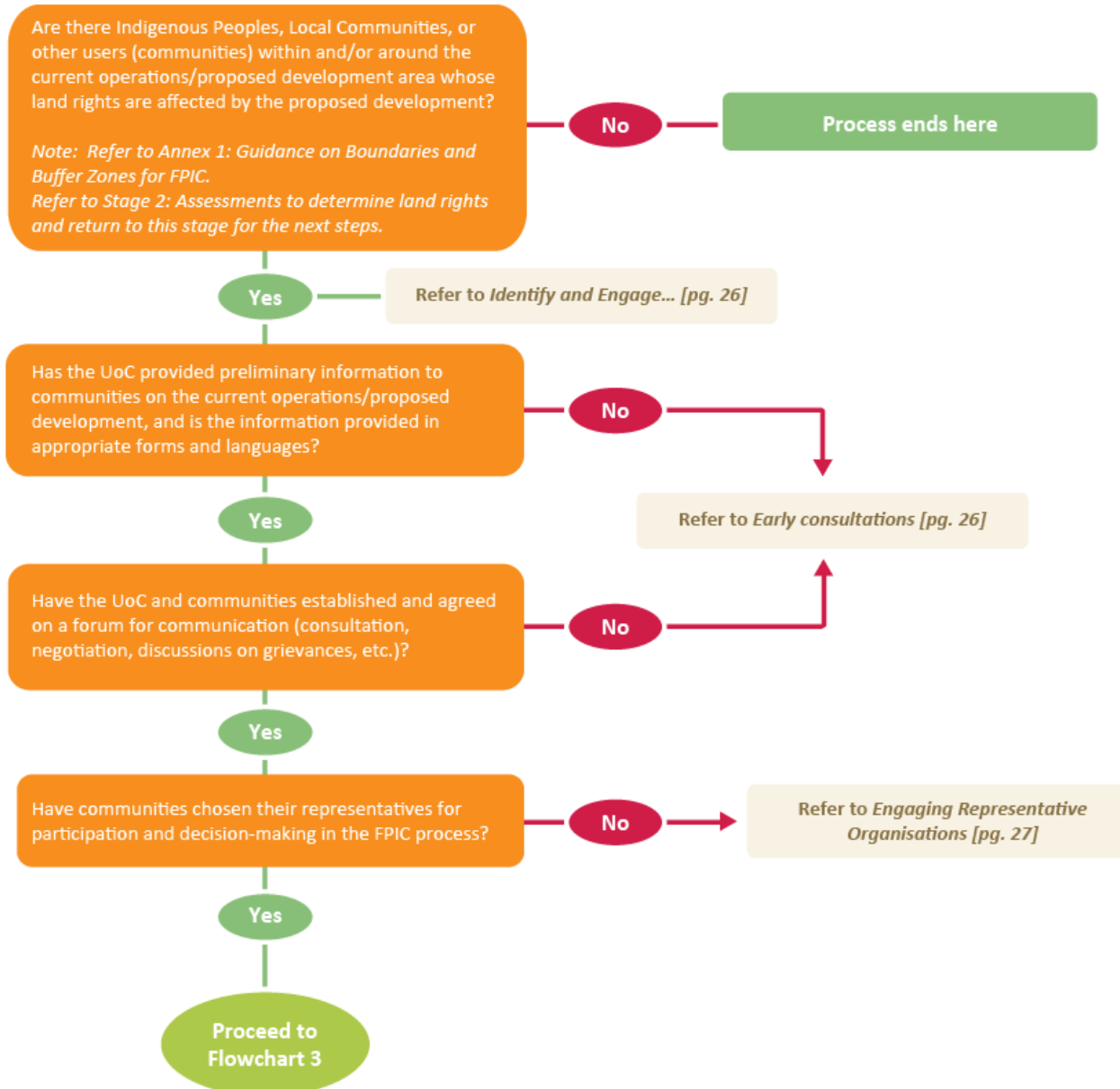
#### How to Carry out the FPIC process

The following flowcharts (See **Flowchart 1: The FPIC Process below**) suggests the main stages for the UoC to engage Indigenous Peoples, Local Communities, and other users in seeking their consent in line with the FPIC requirements of the RSPO P&C. 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 Indigenous Peoples, Local Communities, and other users and are therefore the recommendations are informative rather than normative.



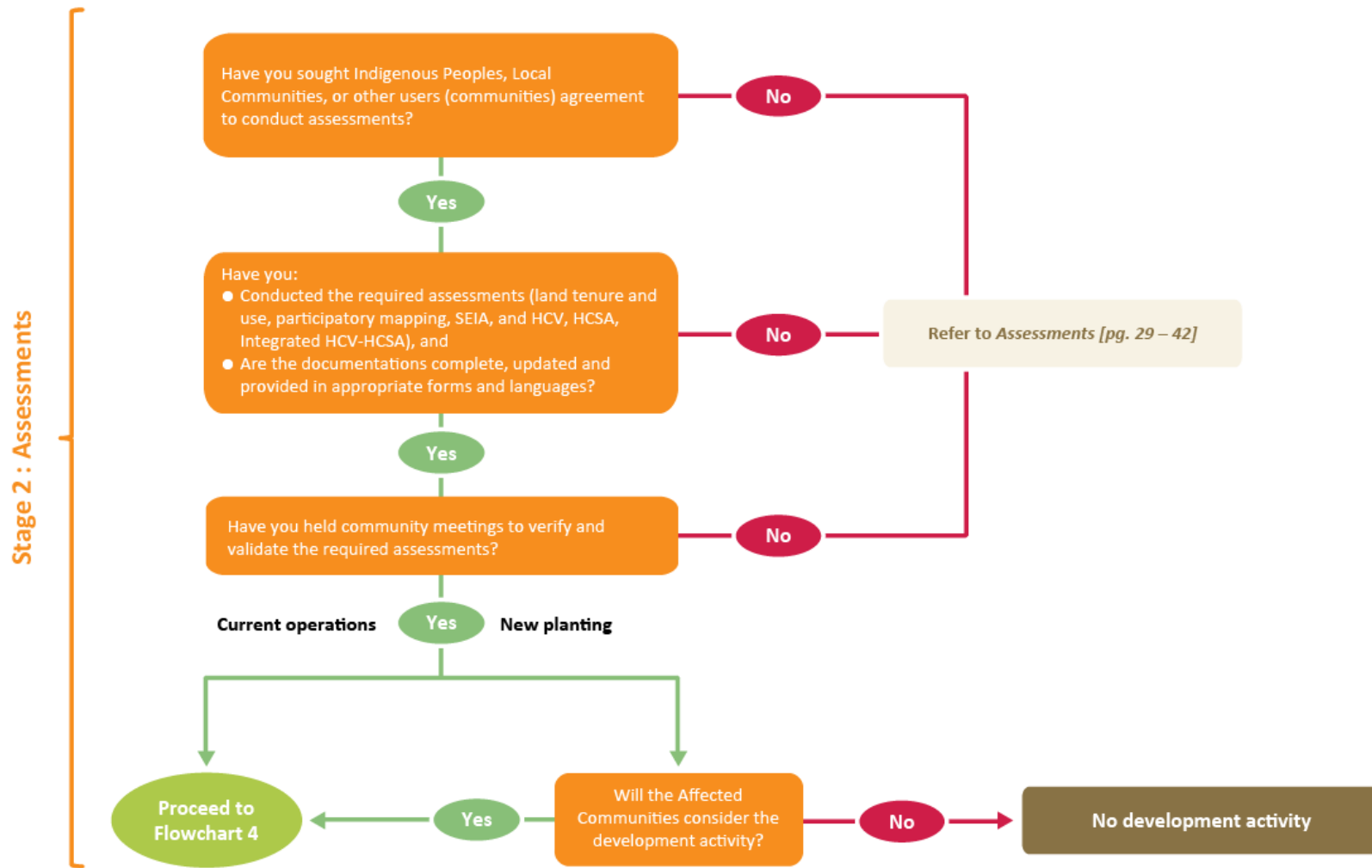
*Flowchart 1. The FPIC Process*

Stage 1: Preparation and Investigation



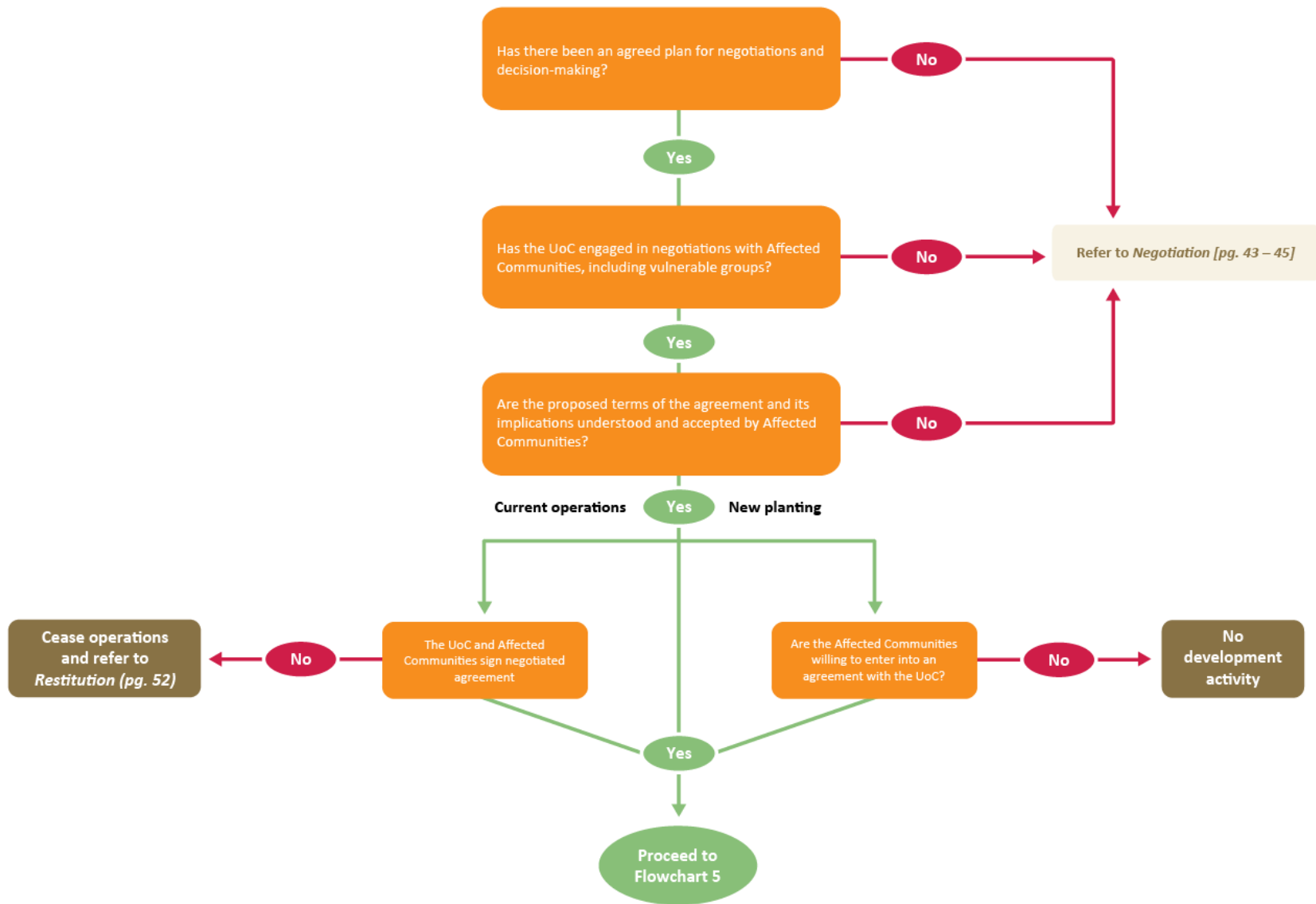
Flowchart 2. Does the Unit of Certification need to carry out FPIC?



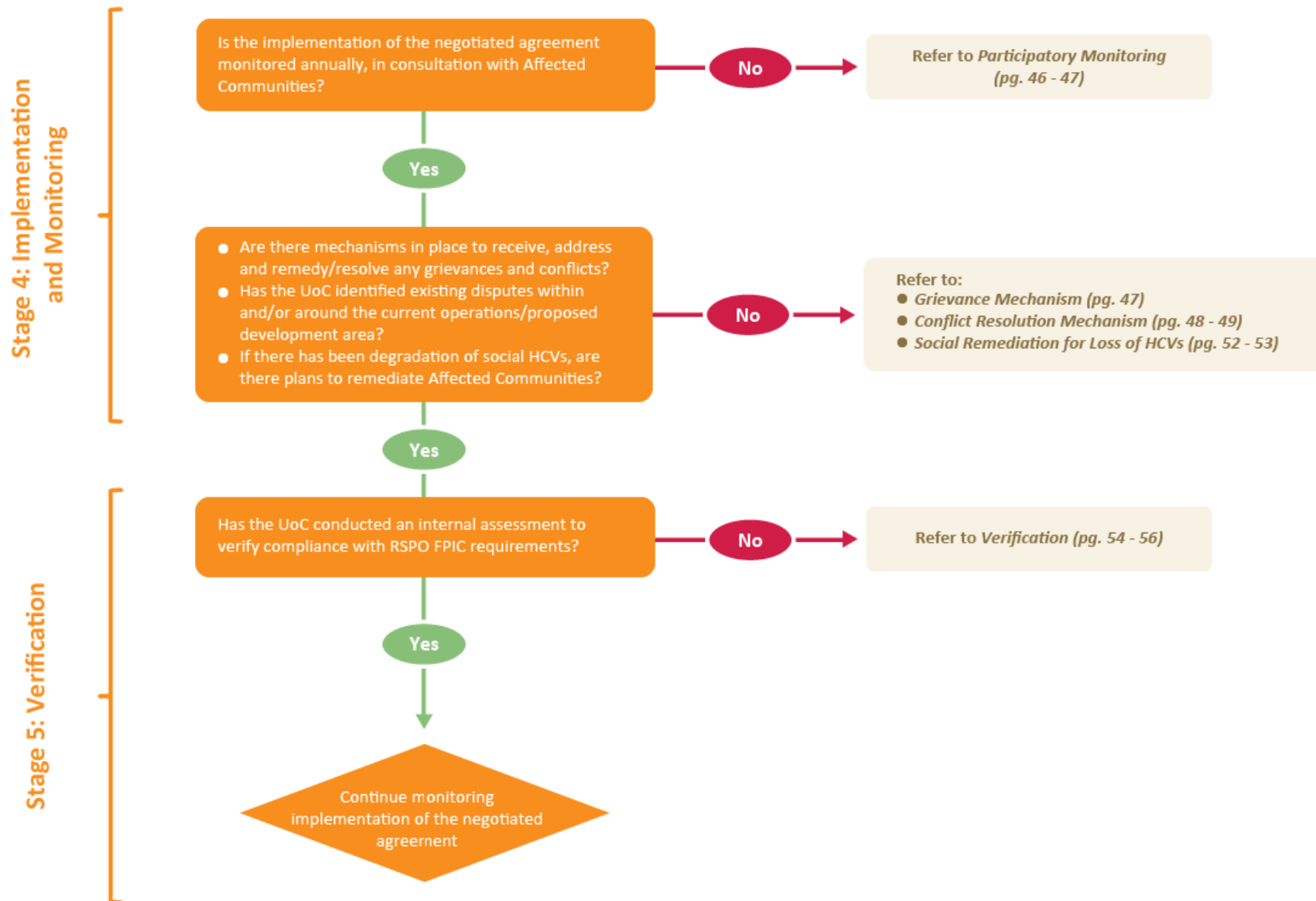


*Flowchart 3. Have the necessary assessments been carried out?*

Stage 3: Negotiation



Flowchart 4. Have there been negotiations leading to a final agreement?



**Flowchart 5.** Has the implementation of FPIC been monitored and verified?

## STAGE 1: PREPARATION AND INVESTIGATION

### IDENTIFY AND ENGAGE WITH ANY AFFECTED INDIGENOUS PEOPLES AND LOCAL COMMUNITIES, AND OTHER USERS

While initiating the FPIC process, UoCs shall involve Indigenous Peoples, Local Communities, and other users to represent the wide range of interests and land uses that different neighbouring communities may have. These may include the interests of Indigenous Peoples and Local Communities, including those of women, youth and the elderly in these communities, noting that the approach to inclusivity must take into consideration cultural sensitivities.

During the initial process to establish whether Indigenous Peoples, Local Communities, and other users are living in or using the area that will be affected by the proposed development activity, the UoC must examine a wide range of information sources (see Figure 3 below for examples).

Useful sources of information to identify if there are Indigenous Peoples, Local Communities, and other users in the proposed development area	Local and civil society organisations	Field visit to local and neighbouring communities	Local government bodies	Ethnographics
	Religious institutions (e.g. priests, ulama)	Social surveys	Aerial/satellite photos	Local police
	Local political parties	Civil society organisations publications	Local trade unions	Government censuses and statistics

**Figure 3.** Useful sources of information to identify if there are Indigenous Peoples, Local Communities, and other users in the proposed development area.<sup>25</sup>

- The UoC may choose to reach out to communities by broadcasting information, for example, through community radio to know who to contact to register their rights and interests in the oil palm development area. Written notices may also be included on community notice boards, where there are sufficient levels of literacy, and published in local gazettes.

*Note: information may need to be provided in several languages, including Indigenous Peoples' languages.*

- The FPIC team (staff and/or consultants) of the UoC responsible for engaging communities should obtain the findings of these preliminary stages, have knowledge of those communities, and be equipped with a range of relevant skills, as well as include both men and women.
- The UoC must be transparent by making all documentation fully available to the stakeholders and representatives of the Affected Communities.

#### Early Consultations



#### Mandatory FPIC requirements

RSPO requirements are understood

- **1.1.** The unit of certification provides 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.

**Figure 2:** *Relevant information for communities* (pg. 18) suggests the minimum information and documentation that should be shared with communities while engaging in early consultations. All of these **should be** shared proactively by the UoC (rather than waiting for a request from the community).

<sup>25</sup> Adapted from Free, Prior and Informed Consent Guide for RSPO Members (2015), Diagram 1, pg. 22.

### On the community's participation:

- Communities **shall** also be informed that their participation in such consultations does not imply their consent to anything beyond what has been agreed to in the meeting (if anything) and their participation does not automatically mean consent to the broader development activity.
- Third-party, independent observers may be invited to attend consultations and negotiations, provided that communities and the UoC mutually agree to their presence.



#### Recommendations

##### Site Visits

- **The UoC may offer, or the community may request,** a visit to other oil palm plantations owned by the UoC or other actors, or other land developments, to be better informed on the impacts, benefits and risks that land conversion may entail, and alternative development options.



#### Recommendations

##### Establish a permanent community and UoC forum

- This forum can be used for regular and ongoing communications between the UoC and Indigenous Peoples, Local Communities, and other users relevant to specific localities.
- At later stages in the FPIC process, community representatives may continue to undertake negotiations, and participate in monitoring forums, on behalf of the Indigenous Peoples, Local Communities, and other users in a specific locality. However, all parties must ensure that the whole community is collectively informed.
- It may also be used to handle concerns or grievances that communities may have with the oil palm plantings operations relevant to the locality.

### Engaging Representative Organisations



#### Mandatory FPIC requirements

##### Communities choose how to represent themselves

- **4.4.5 (C)** Evidence is available to show that communities are represented through institutions or representatives of their own choosing, including by legal counsel if they so choose.
- **4.5.2 (C)** FPIC is obtained for all oil palm development through a comprehensive process, including in particular, full respect for their legal and customary rights to the territories, lands and resources via local communities' own representative institutions, with all the relevant information and documents made available, with option of resourced access to independent advice through a documented, long-term and two-way process of consultation and negotiation.
- **4.6** 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.

Indigenous Peoples, Local Communities, and other users must be free to choose who they invite to participate and what role they play in the FPIC process. Indigenous Peoples and Local Communities have the right to choose their own representatives and to maintain their own decision-making institutions.



Figure 4. Identify representative institutions.<sup>26</sup>



### Recommendations

Engagement with Community Appointed Advisors to facilitate access to resources and expertise

- Indigenous Peoples, Local Communities, and other users may invite advisors and lawyers to help with assessments and contracts. NGOs and religious bodies may also be invited because of their access to information or subject matter expertise. If third parties are involved, they shall be independent of the UoC to eliminate bias.
- If Indigenous Peoples choose to give their consent to a project, the consent should be consistent with their own laws, customs, protocols and best practices, including representation by legal counsel when possible.

<sup>26</sup> Adapted from Free, Prior and Informed Consent Guide for RSPO Members (2015), Diagram 3, pg. 38.

## STAGE 2: ASSESSMENTS



### Mandatory FPIC requirements

Relevant Criteria and Indicators for Stage 2

→ 3.4, 4.4.1 (C), 4.4.3 (C), 4.4.4, 4.4.5 (C), 4.5.4, 7.12, 7.12.2 (C) b)

**Note:** Indicators will be expanded on in relevant sections within Stage 2.

The fundamental purpose of this stage is to:

- Identify land ownership, boundaries and use (Land tenure and use assessment and participatory mapping)
- Assess impacts of the potential development (SEIA)
- Identify areas of conservation and forests (HCV assessment, HCS assessment, integrated HCV-HCSA assessment)

The purpose, process and expected outcomes of assessments, and management and access options, **shall be clearly** explained to communities prior to being carried out. Assessments (land tenure assessment, participatory mapping, SEIAs and integrated HCV-HCSA assessments) **should** provide information that communities need in order to make informed decisions about whether to accept oil palm developments on their lands. It should also be communicated that further engagement and consent will be negotiated regarding the project development and that the initial agreement is only for the purposes of conducting assessments.

Timelines and deadlines set **shall take into account** the time needed for communities to absorb and discuss information, consult and engage in decision-making processes, and locate and benefit from suitable independent legal and technical advice.

Groups who may be invited to participate in these assessments include the elderly, women, self-chosen community representatives, third-party experts, minority groups and NGOs. Where communities do not agree to participate in assessments, their land/territory cannot be considered evaluated and cannot be indicated for project development.



### Take Note

HCV-HCSA and SEIA assessments

Both the HCV-HCSA and SEIA assessments must be completed prior to any land clearance and/or development of oil palm plantation, and information regarding negative impacts must be shared with those likely to be affected to ensure that any relinquishment of rights is fully informed.

Prior to conducting integrated HCV-HCSA assessments, refer to *Figure 2: Pre, during, and post-assessment requirements for integrated HCV-HCSA and standalone HCSA assessment (page 5)* of the **Guide on HCSA Requirements for the RSPO**.<sup>27</sup>

Some UoCs conduct participatory SEIAs and integrated HCV-HCSA assessments on specific areas within targeted concession areas. Thereafter, these results are extrapolated to a wider concession. This approach is acceptable for environmental elements, but it is not sufficient to meet FPIC requirements for Affected Communities. Best practice for FPIC and social impact methodologies require field surveys or direct interaction with all Affected Communities through their self-chosen representatives.

<sup>27</sup> Guide on the High Carbon Stock Approach Requirements for the RSPO (2022), Figure 2, pg. 5.





## Take Note

### Indigenous Peoples' traditional knowledge

It is important for Indigenous Peoples to provide their agreement for the use of their traditional knowledge, including identification of what knowledge is public and what is secret or sacred.<sup>28</sup> Ownership of Indigenous Peoples' traditional knowledge remains theirs and it is an inseparable part of their cultural heritage.

It may not be appropriate for certain traditional knowledge to be shared with members of other communities or groups. Indigenous Peoples may choose to only provide such information confidentially to the UoC (e.g., through two separate maps – the first with non-confidential information for public sharing; and the second containing traditional knowledge which Indigenous Peoples may provide confidentially to the UoC).

## Identifying Prior Rights to Land and Other Resources

Land rights identification is crucial, as it provides clarity to land ownership. Where possible, it is recommended to secure land titles, as it provides the following benefits:

### For Companies

- Reduces risks of disputes/ conflict and potential interference to the use of the land
- Less possibility of interruption in the UoCs business and activities
- Avoid future compensation for issues related to land rights

### For Communities<sup>29</sup>

- Incentives for farmers to invest in land because ownership is secure and clear
- Easier access to financial assistance for agricultural activities and improvements to their land
- Enable land sale and rental markets
- Ensure full utilisation of land because of clarity of extent

A systematic and proper rights' identification method is needed, as sometimes land titles may not be available, or where data or information regarding lands (e.g., boundaries, rights, ownership, land usage, conservation areas) may not have been identified or are outdated.



## Take Note

### Demonstrable rights

**Demonstrable rights** refer to informal rights that are not registered or recognised by the government and national laws. Demonstrable rights are best ascertained through direct engagement with Indigenous Peoples, Local Communities and other users. This allows them to have adequate opportunities to justify their claims, and is best conducted through participatory mapping with the involvement of neighbouring communities.<sup>30</sup>

For customary and user rights (informal) claims, the individuals making claims should be able to demonstrate:<sup>31</sup>

- A geographical, historical and cultural connection to the specific area over which their claim is made.
- Maintain either regular, periodic, or seasonal or repeated or intermittent use of the land area over which the claims are made.

While these claims are informal, for the purposes of FPIC, these demonstrable rights where possible, should be documented. These include letters of acknowledgement by relevant organisations (IMOs, NGOs), village heads or local authorities.

<sup>28</sup> Indigenous Peoples have the right to redress with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs [Article 11(2) UNDRIP]. See cases on this subject, for example, *Foster v Mountford* 14 ALR 71 (1976), in Australia, the Court prevented the sale of a book containing sacred sites and objects in breach of confidence of Indigenous Peoples.

<sup>29</sup> World Bank Blogs, *7 reasons for land and property rights to be at the top of the global agenda*.

<sup>30</sup> Adapted from the 2018 P&C, Annex 1: Definitions, Rights – 4. Demonstrable Rights, pg. 79.

<sup>31</sup> Adapted from Malaysian National Interpretation 2014 (Endorsed by RSPO Board of Governors on 6 March 2015), pg. 95.

Figure 5 below illustrates the categories of legal, customary and user rights.



Figure 5. Categories of Legal, Customary and User Rights<sup>32</sup>

<sup>32</sup> Diagram and content contributed by Proforest and Landesa.



### Mandatory FPIC requirements

#### Land tenure and use assessment

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

Land tenure and use assessments require:

- The involvement of skilled and experienced individuals and/or organisations, with prior experience working with communities.
- Relevant information on land tenure, which may be found through desktop research and from local government departments (e.g. Indigenous Affairs and Land Registry Offices).
- Consultation with communities who have been living and using the land previously to identify who was living in the area and how they used and managed the land.
- Once the community has agreed to the assessment, interviews can be carried out to understand how people use the land.
- The interviews must clarify who owns, uses and manages the land; and whether any of the lands or resources are held by groups (rights to land may cover houses, farms and fields in addition to hunting and fishing areas, forest resources, water catchments and reserves).
- Once these areas have been clarified, the UoC must document their rights to use the land, including how the land rights were acquired.
- To achieve a representative sample, the range of people interviewed should take into consideration gender, ethnic groups and social classes. The UoC should ensure cultural sensitivities are taken into consideration in the process of representation.

<sup>33</sup> RSPO, FPIC - Identifying Rights to Land and FPIC.



## Take Note

### Indigenous Peoples' Land Rights

In some countries, governments have set up formal legal mechanisms to document customary land rights, for example, a Certificate of Village Land (CVL) or Certificate of Customary Right of Occupancy (a certificate of family land within village land). A list of community land formalisation procedures can be found in World Resources Institute's "The Scramble for Land Rights".<sup>34</sup> In other countries, "native title" endures for as long as it has not been extinguished or replaced by formal recognition of indigenous customary land rights by national or regional courts. According to the "native title" principle, Indigenous Peoples have the right to lands based on their customary law and sustained connection with the land. Where there is no formal recognition of Indigenous Peoples' rights, it is important to look for other forms of evidence that could be used in place of formal recognition.

Some examples (*non-exhaustive list*) of evidence of Indigenous Peoples' customary land rights may include:

- Statements (oral histories, recorded and signed) from members of the Indigenous Peoples' group on their customary law and rights to the land including:
  - The identity of the Indigenous People, such as the name of their tribe, members and other identifying factors such as ancestors and genealogical information.
  - The traditional language of the Indigenous Peoples.
  - The Indigenous Peoples' connection to the land.
  - The Indigenous Peoples' social and cultural system—the body of law and custom.
  - The activities undertaken and responsibilities that the Indigenous People have towards the land.
  - The Indigenous Peoples' rights and interests in the land.
  - The Indigenous Peoples' consent to land use for oil palm plantings (if already given).
- Statements from neighbouring Indigenous Peoples confirming the rights of the Indigenous People to the land.
- Indigenous Peoples' meeting records with documented agreements on land rights and land use rights.
- Documentation submitted for the recognition of Indigenous Peoples' land rights to cadastral registers, to government agencies, to courts or tribunals, and to other institutions.
- Independent expert reports, such as anthropological reports, historical reports, linguist reports and specialised land tenure reports (the latter historically analyses private property arising from the dispossession of Indigenous Peoples from their land).
- Archival records demonstrating the Indigenous Peoples presence in the area, for example, church records, birth records, and government registers.
- Published materials (books, articles, reports, maps) referring to Indigenous Peoples in the area.
- Documents emanating from previous participatory mapping (e.g. maps and charts).
- Documentary evidence, such as videos and photography.

It is important to note that Indigenous Peoples will most likely require independent, external advisors (and funding) to assist in the preparation of documentation of their land rights and land use rights. The UoC needs to be clear on any intent to provide assistance to Indigenous Peoples related to land rights, as otherwise this could be construed as potential conflict of interest if this is not fully clarified.

In addition, please refer to the national or regional statutory and customary systems for the definition of land rights and land use rights in your context.

Where there are legal or customary rights to land, the UoC must demonstrate that these rights are understood and are not being threatened or reduced. For example, Indigenous Peoples' rights and access to water should not be impacted by the development. If there is a risk of impact, mitigation measures are to be developed with Indigenous Peoples' participation.

Where customary rights areas are unclear these must be established through participatory mapping exercises involving affected parties including neighbouring communities and local authorities.

<sup>34</sup> World Resources Institute, *The Scramble for Land Rights*.

## Participatory Mapping



### Mandatory FPIC requirements

#### Participatory mapping

- **4.4.3 (C)** Maps of an appropriate scale showing the extent of recognised legal, customary or user rights are developed through participatory mapping involving affected parties (including neighbouring communities where applicable, and relevant authorities).

- Participatory mapping, also known as “community mapping”, is based on the premise that communities have knowledge of their customary tenure and surrounding environments, which can be expressed in simple maps. It allows communities to bring their local knowledge and perspectives to the attention of authorities and the UoC.<sup>35</sup>
- Once the UoC has identified all the relevant stakeholders (Indigenous Peoples, Local Communities, and other users) involved, they **should** collaborate in the mapping process to identify features communities perceive as important such as customary land boundaries, how they use the forest, sacred areas, and so on. This is to ensure that future negotiations are based on a clear understanding of the various rights involved.
- The UoC should ensure that the community includes their elders who know the local history and culture. Where appropriate, both men and women should also be included since they use the land differently.
- It is important to include ALL communities if the land in question is used by several communities. This will help avoid conflicts where neighbours might dispute boundaries.
- Technology such as the Global Positioning System (GPS) and Geographic Information System Software (GIS) have made these processes easier and feasible.<sup>36</sup>



### Recommendations

#### Guidance on overlapping boundaries

- It is recommended that communities located within a suggested radius of 5 km (maximum) around the UoC are identified. This radius is for reference only and can be reduced, according to the reality on the ground and with clear justifications. For example, for smaller, new plantings located in private land belonging to individual farmers, this radius could be reduced (See Annex 1: Guidance on Boundaries and Buffer Zones for FPIC).
- If there is a legitimate contest between the UoC and Affected Communities in which the right to use the land has been properly demonstrated, the UoC shall develop mutually agreed conflict resolution processes/mechanisms and if necessary, compensate in line with the accepted documented process of FPIC. Refer to **Conflict Resolution Mechanism** (pg. 48). However, it is not the responsibility of the company to resolve conflicts between communities.

<sup>35</sup> Adapted from Mapping for Rights, *Participatory Mapping*.

<sup>36</sup> RSPO, FPIC – Participatory Mapping and FPIC.





**Figure 6.** The five step process to participatory mapping<sup>37</sup>

<sup>37</sup> RSPO, FPIC - Participatory Mapping and FPIC.

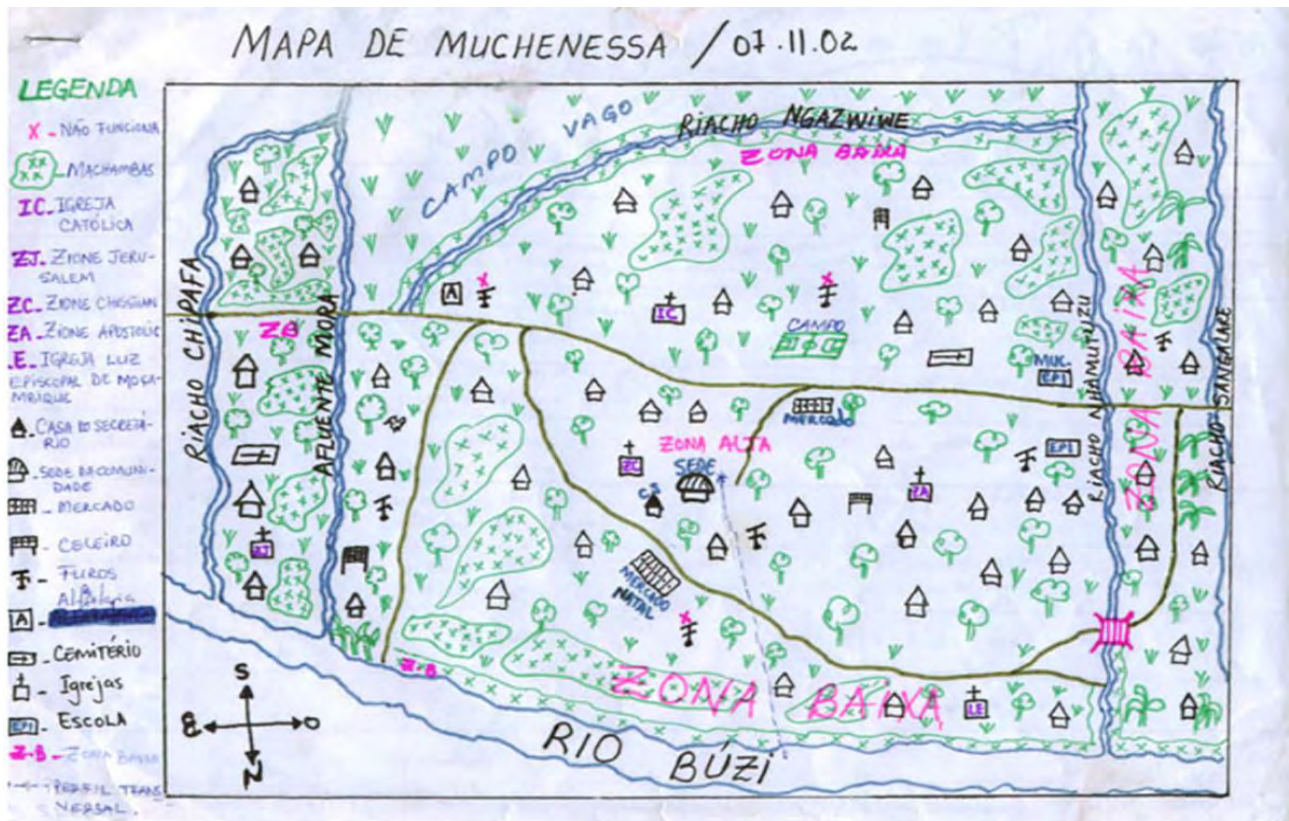


Figure 7. Although it is recommended that final maps be made using software systems, such as GIS, participatory sketch maps such as this are also valid and are important, as they allow communities to highlight areas important to them.

### Social and Environmental Impact Assessment (SEIA)



#### Mandatory FPIC requirements

SEIA

- 3.4 A comprehensive Social and Environmental Impact Assessment (SEIA) is undertaken prior to new plantings or operations, and a social and environmental management and monitoring plan is implemented and regularly updated in ongoing operations.
- 4.4.4 All relevant information is available in appropriate forms and languages, including assessments of impacts, proposed benefit sharing, and legal arrangements.
- 4.5.4 To ensure local food and water security, as part of the FPIC process, participatory SEIA and participatory land-use planning with local peoples, the full range of food and water provisioning options are considered. There is transparency of the land allocation process.

*Note: The SEIA national requirements and assessments may differ from region to region. Please refer to your respective national requirements in order to ensure that assessments are up to date. Reference should also be made to P&C National Interpretation (NI) (if any) on assessor competencies, assessment content, and validity. Where no national requirements or NI is available, refer to the 2018 P&C, Annex 2: Guidance for Criteria 3.4, pg.91 -93.*

SEIA is a participatory analysis and planning process carried out prior to new plantings or operations. It incorporates relevant social and environmental data, as well as stakeholder consultations to identify impacts (direct and indirect) and determine whether these impacts can be satisfactorily addressed, in which case the UoC also defines specific actions to minimise and mitigate negative impacts (policies, programmes, plans, projects).





## Recommendations

Guidance for SEIA<sup>38</sup>

The assessment (SEIA) should include, but is not limited to:

1. Impacts of all major planned activities, including land clearing, planting, replanting, pesticide and fertiliser use, mill operations, roads, drainage and irrigation systems and other infrastructure.
2. Impacts on HCVs, biodiversity and RTE species, including beyond concession boundaries and any measures for the conservation and/or enhancement of these.
3. Effects on adjacent natural ecosystems of planned developments, including whether development or expansion will increase pressure on nearby natural ecosystems.
4. Identification of watercourses and wetlands and assessment of 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.
5. Baseline soil surveys and topographic information, including the identification of steep terrain, marginal and fragile soils, areas prone to erosion, degradation, subsidence and flooding.
6. Analysis of the type of land to be used (forest, degraded forest, peatlands, cleared land, etc.).
7. Assessment of land ownership and user rights.
8. Assessment of current land use patterns.
9. Assessment of impacts on people's amenity.
10. Assess impacts on employment, employment opportunities or from changes of employment terms.
11. A cost-benefit analysis on social aspects.
12. Assessment of social impacts on surrounding communities of a plantation, including an analysis of effects on livelihoods, and differential effects on women versus men, ethnic communities, and migrant versus long-term residents.
13. Assessment of salient risk of human rights violations.
14. Assessment of the impacts on all dimensions of food and water security including the right to adequate food, and monitoring food and water security for Affected Communities.
15. Assessment of activities that may impact air quality or generate significant greenhouse gas (GHG) emissions.

<sup>38</sup> RSPO Principles and Criteria (2018), Annex 2: Guidance - Criteria 3.4, pg. 91 - 92.



Figure 8. SEIA - Guidance for assessing and managing the social impacts of projects<sup>39 40</sup>

<sup>39</sup> Definition of "Mitigation hierarchy", International Association for Impact Assessment, *Social Impact Assessment: Guidance for assessing and managing the social impacts of projects (2015)*, pg. 88. See also: Business and Biodiversity Offsets Programme (BBOP), *Business, Biodiversity, Offsets and BBOP: An Overview*, Adapted from Figure 1, pg. 5.


<sup>40</sup> Adapted from International Association for Impact Assessment, *Social Impact Assessment: Guidance for assessing and managing the social impacts of projects (2015)*.

The most common impacts revealed by SEIAs are illustrated in **Figure 9** below:

<b>Land clearance</b>	<b>Land sales or leases to companies</b>	<b>Agrochemicals and mill effluents causing pollution</b>
Reduced access to game and forest products	Limit livelihood opportunities due to reduced access and/or rights to land	Reduced access to clean water for drinking, bathing and fisheries
<b>Increased development and economic activity due to UoC operations</b>		<b>Influx of workers (migrant/non-local)</b>
<ul style="list-style-type: none"> <li>• Improved accessibility</li> <li>• Disruption in cultural or religious values</li> <li>• Impact on traditional knowledge</li> <li>• from traditional (e.g. farming) to modern living (e.g. shops)</li> </ul>		Increased need for resources and potential inter-community tensions
<b>Access to credit</b>		<b>Employment and smallholding opportunities</b>
Increased accessibility to funds or loan facilities		Increased income opportunity

*Figure 9. Common impacts revealed by SEIAs*

### Integrated High Conservation Value-High Carbon Stock Approach (HCV-HCSA) Assessment


**Mandatory FPIC requirements**  
 HCV and HCS identification and preservation

- **7.12** Land clearing does not cause deforestation or damage any area required to protect or enhance High Conservation Values (HCVs) or High Carbon Stock (HCS) forest. HCVs and HCS forests in the managed area are identified and protected or enhanced.
- **7.12.2 (C)** HCVs, HCS forests and other conservation areas are identified as follows:
  - b) Any new land clearing (in existing plantations or new plantings) after 15 November 2018 is preceded by an HCV-HCS assessment, using the HCSA Toolkit and the HCV-HCSA Assessment Manual. This will include stakeholder consultation and take into account wider landscape-level considerations.

- The Integrated HCV-HCSA assessment “is a participatory process for identifying social and environmental values which need to be conserved in production landscapes.”<sup>41</sup> The assessment allows for the identification of HCV areas and HCS forests and peatlands present in the landscape, and management and monitoring recommendations about how they can best be protected, in collaboration with Affected Communities.
- The assessment report compiles social and environmental findings based on evidence gathered from field studies, interviews, participatory mapping, satellite imagery analysis, etc. and interpreted through the lenses of the HCV and HCS approaches.
- Integrated HCV-HCSA assessments must be led by an assessor with an ALS licence, followed by quality control by the HCVN Assessor Licensing Scheme.

<sup>41</sup> HCV-HCSA Assessment Manual for use during integrated HCV-HCSA assessments (2017) at p.10.



### Take Note




What if Indigenous Peoples and Local Communities agree to the project development but do not agree to HCV or Integrated HCV-HCSA assessments?

The UoC shall not proceed with the development of the project<sup>42</sup>, as the UoC is required by RSPO to undergo HCV or Integrated HCV-HCSA assessments.

### High Conservation Values (HCV)

- High Conservation Values (HCVs)<sup>43</sup> are biological, ecological, social or cultural values of outstanding significance or critical importance within a landscape. Examples of impacts to HCVs include land clearing, planting, replanting, pesticide and fertiliser use, mill operations, roads, drainage, and irrigation systems and other infrastructure of proposed activities.
- The HCV approach aims to ensure that areas for biodiversity and cultural and community needs are protected while allowing economic development and agricultural production.
- The six HCV types include **species diversity (HCV 1)**, **landscape-level ecosystems (HCV 2)**, **ecosystems and habitats (HCV 3)**, **ecosystem services (HCV 4)**, **community needs (HCV 5)** and **cultural values (HCV 6)**.

The figure below illustrates further on what social HCVs<sup>44</sup> are:

HCV 4	 Ecosystem Services	Basic ecosystem services in critical situations, including protection of water catchments and control of erosion of vulnerable soils and slopes.
HCV 5	 Community Needs	Sites and resources fundamental for satisfying the basic necessities of local communities or indigenous peoples (for livelihoods, health, nutrition, water, etc.), identified through engagement with these communities or indigenous peoples.
HCV 6	 Cultural Values	Sites, resources, habitats and landscapes of global or national cultural, archaeological or historical significance, and/or of critical cultural, ecological, economic or religious/sacred importance for the traditional cultures of local communities or indigenous peoples, identified through engagement with these local communities or indigenous peoples.

*Figure 10. HCVs 4-6.*

<sup>42</sup> RSPO Principles & Criteria (2018) - Criteria 7.12 Land clearing does not cause deforestation or damage any area required to protect or enhance High Conservation Values (HCVs) or High Carbon Stock (HCS) forest. HCVs and HCS forests in the managed area are identified and protected or enhanced, pg. 62 - 64.

<sup>43</sup> Refer to Glossary, pg. vi.

<sup>44</sup> Refer to Glossary, pg. vi.



## High Carbon Stock Approach (HCSA)

The HCSA is a tool for companies who are committed to breaking the link between deforestation and land development in their operations and supply chains. The tool uses field data on levels of biomass, vegetation structure and composition, and a view from above (satellite or Light Detection and Ranging (LiDAR)), to create a HCS classification ranging from high-density forest to degraded former forest areas of scrub and open land.<sup>45</sup>

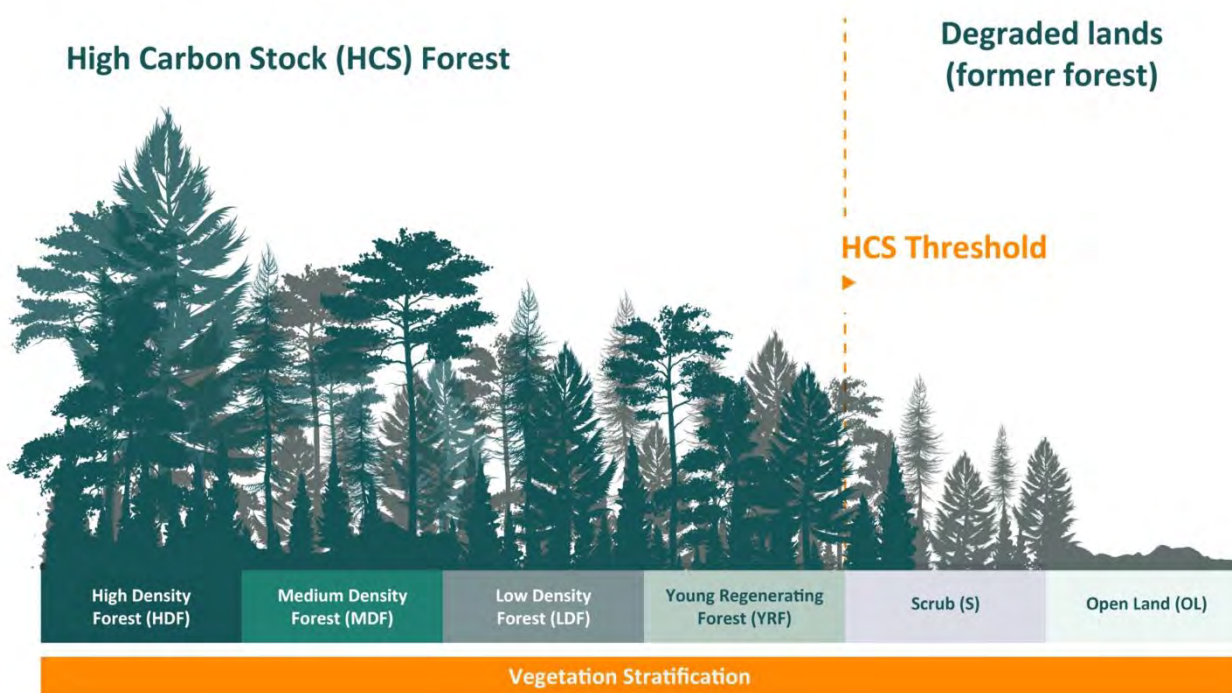







Figure 11. HCS Vegetation Stratification<sup>46</sup>

The table below outlines the summary of activities associated with the HCV and HCS approaches:

Assessment Steps	HCV Approach	HCS Approach
<b>Pre-assessment</b> 	<ul style="list-style-type: none"> <li>- Understand where the site is located and the land cover</li> <li>- Request information to assess preconditions</li> </ul>	
<b>Scoping study</b> 	<ul style="list-style-type: none"> <li>- Desktop research on potential values</li> <li>- Site visit to better understand social and environmental characteristics of the site</li> </ul>	<ul style="list-style-type: none"> <li>- Initial land cover map and patch analysis</li> <li>- Ground truth sample of vegetation classes</li> </ul>
<b>Fieldwork (social and environmental)</b> 	<ul style="list-style-type: none"> <li>- Participatory mapping</li> <li>- Fieldwork to gather information on HCVs</li> </ul>	<ul style="list-style-type: none"> <li>- Identity local peoples' lands</li> <li>- Verify peat study</li> <li>- Forest inventory</li> <li>- Finalise land cover map</li> </ul>

<sup>45</sup> Adapted from HCSA, THE HCS APPROACH TOOLKIT, Module 1 (Version 2.0, May 2017), pg. 5. See also: HCSA, *The High Carbon Stock Approach*.

<sup>46</sup> Adapted from HCSA, THE HCS APPROACH TOOLKIT, Module 1 (Version 2.0, May 2017), pg. 5.

<p><b>Analysis and interpretation</b></p> 	<ul style="list-style-type: none"> <li>- Identify HCVs and HCV management areas</li> <li>- Recommendations</li> </ul>	<ul style="list-style-type: none"> <li>- Patch analysis decision tree</li> <li>- Identify HCS forest</li> <li>- Recommendations</li> </ul>
<p><b>Consultation</b></p> 	<ul style="list-style-type: none"> <li>- Consult on HCVs and management recommendations</li> <li>- Discuss the potential incentives and benefits for integrated conservation and development</li> </ul>	<ul style="list-style-type: none"> <li>- Consult on HCSA management recommendations</li> </ul>

For further information regarding RSPO HCSA requirements, please refer to the “Guide on HCSA requirements for the RSPO<sup>47</sup>”, available on the RSPO website.

<sup>47</sup> Guide on the High Carbon Stock Approach Requirements for the RSPO (2022).

## STAGE 3: NEGOTIATION



### Mandatory FPIC requirements

#### Negotiation

- **4.4.2** Copies of documents evidencing agreement-making processes and negotiated agreements detailing the FPIC process are available and include:
  - a) Evidence that a plan has been developed through consultation and discussion in good faith with all affected groups in the communities, with particular assurance that vulnerable, minorities' and gender groups are consulted, and that information has been provided to all affected groups, including information on the steps that are taken to involve them in decision making
  - b) Evidence that the unit of certification has respected communities' decisions to give or withhold their consent to the operation at the time that these decisions were taken
  - c) Evidence that the legal, economic, environmental and social implications of 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 unit of certification's title, concession or lease on the land.
- **4.4.4** All relevant information is available in appropriate forms and languages, including assessments of impacts, proposed benefit sharing, and legal arrangements.

### Consultations in Good Faith

- The UoC **must engage** directly with each of the relevant communities in the area that have been identified as being affected during the assessment stage.
- Upon identifying and engaging with the relevant stakeholders, an agreed plan for decision-making and negotiation is needed. While it is important to engage local village leaders, these must not be treated as the only or primary community representatives by default. It is important to engage with elders, women, persons with disabilities, youth and children, or to ensure that their views are represented to ensure they understand the specific impacts on them.<sup>48</sup>
- The UoC **must inform** the community that they have the right to choose their own representatives and institutions, and that they have the right to choose more than one such representative.
- The communities' self-chosen representatives may include one or a combination of bodies, all of which need to be taken into consideration and engaged directly by the UoC.



### Recommendations

#### Meetings

- These meetings should take place in the community's village/premises to allow communities to engage comfortably.
- The UoC should provide adequate notice through a formal letter or a visit by the UoC to Indigenous Peoples and Local Communities.
- If requested, necessary support (e.g. advisors, intermediary organisations and other parties) shall be provided by the UoC.
- Side-meetings should be held with vulnerable groups within the community, to determine their views. For instance, female team members may choose to talk informally to women and girls outside of the meeting setting in contexts where they feel more comfortable to engage. It is important to respect cultural sensitivities within the communities when engaging vulnerable groups.
- Active monitoring and support from third parties or other stakeholders may be helpful for the process and ultimately for the community to decide whether they invite, request or allow such monitoring and support and under what terms and conditions.

<sup>48</sup> United Nations Digital Library, *Free, Prior and Informed Consent: A Human Rights-Based Approach: Study of the Expert Mechanism on the Rights of Indigenous Peoples*, pg. 8.



**Caution:** Do not take pictures or videos of community members or meetings without first getting consent. Doing so without prior consent may be construed as intimidation.



### Take Note

On Community Governance and Communities to negotiate with

- In some areas, different tribes and castes may have their own representative body, which is considered more legitimate than official government or village leaders. Communities do not always coincide with administrative (or electoral) boundaries.
- In some cases, village leaders are elected by the government and not by the community itself, and they shall be included in consultations with the broader community, rather than be engaged on an individual basis without broader involvement.
- To identify if they are part of the Affected Communities, those with demonstrable rights who reside outside the proposed area of development shall also be consulted.
- Where there are individuals or groups that hold separate views or concerns from the broad community, whatever their view, the UoC should make additional efforts to consult and include these individuals or groups.

Refer to *Ensuring there is Consent* (pg. 18) on *Items to Address during Negotiations*.

### Signed Negotiated Agreements between Parties

During the negotiation process any of the discussed proposals **may be accepted, amended or countered**.

- Both parties must fully understand what they are signing.
- Agreements are meant to be binding for each party. The process of creating a binding agreement may require a notary in the case of the UoC or a public ceremony in the case of a community.
- Copies of the final and signed agreement and its annexes shall be provided to all parties to the agreement.
- Parties must fully understand the terms of the agreement and its implications. These may include:
  - The extent and location of planned development activity
  - Areas allocated for different purposes
  - The legal implications of the agreement and how it will be made legally binding
  - Who will own and manage areas
  - Who will exchange their rights for compensation
  - Benefits provided and process for compensation
  - How negative impacts will be avoided, mitigated or compensated
  - What happens if there is a change in ownership or funding
  - How disputes will be resolved
  - How communities will be involved in implementing and monitoring the agreement, i.e. participatory monitoring and evaluation

### Documented System for Compensation

A documented system for compensation should be included within the negotiated agreement, which includes the following:

- i) Procedure for the identification of:
  - a. Legal, customary or user rights
  - b. People entitled to compensation of rights
- ii) Procedure for calculation and distribution of fair and gender-equal compensation (monetary or otherwise), including corrective action as a result of the evaluation of this procedure.
- iii) Provision of equal opportunities to both men and women to hold land titles for small holdings.



## Mandatory FPIC requirements

Documented system for compensation

- **4.6** 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.
- **4.6.4** The process and outcomes of any negotiated agreements, compensation and payments are documented, with evidence of the participation of affected parties, and made publicly available to them.



## Recommendations

Legacies, Divestments and Handovers

*Handovers and the sale and purchase of oil palm concessions by a new operator is a key concern of communities. They are often not informed of these handovers prior to the negotiated agreement, are unclear who exactly owns the concession, whether the concession's boundaries will change, whether the new holder is an RSPO member, if there is any relationship between the new and former holder, whether the former holder will resolve any outstanding disputes and uphold existing agreements, and whether the new holder will take on these responsibilities.*

*For this reason:*

- Communities should be **informed** of the possibility and implications of the handover as early as possible, before the transaction takes place, ideally in a three-way discussion with the community, the seller and the buyer. Consulting the local government is also recommended.
- It is in the interests of the buyer **that communities are fully aware** of any ongoing disputes within the concession and any outstanding obligations or agreements. This includes what actions have been taken to address this, and how the UoC will seek to consult communities prior to any handover or transfer of ownership.
- The buyer **should** 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 shall be consulted thoroughly prior to the transaction to ensure compliance.
- Where land conflicts are long-standing and unresolved or 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 will be properly implemented as required by the RSPO P&C.

## STAGE 4: IMPLEMENTATION AND MONITORING



### Mandatory FPIC requirements Implementation of Agreements

- **4.4.6** There is evidence that the implementation of agreements negotiated through FPIC is annually reviewed in consultation with affected parties.

### Participatory Monitoring

The FPIC process does not end with the signing of an agreement between the UoC and the Affected Communities. Once the agreement has been signed by all relevant parties, it must be monitored annually to ensure effective FPIC implementation.

A participatory monitoring procedure that involves representatives from both the UoC and the community ensures validation of results against commitments and allows for adjustments as development activities progress. More reliable monitoring results can be found through community monitoring (including community-selected indicators) because of Indigenous Peoples' knowledge and use of the land, water and natural resources.

#### Teams involved in Participatory Monitoring should check that:

- Legal arrangements<sup>48</sup> are complied with
- All compensation (monetary/non-monetary), benefits and services are provided as per the negotiated agreement
- Resource management plans, including impacts on food and water security are monitored
- Infrastructure is delivered on schedule
- Promises of employment were fulfilled
- If smallholdings are provided, the agreed location, timeline, transfer of management and payment terms (prices and payments must be fair and transparent) are as agreed upon

*Figure 12. Checklist – Monitoring all parts of the agreement*



### Recommendations Community Involvement

The following can lead to increased community member involvement in data collection and interpretation:

- If required, a community-approved facilitator to facilitate discussions between Indigenous Peoples and Local Communities, and the UoC.
- Involve the same individuals (members of Indigenous Peoples and Local Communities) throughout the monitoring process for continuity of information.
  - Interpretation of the data collected should also be discussed and shared with vulnerable groups within the community.

*Note: Data collection - Reference can be made to **Figure 8. SEIA - Guidance for assessing and managing the social impacts of projects** (pg. 38).*

<sup>49</sup> RSPO Principles and Criteria (2018), Annex 2: Guidance – Criteria 4.4, pg. 98.

For the purposes of monitoring, the **permanent community and UoC forum (refer to Recommendation box - pg. 27)** can be utilised to ensure that:

- Terms of the negotiated agreements are fulfilled and delivered on schedule.
- Issues are identified and addressed in a timely manner to avoid escalation into grievances or disputes.
- There is an open channel of communication, building trust and maintaining good relations between the UoC and community members.

### Grievance Mechanism

A grievance refers to a broad range of problems or issues concerning the Affected Communities over the course of the FPIC process, which should be properly addressed by the UoC.



#### Mandatory FPIC requirements

##### Grievance mechanism

- **4.2** There is a mutually agreed and documented system for dealing with complaints and grievances, which is implemented and accepted by all affected parties.
- **4.2.1 (C)** The mutually agreed system, open to all affected parties, resolves disputes in an effective, timely and appropriate manner, ensuring anonymity of complainants, HRDs, community spokespersons and whistleblowers, where requested, without risk of reprisal or intimidation and follows the RSPO policy on respect for HRDs.
- **4.2.2** Procedures are in place to ensure that the system is understood by the affected parties, including by illiterate parties.
- **4.2.3** The unit of certification keeps parties to a grievance informed of its progress, including against agreed timeframe and the outcome is available and communicated to relevant stakeholders.

An effective grievance mechanism allows for trust to be built between companies and communities, contributing to a mutually beneficial FPIC process. As such, Indigenous Peoples, Local Communities, and other users should be seen as partners in designing and monitoring these grievance mechanisms. This mechanism shall acknowledge, review and resolve grievances within a specified time frame and parties to the grievance shall be informed of its progress.



#### Recommendations

##### Complaints Box

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. There should not be any surveillance of the complaints box to ensure anonymity of complainants. This practice can minimise the risk of reprisal against individuals lodging or targeted by complaints.

A grievance mechanism should be developed in consultation with communities to ensure it is accepted, relevant, accessible and implementable within the applied environment. It should be designed taking into account culturally appropriate ways of handling community concerns. While this describes an ideal grievance mechanism design, a grievance mechanism can be based on existing mechanisms already developed by the company, which are tailored to the needs and environment of the communities within the development.

It is also acknowledged that in certain scenarios, communities may be disinterested in participating in the development of the grievance mechanism due to various reasons. In these instances, it is required that communities at least be made aware, understand and agree to use the grievance mechanism developed by the company.

It needs to be clear to communities and/or their representatives that any grievance lodged will not result in any retribution or reprisal to the complainant, nor does it replace their rights to other forms of independent remedy such as legal action, mediation, etc.



## Mandatory FPIC requirements

### Conflict Resolution Mechanism

- **4.2.4** The conflict resolution mechanism includes the option of access to independent legal and technical advice, the ability for complainants to choose individuals or groups to support them and/or act as observers, as well as the option of a third-party mediator.
- **4.8.1** Where there are or have been disputes, proof of legal acquisition of title and evidence that mutually agreed compensation has been made to all people who held legal, customary, or user rights at the time of acquisition is available and provided to parties to a dispute, and that any compensation was accepted following a documented process of FPIC.
- **4.8.2 (C)** Land conflict is not present in the area of the unit of certification. Where land conflict exists, acceptable conflict resolution processes (see Criteria 4.2 and 4.6) are implemented and accepted by the parties involved. In the case of newly acquired plantations, the unit of certification addresses any unresolved conflict through appropriate conflict resolution mechanisms.
- **4.8.3** Where there is evidence of acquisition through dispossession or forced abandonment of customary and user rights prior to the current operations and there remain parties with demonstrable customary and land use rights, these claims will be settled using the relevant requirements (Indicators 4.4.2, 4.4.3 and 4.4.4)
- **4.8.4** For any conflict or dispute over the land, the extent of the disputed area is mapped out in a participatory way with involvement of affected parties (including neighbouring communities where applicable).

Palm oil development can be a source of conflict where there are disputes over land rights, insufficient consultations by companies with locals, community displacements, illegal operations, and lack of compensation for resettlement in the case of displacements.

Conflicts can lead to displacement of communities, labour shortage, problems in accessing credit and land, and casualties. Smallholders exposed to conflicts are also at risk and are sometimes forced to change land use patterns and crop portfolios, reallocate their labour structure, and destroy their physical assets to protect productivity. Conflicts not only impact the UoC and the surrounding communities, but also the entire supply chain.

As such, the RSPO requires that the UoC must develop a conflict resolution mechanism to address and resolve these issues. Conflict resolution can be considered as both a relationship-building and risk-management tool. A conflict resolution mechanism refers to a system to diffuse, resolve and remediate disagreements, confrontations and tensions between the UoC and Indigenous Peoples, Local Communities, and other users (individuals/groups) in a practical and constructive manner.<sup>51</sup> This mechanism may be accessed by the community and/or its representatives via the grievance mechanism (i.e. lodging a grievance) or initiated by the UoC in cases where communities do not wish to lodge grievances themselves.

The UoC and Indigenous Peoples, Local Communities, and other users should understand and agree to conflict resolution procedures in advance. This allows Indigenous Peoples, Local Communities, and other users to set aside any procedures that they do not agree to. Among the approaches recommended are **dialogue** and **mediation**.

<sup>50</sup> RSPO, FPIC - Conflict Resolution and FPIC.

<sup>51</sup> Adapted from *Conflict Resolution*.

## Dialogue

To prevent an existing conflict from escalating and to initiate the resolution process, parties to a conflict should engage in dialogue with respect, honesty and an openness to learn from each other. When trust and understanding are cultivated at the beginning of a dialogue, problems are more likely to be resolved through discussions. Keeping communication lines open enables UoCs to identify and address issues amicably.

## Mediation

Mediation is a conflict resolution approach that increases the structure and formality of dialogue. Disputes and grievances might be addressed in less formal forums, before Indigenous Peoples, Local Communities, and other users governing bodies, elder councils or similar entities.

Other options include arbitration (an individual appointed by the parties who has decision-making power) and adjudication (formal court of law).

A representative from Indigenous Peoples, Local Communities, and other users may serve as a mediator for disputes. They may understand the value of a neutral perspective as opposed to the role of a legal advisor/representative on behalf of the Indigenous Peoples, Local Communities, and other users, which is an important but separate role. A plan that provides for mediation facilitated by such an individual stands a much better chance of being relied on and respected, since the person brings credibility.

There are five (5) major conflict management styles that can be used: integrating, obliging, dominating, avoiding and compromising; however, the appropriateness of using these styles depends on the situation and several criteria related to the nature of the conflicts. For further information, refer to ***Conflict resolution management to support sustainable palm oil production***.<sup>52</sup>

## Operationalising the Grievance Mechanism and Conflict Resolution Mechanism

There are a few critical elements that should be included:

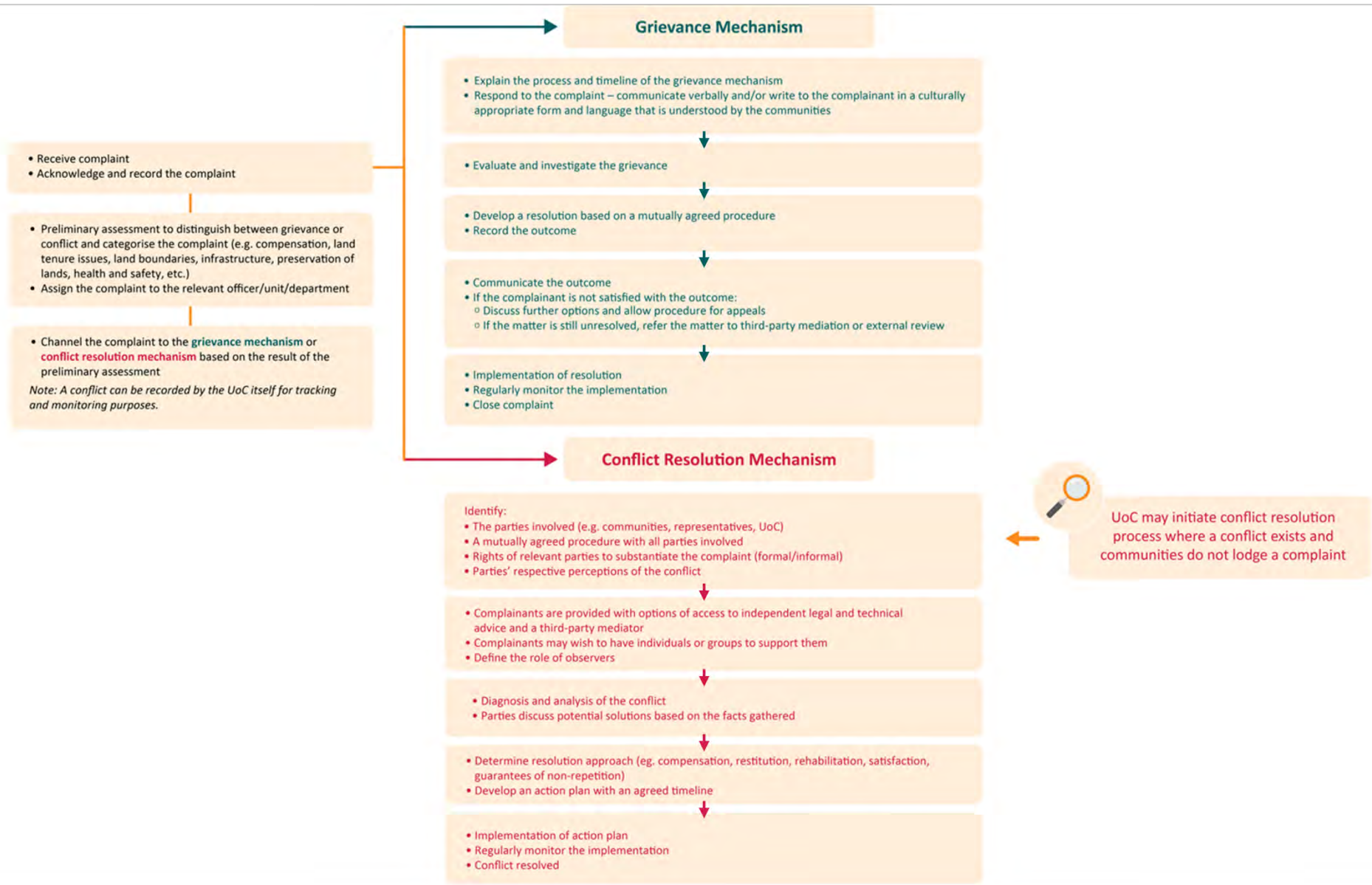
- Introduction
  - Objective and goals of the mechanism.
  - Identification of potential users of the mechanism.
- Scope of the mechanism
  - What categories of complaints are covered under the mechanism? (e.g. land rights, compensation, boundaries of development, preservation of HCV/HCS areas, terms violated in negotiated agreements, etc.)
  - What categories are excluded? (e.g. complaints not related to activities of the UoC and/or beyond company control)
- How to file/submit a complaint
  - What form of complaints [e.g. standard template, digital platforms (apps), letter, email, logbook, verbal] are accepted?  
*Note: There may be a reason for designing a mechanism that allows for verbal complaints (e.g. lack of literacy among some community members).*
  - What is the necessary information that should be included in the complaint filed? (e.g. requests for confidentiality/anonymity, full name of complainant (individual/representative organisation), contact details, description of the complaint in detail including date and time, and evidence to support the complaint, where available).
  - How to submit a complaint? What are the different avenues (email, office, hotline, in-hand to field staff) for each respective form of complaint?
  - To whom the complaints are submitted to and processed by? (e.g. Complaints Officer)
  - Timeline and details for each process step (such as what, where, who, when and how).

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<sup>52</sup> Adapted from *Conflict resolution management to support sustainable palm oil production (2020)*.

- Resources
  - People - trained staff or external resources experienced in social and environmental management and in dealing with community concerns and complaints.
  - Systems - systems for receipt, recording and tracking of the process (e.g. complaint log, complaint tracking cards).
  - Processes - written procedures for handling complaints and responsibilities assigned for each step as well as for management oversight.
  - Budget - estimating, allocating and tracking costs associated with complaints handling.





Note: In the event a resolution cannot be achieved, a complaint can be lodged via the RSPO Complaints System

Figure 13. Operationalising the Grievance Mechanism and Conflict Resolution Mechanism

## Social Remediation for Loss of HCVs

The Remediation and Compensation Procedure (RaCP) (2015)<sup>53</sup> was developed to provide a clear, formal and transparent mechanism to remediate/restore and compensate for the potential HCV loss, to address the specific problem of the failure to conduct HCV assessment prior to past land clearance since November 2005. The RaCP does not yet currently include clarity on compensation for social HCV compensation.

Nevertheless, UoCs are urged to consider the social HCVs, traditional livelihoods, cultural practices, identity and knowledge of Indigenous Peoples, Local Communities, and other users are inextricably linked with the environment and ancestral lands/domains/territories. The loss of the ability to continue traditional practices (e.g. hunting, fishing, land management and harvesting non-timber forest products) may lead to a decline in knowledge transfer and consequently erode cultural identity, knowledge, governance, and social connections. Therefore, the displacement of Indigenous Peoples, Local Communities, and other users from areas where customary or user rights have long been established, has potentially far-reaching consequences, including the extinction of cultures and ethnic societies. Thus, when considering remediation strategies, companies need to keep in mind that there is no one size fits all solution and may require a combination of options depending on the type, severity and scale of the social HCV loss. Therefore, Indigenous Peoples, Local Communities, and other users should be involved at the earliest possible stage when developing remediation strategies, to avoid disagreements or differing expectations at a later stage.

It is important for the UoC to provide social remediation to restore, maintain or enhance social HCVs: 4, 5 and 6, where these are found to be required. Options for remediation may include restitution, rehabilitation, substituting or financially compensating for the provision of and/or access to natural resources or cultural sites with Affected Communities.

**There are 5 (five) general categories of social remediation options<sup>54</sup> that can be considered:**

- I. **Restitution** – restoration of a situation or conditions prior to the development activity
  - Example: Returning disputed lands to the community, restoring access to resources, agreement either to permanently suspend operations in the disputed area and/or proceed with a newly negotiated agreement involving all the requirements of an FPIC process.
- II. **Compensation** – appropriate and proportional award and/or payment (monetary or non-monetary) in recognition of loss and assessable damages
  - i. Monetary – payment for use of lands and/or losses of livelihood and/or income to the individuals entitled (e.g. the collective community rather than specific individuals for a collective grievance).
  - ii. Non-monetary - Options may include (where possible): land excision, land swaps, assistance with land titling, changed terms of land rental or lease, allocation of smallholdings, co-management, community shareholdings, community development, and compensation through the provision of services, infrastructures or other assistance.
- III. **Rehabilitation** – restoration for the purposes of retention and preservation of a particular ecosystem
  - Example: replanting forests in damaged riparian areas of water sources
- IV. **Satisfaction** - acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality<sup>55</sup>
  - Example:
    - Making public apologies for violations
    - Cessation of continuing violations
    - Full public disclosure of social HCV loss
- V. **Guarantees of Non-Repitition** – measures that prevent the repetition of the initial social HCV loss
  - Example: Promoting mechanisms and reviewing operational SOPs to prevent and monitor social HCV loss

<sup>53</sup> Remediation and Compensation Procedure (2015).

<sup>54</sup> UN Human Rights Office of the High Commissioner, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Human Law*. Resolution adopted by the UN General Assembly on 16 December 2005.

<sup>55</sup> Jus Mundi, *Satisfaction*.

- Examples of scenarios of social remediation for loss of HCVs are provided below<sup>56</sup>:
  - I. If a single family impacted by forest clearance has lost a stand of fruit trees (HCV5), it may agree to remediation through replanting alternative food sources, or monetary compensation, or a combination of these.
  - II. If a community has lost access to its ancestral hunting grounds (HCV5), it may agree to remediation through habitat restoration, provision of an alternative livestock rearing, or monetary compensation.
  - III. If an individual's fruit trees (HCV 5) were cleared and planted with oil palm without her consent, she may agree to the restoration of another area with fruit trees and compensation for lost income in the interim.
  - IV. If a community's graveyard (HCV6) has been bulldozed to make way for plantations, the community may agree to the erection of a monument celebrating all those buried there and a compensation sum for damages.



### Take Note

#### Corporate Social Responsibility vs. Social Remediation

Corporate Social Responsibility if in the form of basic social welfare support, is not a form of social remediation. The provision of social welfare support, such as educational facilities, water supplies, medical health, and village infrastructure, is now part of several UoCs commitments towards Local Communities, as part of a broader commitment to the improvement of their wellbeing and environment. While this may contribute to community development as agreed upon by Local Communities (Indicator 4.3.1), this alone will not amount to social remediation as the intention is to remediate, restore and compensate for the loss of social HCVs.

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<sup>56</sup> Remediation and Compensation Procedure (2015), pg. 16.

## STAGE 5: VERIFICATION

### Internal Assessment of Compliance with RSPO FPIC Requirements

Verification is an essential component of FPIC, as it allows the UoC to assess their level of compliance to the FPIC requirements and assess the fulfilment in implementing their obligations under the negotiated agreement.

The checklist below is non-exhaustive. It can be used as guidance for:

- i) UoC - to conduct internal verification
- ii) Auditors - to check compliance of the UoC with RSPO FPIC requirements

Stages of the RSPO FPIC process		Evidence		Purpose
a)	Preparation and Investigation	i.	Social Survey	Identify Indigenous Peoples, Local Communities, and other users who live in and around the proposed development to identify Affected Communities.
		ii.	Land tenure study/survey	Ensure UoC understanding of local systems and land ownership, including customary or informal land tenures.
		iii.	Records of meetings	Evidence of UoC consultation with communities to determine their representation and to convey that communities have the right to say “no” at any stage of the FPIC process (from initial discussions until the agreement has been signed).
		iv.	Letter of agreement	Evidence of acceptance of communities’ chosen representatives (if applicable).
b)	Assessments	i.	Lists of landowners	Determine legal or customary landowners and confirm all Affected Communities.
		ii.	Participatory maps: a) Draft b) Endorsed	Evidence showing the extent of legal, customary and user rights, and/or any contested lands of Affected Communities.
		iii.	Letter of acknowledgement by relevant organisations (IMOs, NGOs), village heads or local authorities	Supporting evidence of informal rights of the Affected Communities over the land.
		iv.	Participatory SEIAs Report	Determine social and environmental impacts (as agreed upon by communities) of the proposed development of the UoC.
		v.	Participatory HCV Assessment Report	Identify environmental, social and/or cultural values of significance or critical importance in and around the proposed development.
		vi.	Integrated HCV-HCSA Assessment Report	
		vii.	Records of maps, assessments and other evidence provided to Affected Communities – [b (ii) to (vi)]	Evidence that Affected Communities are consulted with and informed of the impacts of the proposed development.

		viii.	Records of maps provided to neighbouring communities [b(ii)]	Evidence that neighbouring communities are informed of the boundaries and land claims of Affected Communities.
		ix.	Records of meetings	Evidence of UoC consultation with communities regarding mapping and assessments.
		x.	NPP Submission (if applicable)	Identify environmental and social values present in the proposed development, and to protect, monitor and manage those values based on RSPO standards.
c)	Negotiation	i.	Agreements for FPIC-based negotiations (e.g. Letter of Intent, Memorandum of Understanding, etc.)	Ensure that a process for FPIC-based negotiations has been mutually agreed upon and documented prior to the agreement with Affected Communities.
		ii.	Records of meetings and consultations	Evidence that Affected Communities have access to independent information and advice concerning the impacts of the proposed development and implications of the agreement.
		iii.	Draft(s) of negotiated agreements	Evidence that there have been iterative negotiations between the UoC and Affected Communities on issues relating to compensation, benefit-sharing arrangements, mitigation of impacts, land deals and excisions, dispute resolution, etc.
		iv.	Mutually agreed upon procedure to identify: a) Legal, customary and user rights b) Individuals/groups within the Affected Communities entitled to compensation	Evidence that there is a procedure to: i) Identify legal, customary and user rights, and ii) Individuals/groups within the Affected Communities entitled to compensation and benefits
		v.	List of individuals/groups within the Affected Communities entitled to compensation and benefits	
		vi.	Final and signed agreement	Evidence of a binding agreement between the UoC and Affected Communities on the following items: <ul style="list-style-type: none"> <li>Parties and representatives to the agreement</li> <li>Location and duration of development</li> <li>Areas allocated for different purposes</li> <li>Compensation and benefits</li> <li>Conflict resolution</li> <li>Grievance mechanism</li> <li>What happens if there is a change in ownership or funding</li> <li>Provisions for monitoring, including how communities will be involved in implementing and monitoring the agreement, i.e. participatory monitoring and evaluation</li> <li>Provisions for renegotiation, renewal and termination</li> </ul>

d)	Implementation and Monitoring	i.	Documentation and proof of compensation and benefits provided to individuals/groups within the Affected Communities entitled to compensation	Evidence that individuals/groups within the Affected Communities are compensated as per the final and signed agreement.
		ii.	Grievance mechanism SOPs and supporting documents	Evidence that the UoC has a mechanism to address and resolve grievances in an effective, timely and appropriate manner. This mechanism ensures the anonymity of complainants, without the risk of reprisal or intimidation.
		iii.	Conflict resolution SOPs and supporting documents	Evidence that there is a mutually agreed upon conflict resolution mechanism to address and resolve disputes.
		iv.	Records of the communities' acceptance of the conflict resolution mechanism	
		v.	Documented social remediation plans	Evidence that there is remediation for loss of social HCVs.
		vi.	Documented Human Rights Policy	Evidence that the Human Rights Policy is available, implemented and communicated. This policy prohibits retaliation against Human Rights Defenders and prohibits intimidation and harassment by the UoC and contracted services (e.g., security forces).
		vii.	Documented evidence of communication of Human Rights Policy to all levels of the workforce and operations	

## ANNEX 1: GUIDANCE ON BOUNDARIES AND BUFFER ZONES FOR FPIC

This section provides guidance for the UoC to determine the boundaries and perimeters in which assessments should be conducted in order to ascertain if there are Affected Communities within the buffer zone for the FPIC process to be conducted.

### Buffer Zones

100 ha = 1 km x 1 km (1000 m x 1000 m)

Proposed plantation areas (km <sup>2</sup> )	Proposed plantation areas in hectares (ha)	Radius of Buffer Area (km)
1 x 1	100	0
2 x 2	400	0.5
3 x 3	900	1
4 x 4	1,600	2
5 x 5	2,500	3
6 x 6	3,600	4
7 x 7	4,900	5
8 x 8	6,400	5
9 x 9	8,100	5
10 x 10	10,000	5



**Example 1:**

For a plantation of 1,600 ha, the radius of the buffer area is 2 km. Since there is no community located within the buffer area, no FPIC process is needed.



**Example 2:**

For a plantation with an area of 900 ha, the radius of buffer area is 1 km. There are two communities located within the buffer area. Through assessments conducted with both communities within the buffer area, if it is found that land rights are impacted then FPIC must be conducted.



## ANNEX 2: FPIC IN INTERNATIONAL LAW

### ILO Convention 169 on Indigenous and Tribal Peoples

- **ILO 169** requires governments to carry out consultation in good faith consultations with the objective of achieving an agreement/consent.
- **ILO 169** stipulates that decision-making of indigenous peoples' own institutions should be respected.
- **ILO 169** states that in applying national law, due regard shall be given to customs and customary laws.
- **Article 6** requires that governments consult with indigenous peoples through their representative institutions whenever consideration is being given to legislative or administrative measures that may affect them directly.
- **Article 15** states that the rights of indigenous peoples to participate in the use, management and conservation of natural resources on their lands shall be specially safeguarded.
- **Article 15** further states that where the State retains the ownership of or rights to resources on indigenous peoples' lands, they shall consult indigenous peoples to determine how their interests would be affected before undertaking or permitting any exploration or exploitation of such resources.
- **Article 15** also states that indigenous peoples shall wherever possible participate in the benefits of such activities and shall receive fair compensation for any damages that they may sustain as a result of such activities.

### UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

#### No forced removal (Article 10)

- Indigenous peoples shall not be forcibly removed from their lands or territories without their free, prior and informed consent and after agreement on just and fair compensation and, where possible, with the option of return.

#### Lands and Territories (Articles 20 and 26):

- Indigenous peoples have the right to the lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired.
- States shall give legal recognition and protection to these lands, territories and resources, conducted with due respect to their customs, traditions and land tenure systems.
- 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.

#### Right to restitution and redress (Articles 28):

- 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 that 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.
- 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.
- 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.
- Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

#### Self-Identification and Non-discrimination (Articles 15):

- Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations, which shall be appropriately reflected in education and public information.

- States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

**Representation (Articles 18 and 19)**

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

**Customs, Traditions and Self Determination (Articles 3, 4, 5, 32, 33, 34):**

- 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. They have the right to autonomy or self-government in matters relating to their internal and local affairs, and ways and means for financing their autonomous functions.
- Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.
- States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions 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, utilisation or exploitation of mineral, water or other resources.
- Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, and 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.

Additionally, Articles 11, 19 and 29 make reference to FPIC.

## ANNEX 3: FREQUENTLY ASKED QUESTIONS (FAQs)

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### What if a community/land user withdraws consent after the development has begun?

- Communities/land users have the right to say “no” to the development at any stage. If this does happen, a UoC shall understand whether this withdrawal aligns with the agreements signed. The UoC shall try to address the community’s concerns and discuss alternatives. It is possible that a grievance mechanism may be useful to discuss in this case.

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

- The RSPO P&C requires that RSPO members identify and document the Rights (legal rights, customary rights, user rights, demonstrable rights) of Indigenous Peoples, Local Communities, and other users, regardless of whether these are formally recognised by the government or not.
- Efforts should be made to inform local government bodies of the requirements under the RSPO P&C that obliges the UoC to recognise informal and customary rights even where titles are not held by those communities.

### Is consultation, or *sosialisasi* in Indonesian, the same as FPIC?

- No. Consultation is an important element in the consent-seeking process and shall 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.

### Is consultation with the village chief sufficient?

- FPIC is a collective right of Indigenous Peoples and Local Communities and therefore shall be sought not on a one-to-one basis but through wide consultation and community participation. The UoC shall respect the decision-making processes of the community. The community may or may not give the decision-making power to the village chief.

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

- Whether or not to provide a contribution to communities for participating in assessments (land tenure and use, participatory mapping, SEIA, HCV, HCSA and Integrated HCV-HCSA), consultations and negotiations 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 the community and their representatives to receive recompense for their time. 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 provided, 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.
- Contributions paid to the communities and/or their representatives shall not be deemed as acquiescence/agreement or waiving of their rights to the land.

### Is FPIC a right to veto?

- No. FPIC is a collective right under international law and as such the will of the collective community should prevail. The community themselves decides how their will is expressed – i.e. decision-making processes within the community and community-selected representatives/institutions to express their views.
- FPIC is not a right for individuals to ‘veto’ the choices of the wider group. However, it does mean that both minority and majority views need 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.

## ANNEX 4: CHALLENGES AND CONCLUDING REFLECTIONS FROM STAKEHOLDERS IN THE DEVELOPMENT OF THIS GUIDANCE

Interviews were undertaken with stakeholders from Africa, Latin America and South-East Asia in developing the RSPO FPIC Guide (2022). It brought out wider viewpoints on how the RSPO can ensure that RSPO members comply with the FPIC requirements of the 2018 RSPO P&C.

Below are some challenges experienced in the implementation of the FPIC process, followed by reflections on resolving these challenges based on feedback from stakeholders.

**Challenge: FPIC is not fully internalised into the Standard Operating Procedures (SOPs) of the UoC. Day-to-day Management and/or field staff are sometimes unaware of FPIC policies, its requirements, or are not prepared to deal with the complexities of ongoing grievances/ land conflict.**

### **UoC policies should match commitments:**

- Most companies have previously dealt with FPIC only through their due diligence or plantation development teams, as it was seen as a New Planting issue. This means that for cases where oil palm development has already taken place, FPIC is not part of daily management standard operating procedures. To match RSPO requirements, it is important that FPIC requirements are also incorporated as part of conflict resolution processes. Some companies have now developed Codes of Conduct, conflict resolution mechanisms and 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.

### **Improve field-level FPIC awareness:**

- It is important to increase understanding of the principles and practices of FPIC at the level of field and operational management, and this should include an understanding of the RSPO P&C more generally.
- There should also be efforts to improve Affected Communities and relevant local government bodies awareness of the FPIC requirements of the 2018 RSPO P&C. Doing so will help companies' efforts to comply with the P&C and ensure communities' have the ability to raise complaints and seek remedy as needed.

### **Strengthen the training of UoC staff:**

- The main challenge is to ensure that all relevant field and operational staff (in particular field managers and middle level staff) are familiar with the FPIC requirements of the P&C.
- RSPO members should consider conducting regular internal training programmes on FPIC, land tenure laws, land acquisition and conflict resolution.
- It helps to also ensure that staff whose role is to liaise with communities, understand diverse perspectives and are trained in intercultural relations and conflict management, which would greatly facilitate the FPIC process.
- UoC staff or consultants need to be socially aware of cultures and be aware of potential misrepresentation, for example, with regards to verbal cues that could be misinterpreted as promises, especially in terms of agreed compensation.

**Challenge: A UoC seeks to develop plantations in areas with a history of conflict or human rights issues.**

### **General human rights awareness needs to increase, including more locally specific issues:**

- Companies should always conduct a locally specific human rights and conflict due diligence prior to any acquisitions. Issues and approaches can be very different from area to area, and understanding the local history and context is a critical step. Where existing conflicts have been identified, the UoC should seek guidance from local experts on human rights and FPIC experts to address these.

### **Engage more effectively with NGOs:**

- It is important for UoCs to:
  - identify key NGOs working in a specific locality and to engage with these NGOs, as many NGOs can provide human rights and FPIC expertise and knowledge in a particular area.
  - Understand that NGOs can also play an important role as advisors and facilitators for Indigenous Peoples, Local Communities, and other users in their decision-making processes. It is important therefore to understand the role of the NGO to ensure more effective engagement.
  - Ensure that Local Communities are given the space to communicate with their chosen representatives and advisors. Clearer communication with the communities can avoid issues of trust that can lead to

conflict, for example where NGOs are perceived as speaking on behalf, or as representatives, of communities, without the necessary mandate.

#### **Understand inherited legacies:**

- When a UoC acquires concessions, it is important to understand whether there are existing conflicts with Local Communities present. This is to enable a better ability to engage with the Local Communities, who may not have been aware of the new concession holders.
- The UoC should introduce themselves to Local Communities located nearby new acquisitions at the soonest possible an opportunity and this should include conveying FPIC processes including grievance procedures etc. This can provide opportunity for relationship building and where there are any legacy conflicts, providing an avenue to address this.

**Challenge: Culturally valued biodiversity and environment is not adequately identified in the SEIA and HCV/ HCV-HCSA Assessments.**

#### **Ensure community participation into assessments:**

- SEIAs and integrated HCV-HCSAs assessments should involve Local Communities and include the wide range of interests and land uses that each and different neighbouring communities may embody; these include the interests of vulnerable groups. The UoC should ensure that the consultants hired for these assessments have adequate expertise on community related matters.
- If Local Communities are not involved in HCV assessments, there is a higher probability of failure to detect the loss of areas critical to community needs (HCV 5) and cultural values (HCV 6) from plantation development.

**Challenge: Communities lack the knowledge and/or resources to fully participate in the FPIC process.**

#### **Provide access to information:**

- The UoC must ensure that sufficient time and planning is put in place for any FPIC process. This is to ensure that sufficient and complete information is being shared with communities to inform their decision making. Provide sufficient time for communities to digest this information, and also to consult internally as a community, and arrive at a collective decision through their own decision-making mechanisms.
- The UoC should facilitate provision of access to independent legal and non-legal support and expertise for communities. This should be mindful of perceptions of conflict of interest, hence being able to link communities to independent sources of advisory, such as NGOs or the RSPO is important.

#### **Provide capacity-building and counsel to Local Communities:**

- Ensure that communities are adequately notified, prior to the land acquisition process.
- The UoC should work closely with bodies and organisations to help ensure that communities are independently informed of their rights and entitlements and have access to legal counsel and technical advice.

**Challenge: RSPO requirements are stricter than national requirements, causing confusion.**

#### **RSPO is a voluntary certification scheme:**

- RSPO has requirements that often go beyond the requirements of national law.
- Where national laws and regulations do not provide adequate recognition and protection of the rights of Indigenous Peoples and Local Communities, international human rights instruments are poorly enforced, and national and international legal frameworks are not harmonised, the ability of the UoC to comply with RSPO's FPIC requirements is more challenging.
- The UoC should encourage efforts of the RSPO to engage with national governments so that the rights of communities to their customary lands and FPIC is respected.

**Challenge: Community representation is unclear. The UoC struggles to determine who represents a community.**

#### **Provide space for self-representation by communities:**

- The UoC should avoid determining community representatives in isolation. This is to avoid perceptions that the UoC is selecting those who are perceived to be aligned with their interests.
- The UoC should ensure communities are fully informed of their right to freely choose their own representatives (including institutions) through their own decision-making processes.
- The UoC should prioritise collective consultations and mapping.
- The UoC must understand how land issues are decided on within the community and adjust their FPIC processes to align with the communities' decision-making.



#### **Incorporate diversity of communities:**

- In identifying community representatives, communities may not often think about institutional representation and may in some instances have more than one representative.
- Communal land implies there are various owners. The process and mechanisms for consent shall be led by the community. Growers shall be prepared to work with the customs of the communal landowners, which may include providing information in multiple settings (e.g. multiple community meetings).
- FPIC requires in-depth knowledge of communities and requires that group preferences and opinions not be oversimplified. Decisions shall be made based on mutually agreed upon procedures during community meetings.
- As a best practice, the signing of contracts shall be conducted in the community.

#### **Challenge: Complex and variable land tenure laws make it difficult for growers to comply with RSPO requirements.**

##### **Better clarity on land rights:**

- For the UoC there is often a lack of clarity over land rights and users may have spurious and illegitimate claims over land. It is critical for the UoC to carry out adequate assessments on all communities in the vicinity to determine Affected Communities. FPIC processes within the UoC must also include a process to determine land and user rights.
- Carry out participatory mapping earlier in the process of land acquisition. Collective rights in land can sometimes be missed if not enough time is allocated in participatory mapping processes. There also needs to be clarity of how mapping processes are carried out in the event of conflict resolution or where disputes arise regarding overlapping land claims.

##### **Additional resources required during land tenure processes:**

- Land tenure processes are often complex and time-consuming and require legal documentation and additional expertise/resources that communities may not have.
- In many cases, prior land use agreements, land ownership and titles are sometimes not documented (e.g. passed down through verbal contracts).

#### **Challenge: Communication and interpretation regarding negotiated agreements.**

##### **Make implications of negotiated agreements clearly understood:**

- Some communities may understand verbal agreements to be binding, while a UoC and/or government may only observe written agreements and signatures as formal and binding. The UoC should encourage communities that all verbal agreements should be put in writing.
- In addition, the UoC should provide clarification to communities of any agreements, including the legal implications of signing an agreement.

#### **Challenge: Conflicts are prevalent, and the community will not accept the development deal.**

##### **Ensure freedom of choice:**

- The UoC must avoid direct coercion and intimidation, including pressuring in more subtle forms, e.g. through the presence of security personnel, a “take it or leave it” approach, 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.

##### **Provide remedy and conflict resolution:**

- The UoC should develop grievance mechanisms that are accessible to Local Communities in cases of conflict and disputes. These should be developed in cooperation with communities to ensure that the mechanism is mutually satisfactory.
- The UoC should focus on improving FPIC implementation more holistically and not only related to resolving conflicts. The UoC should also look at remedies in addition to future improvements (e.g. related to smallholdings, to look at remedying previously destroyed crops in addition to also considering an increase small holdings, etc).

RSPO is an international non-profit organisation 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.

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