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THE HCS APPROACH TOOLKIT

MODULE 2

VERSION 2.0

MAY 2017

THE HCS APPROACH PUTTING NO DEFORESTATION INTO PRACTICE

Social requirements

THE HCS APPROACH TOOLKIT V2.0 MAY 2017

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Authors:

Zakaria Adriani, Patrick Anderson, Sahat Aritonang, Uwe Ballhorn, Bill Barclay, Sophie Chao, Marcus Colchester, Jules Crawshaw, Gabriel Eickhoff, Robert Ewers, Jaboury Ghazoul, David Hoyle, George Kuru, Paul Lemaistre, Pi Li Lim, Jennifer Lucey, Rob McWilliam, Peter Navratil, Jana Nejedlá, Ginny Ng, Annette Olsson, Charlotte Opal, Meri Persch-Orth, Sebastian Persch, Michael Pescott, Sapta Ananda Proklamasi, Ihwan Rafina, Grant Rosoman, Mike Senior, Matthew Struebig, Tri A. Sugiyanto, Achmad Saleh Suhada, Alex Thorp, Sander van den Ende, Paulina Villalpando, and Michal Zrust.

Copy Editor:

Sean Merrigan (Merrigan Communications)

Production and Design Management:

Helikonía

Design:

Peter Duifhuizen (Sneldruk & Ontwerp)

Diagram Design:

- Open Air Design
- Proforest

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MODULE 2

Social requirements



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SECTION A

Respecting communities' rights to their lands and to Free, Prior and Informed Consent through the HCS Approach

By Marcus Colchester, Patrick Anderson and Sophie Chao (Forest Peoples Programme).¹

INTRODUCTION: RESPECTING RIGHTS AND SECURING LIVELIHOODS IN FORESTS

This module focuses on how to respect the rights of communities to give or withhold their consent to planned HCS assessments and developments. A broader set of social requirements for the HCS Approach is being developed, initially with a focus on oil palm. A draft of the Social Requirements for Conserving High Carbon Stock Forests in Oil Palm Development is included in Section B of this module.

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Nearly all terrestrial ecosystems in the tropics are inhabited and provide livelihoods for a wide diversity of social groups, commonly referred to as indigenous peoples and local communities. Around 350 million indigenous people live in forests, with some 1.5 billion individuals, including around half of the world's poorest people, depending directly on forests for their daily livelihoods (Chao 2012). Indeed, research shows that many apparently 'virgin' tropical ecosystems have been shaped and transformed by long-term human occupation and use (Balée 1994; Leach and Mearns 1996; Fairhead and Leach 1998; Posey and Balick 2006). Notably, some customary practices actually enhance carbon stocks in vegetation and soils, such as the humus-rich *terra preta* soils in Brazil which are built up by centuries of indigenous cultivation, and the forest islands created by human settlements in West African savannahs (Heckenberger 2005). Almost any intervention that affects these ecosystems will consequently affect the people who depend on them and may disrupt the ecology. This implies a responsibility to respect their rights and take into consideration how interventions may impact their livelihoods, cultures and roles in shaping the environment.

"It is also very common for people who live in forests to move around within their territory. They may shift their village sites to access fresh hunting and farming areas, or new trading opportunities, and in doing so allow previously used areas to recuperate."

These systems of land use are complex and diverse. Most forest-based communities practise mixed economies, which may include hunting and gathering over extensive areas for wild game and a great diversity of fruits, wild foods, resins, drugs, medicines and construction materials; fishing in rivers, lakes, streams, ponds, and seasonally flooded forests; farming and livestock-raising in permanent fields, pastures and on rotationally cleared forested hillsides; and tree-cropping for rattans, fruits, latexes and timbers. The products derived from all these activities may be used locally, bartered with neighbours, or be traded regionally and globally. All these practices imply subtle local and ecological knowledge embodied in practical lore, belief systems and accompanying social norms.

Corresponding to these systems of land use are equally subtle local systems for apportioning entitlements and regulating use and access, which

are overseen by community or higher-level institutions. It is common among forest peoples to find that rights to different aspects of their lands, territories and resources are simultaneously held by a wide range of local institutions, and often in ways that overlap. For example, an embracing territory may be owned collectively by a village or cluster of settlements and overseen by a council of elders. Within that area, certain hunters or groups of hunters may have their own hunting or trapping trails, specific fruit trees may belong to certain persons, farmlands and forest fallows may be owned by the families that first cleared them, and fishing sites may be allotted to certain groups.

Moreover, a landscape is not only important for community members in economic terms: it is invested with memories, associations and ritual significances that underpin these peoples' very identities. Sacred sites may be taboo to certain persons or in defined circumstances. Areas of forest may be reserved for religious reasons, or for farming by future generations, or conservation set-asides for hunting or to allow recovery after use. Established and locally accepted norms exist by which any disputes that occur can be adjudicated and conflicts resolved. These landscape designations are often invisible to outside observers and even scientists.



It is also very common for people who live in forests to move around within their territory. They may shift their village sites to access fresh hunting and farming areas, or new trading opportunities, and in doing so allow previously used areas to recuperate. This does not mean areas are 'abandoned', only that they are

temporarily out of use or are used less intensively. Studies show that such systems of settlement mobility, rotational farming and land use zoning can help to ensure long-term sustainability of the forested landscape (AIPP and IWGIA 2014).

International human rights and environmental laws require respect for these complex systems that are also described as 'customary use', 'customary rights' and/or 'customary law'. These laws include the basic human rights covenants and treaties of the United Nations, the UN Declaration on the Rights of Indigenous Peoples, and the Convention on Biological Diversity. States have an obligation to protect these rights, while companies are required to respect them even when they are not recognised in national laws or practices. The UN's Guiding Principles on Business and Human Rights (2011) notes that the responsibility of business enterprises to respect human rights exists independently of states' abilities and/or willingness to fulfil their own human rights obligations, and exists over and above compliance with national laws and regulations protecting human rights. These company obligations are also spelled out in several different sustainability standards and certification programmes.

Because the HCS forest assessment process has been developed as a practical tool for companies to use in land use planning for forest concessions, it is important to ground this process within company obligations to respect customary use, human rights, and international laws. This module provides an overview of these obligations as well as the steps companies must take to integrate them into the HCS Approach process.

Implications for company development areas and identification of High Carbon Stock forests

When companies seek to acquire forest lands by purchase or as leases ('development areas') from government agencies, they need to take steps to ensure that the rights and livelihoods of forest peoples are assured. Inevitably, the commercial activities planned by plantation companies have the potential to undermine or disrupt local ecosystems and prior systems of land use. This is because, inter alia:

- Allocation of lands and resources to plantations inevitably reduces or overlaps with the lands available to local communities for other purposes.
- New infrastructures, such as roads, bridges and townships, open up areas to intensified and commercialised resource use, both by local people and outsiders.
- New enterprises attract workers and other settlers to migrate into the area to find employment and engage in other commercial activities, thus competing for jobs and resources with local communities.
- More obviously, if communities' lands and forests are taken over without adequate consultative planning, without respecting communities' rights and without their consent, then imposed plantations may destroy livelihoods, trigger serious social conflicts and lead to environmental misuse.

This module focuses on forest communities with customary rights. Companies seeking to acquire forest lands will often have to relate to and negotiate with recent migrants and farmers without customary rights. There are detailed guides on conflict mapping and tenure assessments to help determine the nature of the rights of different groups in a forest area (Galudra 2010). Along with participatory mapping processes, these will help determine the extent of the rights of each group. Based on assessments and government advice, each group, including recent migrants, will need to be treated respectfully and negotiated with accordingly. It should be noted that recent arrival in an area is not by itself evidence that settlers lack land rights, as they may have acquired such rights from traditional owners or according to customary law.

The purpose of Social and Environmental Impact Assessments (SEIAs) and land use planning tools – like those used to protect High Conservation Values (HCVs) and identify HCS forests – is to mitigate the negative

impacts of development and ensure that essential social and environmental values and services are maintained or enhanced. However, if assessments are conducted without genuine participation, and if lands are reallocated as conservation areas without communities' involvement or respect for their rights and livelihoods, such assessments may be ineffective or worse. This is because, inter alia:

- Assessors and company managers will fail to understand the extent of local communities' rights, or how they make a livelihood, or what rights and status are attached to certain lands and forests under customary systems of land ownership and use.
- Imposed classifications may cut across local systems of land use.
- Imposed conservation areas and restrictions may violate customary rights, causing resentment or disputes with local users.
- Restrictions on use will either impoverish local people or displace their land use to other areas.
- Disrupted systems of land use are likely to become more unsustainable and place greater pressure on remaining resources, including both plantations and conservation areas.



These are not merely theoretical difficulties. Imposed oil palm plantations, pulp and paper plantations and protected areas have all caused widespread conflicts (Colchester 1994 and Dowie 2009). In Malaysia, there are hundreds of legal cases in which communities are disputing the way lands have been allocated to companies without respect for their customary rights (Colchester et al. 2007). In Indonesia, where laws provide even less protection for customary rights, the government's National Land Bureau estimates that there are some 4,000 land conflicts between palm oil companies and communities. Where these disputes are unresolved they may give rise to protests, police repression, retaliatory crop theft, destruction of properties, further repression, riots, police violence, injuries and deaths. Such problems can paralyse plantations, cause substantial financial losses and lead to suffering among local communities.



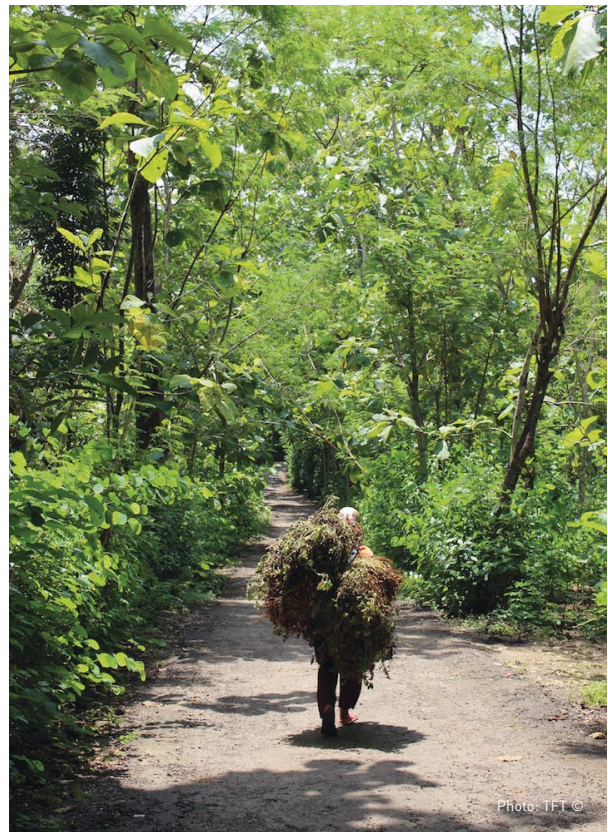
Unfortunately, detailed field studies also reveal very real problems with HCV and HCS Approach land use planning (Forest Peoples Programme 2014). In numerous cases, communities deprived of lands and forests (taken for plantations, proposed conservation areas, or both) have little choice but to establish farms in riparian forests, which have been left uncleared to ensure environmental services under HCV 4. Alternatively, they have impinged on conservation areas set aside for rare, threatened and endangered species under HCV 2. In most instances, the main problems stem from:

- Companies failing to recognise communities' prior rights and right to give or withhold consent to operations planned on their lands.
- Using inadequate toolkits that lack clear advice on how to set aside sufficient lands for livelihood purposes.
- Poorly trained assessors who do not understand the complexity of customary land use systems.
- A lack of genuine community participation in the carrying out of assessments, as well as in the development of management plans and support mechanisms for maintaining conservation values.
- Increased pressure on land due to industrial plantation expansion, increasing populations and in-migration of people seeking farming lands in forested areas.

Problems also arise where communities have not been fully informed about the amount of land companies intend to take over for plantations and conservation areas. Furthermore, communities may imprudently agree to relinquish extensive areas of land without considering their future needs, or because they have unrealistic expectations about the scale of the benefits to be derived from plantations and smallholdings.

Where HCV area and HCS forest zonings have (unfortunately) been carried out after lands have been relinquished, set-asides for conservation can likewise generate resentment. This is because communities are squeezed off the very land they had expected to remain for their own use (e.g. for smallholdings of commercial crops and other self-provisioning activities).

The following guidance has been designed to address these problems.



DEEPER CHALLENGES

It is important to recognise that the problems outlined in this module may be exacerbated by inappropriate land tenure laws and poor land governance by government agencies. All too often, statutory laws do not recognise (the full extent of) customary lands nor require communities' Free, Prior and Informed Consent (FPIC) before allocating such lands to companies. In addition, laws governing land, forestry and plantations may hinder progressive companies from implementing management systems consistent with best practices. In Indonesia, for example, oil palm and pulp and paper companies are licence holders and cannot formally recognise and set aside areas within their development areas for customary rights. Some palm oil companies operating in Indonesia that have set aside extensive areas for HCVs have had these parts of their permit areas cancelled and excised from their development area for leaving too much 'idle land' within their development areas, contrary to the legal requirement to plant such areas with palms.

Even where pulp and paper companies reach informal agreements with communities to set aside areas for community use within their development areas, only strictly limited areas can be allocated for farming or for communities to cultivate crops of their choice.

This is because the plantation permits granted to companies authorise only the cultivation of specified tree species. Under Indonesian regulations, licences authorising oil palm developments can only be issued on state land, and companies have to persuade communities to give up their rights to that land so that an oil palm licence can be issued. Many communities are not informed that in releasing their lands for oil palm development the area becomes unencumbered state land and will not revert to them when the lease expires. In Malaysia, even where an RSPO member company may want to settle a land dispute with a local community, a state (i.e. sub-national) government, which sometimes holds a share in the company, may refuse to settle and instead pursue litigation against the community in the courts.

In exceptional cases, such as that of Wilmar in Central Kalimantan, Indonesia, companies have been able to negotiate ad hoc agreements with local governments allowing them to maintain HCV areas even where national laws proscribe this (Colchester et al. 2012). But if community rights and conservation of HCS forests and HCV areas are to be secured and more widely adopted, then legal reforms are needed.

“...laws governing land, forestry and plantations may hinder progressive companies from implementing management systems consistent with best practices.”

Land acquisition and Free, Prior and Informed Consent (FPIC)

There are numerous toolkits and guides covering how customary rights and prior land use systems should be recognised and how lands should only be acquired for use by third parties subject to communities' Free, Prior and Informed Consent. These include guides developed:

- For certification schemes such as the Roundtable on Sustainable Palm Oil (RSPO supplementary materials), Roundtable on Sustainable Biomaterials (2014) and the Forest Stewardship Council (2012).
- Free, Prior and Informed Consent: Guide for RSPO members (2015).
- By UNDP for the UN-REDD Programme (2012).
- By the German Technical Assistance agency (GIZ) and the Centre for People and Forests for use in REDD+ (RECOFTC 2011).
- By the UN Food and Agriculture Organization for use by governments in the governance of tenure of lands, fisheries and forests (FAO 2014).
- By the International Labour Organization to guide indigenous peoples in negotiations with companies (Barsh 1995).





Numerous reviews have also explored the requirements of international law and the practical obstacles that stand in the way of effective implementation. See, for example:

- MacKay, F. (2004) Indigenous Peoples' Right to Free, Prior and Informed Consent and the World Bank's Extractive Industries Review. Sustainable Development Law and Policy, Volume IV (2): 43-65.
- First Peoples Worldwide (no date) Indigenous Peoples Guidebook for Free, Prior and Informed Consent and Corporation Standards.
- Colchester, M. and MacKay, F. (2004) In Search of Middle Ground: Indigenous Peoples, Collective Representation and the Right to Free, Prior and Informed Consent. Moreton-in-Marsh, UK: Forest Peoples Programme.
- Colchester, M. and Ferrari, M. (2007) Making FPIC Work: Challenges and Prospects for Indigenous Peoples. Moreton-in-Marsh, UK: Forest Peoples Programme. Available at: www.forestpeoples.org/sites/fpp/files/publication/2010/08/fpicsynthesisjun07eng.pdf (accessed 27 April 2017)
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Acceptance by companies that, in line with international law, customary communities have rights to the lands, territories and resources that they have traditionally owned, occupied or otherwise used, and have the right to give or withhold their FPIC as expressed through their own representative institutions, requires some fundamental changes in the way they go about land acquisition. It implies rewriting their standard operating procedures, retraining field staff and managers, and developing much more open systems of communication with local communities. Above all it means accepting that the communities involved will have a decisive voice, both on whether an operation should go ahead or

not, and in setting out the terms and procedures by which consultations and negotiations are undertaken and agreements reached and implemented.

Each and every word in the expression 'Free, Prior and Informed Consent' is loaded with legal significance. Combined, they demand that in any process towards an agreement, communities feel free from any compulsion, coercion or duress; that development areas have not been granted or lands taken prior to communities' agreement; that communities are fully informed about how their rights might be affected, as well as how impacts will be mitigated and benefits shared; and that the procedures by which deals are negotiated and consent given or withheld are agreed by the communities in advance. All the guides noted above stress that securing FPIC requires iterative engagement between operators and communities. FPIC is not a one-off box-ticking procedure to be carried out by company staff, but a repeated two-way engagement and learning process for both parties. As each community is unique and all peoples have different cultures and norms, as well as different rights to land depending on their histories, each procedure towards FPIC may be different.

The following section sets out the key steps in any FPIC process. It draws most heavily on, Free, Prior and Informed Consent: Guide for RSPO members (2015), which should be referred to for details. More details regarding how legitimate versus non-legitimate claims can be handled, how communities can be represented, how conflicting claims can be resolved, how consensus must be documented, and other key factors, are outlined in the RSPO Guide and other guides listed previously.

"As each community is unique and all peoples have different cultures and norms...each procedure towards FPIC may be different."



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Prepare

- Operators complete desktop study to review the status of FPIC/tenure/Community Land Use Plan (CLUP) and the recommendations needed prior to HCS forest field plotting assessment.
- Operators conduct an initial visit to establish community locations, inform communities of their proposal to develop an area and to explain the communities' entitlement to FPIC and right to control what happens on their lands. Information is provided on the HCS Approach and the commitment that the company has made to identify and maintain HCS forests within their development areas and in the surrounding landscape, in cooperation with communities and other actors. Information is also provided on why HCS forests are important to communities and wider society, including inter alia soil and water values and non-timber forest products (NTFPs), how HCS forests are assessed, the right of communities to choose whether or not to identify and maintain HCS forests on their lands, and how communities can potentially be supported through incentives and benefits to maintain any identified HCS forests.
- Communities decide if they want to consider the company proposal, and if so, how they want to be represented when engaging with the operator. Discussions about how the interests of women, children, youth, marginalised castes, classes and land users will be taken into account.
- The procedure and steps for an iterative FPIC process of engagement between the communities and the operator is mutually agreed, taking account of all the steps noted below and the communities' own norms and proposals. This includes clarification on how the process will be documented and validated, as well as the form in which the information will be presented to ensure it is accessible to communities.

Assess and map

- The developer provides the community with copies of maps from its development application and from any planning or development licences it has obtained from government. These are overlaid with existing community maps and those created in the following steps.
- A participatory land tenure and land use assessment is carried out to clarify the way customary rights are allocated and the way the lands are used by the people concerned.
- Participatory mapping is undertaken jointly to plot the full extent of customary rights and uses, including farmlands; forest fallows; hunting, fishing and gathering areas; reserves; sacred sites; and collective territories.
- Participatory Social and Environmental Impact Assessments (SEIAs) and HCV assessments are undertaken, as well as HCS forest stratification and analysis. Together these assessments detail the costs and benefits that HCV areas and HCS forests imply for communities. They also clarify which areas the company seeks to acquire for planting, the proposed areas to be managed for conservation, and which areas will remain unaffected for communities to maintain their livelihoods.
- This information will help communities assess the benefits and costs of accepting development proposals and the associated conservation zoning in their areas.

What is participatory mapping?

Participatory mapping is a tool for identifying and mapping indigenous and local community ownership of land and natural resources, as well as land use. It is a mapping method based on local knowledge and establishes local people as the key stakeholder group in mapping the given areas. Communities identify the areas to which they have customary rights and which are important to them, for historical reasons, for their current and future livelihoods, for their cultural values, or for ecosystem service provision. Communities can use the results of the mapping as a basis for negotiation with companies on land use planning. These results can also be useful to communities beyond their dialogue with companies – for instance, they can support village development and community-based natural resource management. They are important tools for communities carrying out land use planning to accommodate oil palm development and HCS forests into their territories.

Negotiate an agreement

- Communities choose who they want to act as their legal (or other) advisors and as independent observers. Funds are secured (with the assistance of the project developer where requested) to pay for these costs and help ensure communities are adequately informed.



- Once all these elements are in place, time is given for communities to access information on alternative development options, consider the expected costs and benefits of managing HCS forest areas for conservation, assess all the other information provided (including the incentives and benefits on offer), discuss the implications among themselves, and, with their self-chosen advisors, decide if they want to undertake negotiations.
- If the community decides to proceed, negotiations then take place between the communities' representatives and the operator to clarify the terms of any relinquishment of rights over lands and responsibilities for maintaining HCVs and HCS forests on community lands. Time and scope must be given for community meetings to review interim offers and develop counter-proposals for further rounds of negotiation.
- If agreement is reached in principle, then land deals can be finalised with associated provisions for land use, conservation and management, enclaving areas (from both development and conservation) for food production, benefit sharing, mitigation and grievance mechanisms, etc.
- The mechanisms and tools that will be used to establish and manage conservation areas – including conservation agreements and co-management – are identified and agreed upon, as is fair compensation for any loss of use of conservation areas.
- The agreement is legalised or notarised. This step includes the socialisation of the agreement with government, including discussions that can support its implementation.

Implement, monitor, and update the agreement

- The agreement is implemented – this may include staged relinquishment of rights and land acquisition from specific rights holders within the collective territory.
- Participatory monitoring of implementation is set up.
- The grievance mechanism is activated where and when necessary.
- Management systems are adjusted where monitoring or grievance mechanisms identify shortcoming in implementation or unexpected problems.

The ideal outcome of a good FPIC process is more than just a set of fairly implemented agreements, but also a relationship of trust between communities and the operator.

ACCOMMODATING RIGHTS AND LIVELIHOODS IN THE HCS APPROACH

The main purpose of the HCS Approach is to identify viable areas of forest that should be conserved due to their value as carbon stores, for biodiversity conservation, and as areas for customary use. Areas of vegetation within a defined commercial land development are screened using a combination of satellite imagery and field sample plot analysis to estimate the above-ground biomass (AGB) of trees over 5 cm in diameter and stratify vegetation into six categories: Open (or cleared) Land (OL), Scrub (S), Young Regenerating Forest (YRF), Low Density Forest (LDF), Medium Density Forest (MDF) and High Density Forest (HDF).

In pilot experiences, HCS forest areas are those in the four upper categories – YRF, LDF, MDF and HDF. These are then analysed further to identify viable forest areas that are proposed for conservation. Open area, grasslands and scrub areas are not considered to be HCS forest areas (see Module 4). Peatland and HCV areas are also identified and managed in an integrated way for conservation.

In order to accommodate the dynamic use of lands and forests by communities, forest stratification maps of the lands under consideration need to be overlaid with the participatory maps already developed to show which of these areas are subject to customary rights and use. The aim must be to ensure that HCS Approach, HCV and FPIC processes operate together and not contradictorily. Areas of overlap then need to be checked with the participation of the rights holders to ascertain current and proposed usage, whether as hunting, fishing and gathering grounds, or as forest reserves, sacred sites, farmlands, pastures, tree crops, rotational farming areas or future farmland



reserves. This allows many of these areas, especially tree crops and farmlands, to be excluded from consideration as HCS forest.

Where HCS forest areas proposed for conservation may affect either communities' rights or their current and future access and use, FPIC is also required. Prior to this, and to ensure informed consent, discussions should be held to clarify:

- The purpose and procedures of the HCS Approach, presented in a form and language comprehensible to community members.
- The constraints imposed on rights and resource use, including prohibited uses, inside any proposed conservation areas to be managed for both HCS forest and HCV.
- The tenurial arrangements that will be applied to any conservation areas, and whether these will secure or diminish community rights.
- Who is responsible for managing and monitoring the proposed conservation areas to ensure they retain their ascribed values.
- Where any relinquishment of rights or restrictions of livelihoods would ensue, and what mitigations, compensation or alternatives would be offered.
- How the costs and benefits will be shared, including the impacts of conservation areas on current livelihoods and the benefits foregone by limiting the areas available for smallholdings and estates.
- The package of incentives and benefits that is being offered for conservation of the HCS forest areas (integrated with those offered for plantation areas).

For areas under long-term cycles of rotational farming and forest fallows, and where communities expect to make their living by farming, ground surveys will be needed to estimate the length of forest fallows



and calculate the total areas of forest and farming land needed to maintain current livelihoods. Survey results can then be taken into account in community land use planning and be considered in relation to incentives (support) for alternative livelihoods and farming productivity gains (e.g. maintaining or increasing production while using less land).

Community land use planning

To help communities plan viable long-term livelihoods and ensure local food security, information must be generated from participatory mapping and HCV and HCS Approach zoning to clarify the location and extent of those areas:

- Currently allocated to various community uses.
- Required by the company for proposed plantations.
- Allocated for smallholdings or other benefit-sharing developments.
- To be conserved for HCV including riparian zones, and which of these areas will restrict current uses.
- Proposed to be conserved for HCS forest, and which of these areas will restrict current uses.
- Remaining for various community uses, including the needs of future generations, if all other allocations are acceded to.

Community participatory land use planning should then be carried out through iterative and inclusive community meetings – some with the operator, some only with chosen advisors, some without any outsiders – to assess community needs, evaluate the proposals from operators and assessors, and where necessary make counter-proposals for land allocations, land uses, land management and tenure. These proposals become part of the information that feeds into FPIC negotiations (above).

CLARIFYING TENURE AND MANAGEMENT



Clarifying tenure

Creative use of customary and statutory law should be explored to identify tenures that minimise the extent to which any proposed land allocations limit or curtail rights and land uses.

For many rural communities, lack of land tenure security stops them being able to secure and expand their livelihoods and maintain customary management, including forest conservation practices. Developers committed to the HCS Approach should offer and act to assist communities to secure their tenure – as a means to respect community rights, build trust and secure community commitments to maintain HCS forests.

“Areas to be conserved for HCV and HCS forests which overlap areas of customary rights should also be secured as community lands...”

Potentially, lands need not be ceded by communities to operators for plantations in perpetuity by sale or transfer, but can instead be leased or rented for agreed terms. Community lands which are not to be ceded to the company should be excised from development areas and titled or registered as community lands. Areas to be conserved for HCV and HCS forests which overlap areas of customary rights should also be secured as community lands, in compliance with relevant laws and regulations. Likewise, remaining areas being retained by communities should be secured.

MANAGEMENT

Care must be taken to clarify which entities will have responsibility to manage particular conservation areas, bearing in mind a range of options, including:

- Company-managed areas within development areas.
- Community-owned and managed areas.
- Government-managed areas excised from development areas.
- Co-managed areas (by community and government, or by community and company).

Conservation areas that overlap community lands and territories should not be taken over, managed or co-managed by other parties without this being agreed through the FPIC process. Once the entities with responsibility for management have been agreed, the persons (or office holders) and institutions holding those responsibilities need to be authorised, trained and budgeted to carry out their management roles. Effectively securing and protecting all HCS forest areas will usually require a mosaic of management regimes and tenures, as well as innovative approaches to create incentives and secure ongoing funding and support.

Since national laws are too variable to make simple recommendations, legal studies will be needed to ascertain the best options available in different countries and locales; these will also need to be explored with communities and their legal advisors prior to any consent. Without government understanding of the HCS Approach and related forest management agreements, it will be difficult for companies and communities to maintain identified HCS forests. It is therefore important to brief relevant government agencies on the HCS Approach at an early stage, and to keep them informed as plans for identifying and maintaining HCS forests are developed and agreed between companies and communities. Studies will be needed to identify legal mechanisms that allow communities to secure their tenure over HCS forests, as well as incentives and support that can help communities maintain HCS forests.

MONITORING

Land use planning, zoning and management are always dynamic processes and cannot be expected to cover every eventuality. Ensuring the effective functioning of HCS forest and HCV systems requires integrated participatory monitoring systems that combine (a) periodic remote sensing to check that extensive land clearance is only happening where agreed, and (b) real time ground patrols that include members of local communities who can often identify actors responsible for any such clearance as well as other threats or risks to agreed arrangements



RETROFITTING THE HCS APPROACH INTO PRE-EXISTING NEGOTIATIONS AND PLANTATIONS

When establishing new plantations, the HCS Approach should be integrated from the very beginning into processes such as HCV identification, HCV protection and FPIC. This module (and the HCS Approach toolkit as a whole) assumes that companies intending to apply the HCS Approach are also committed to identifying and maintaining HCVs. The main part of this module has proposed an integrated approach to combining HCS Approach, HCV and FPIC processes. Where operators have already acquired lands and have begun establishing (or have already established) plantations prior to adopting the HCS Approach, a participatory review with independent advisors needs to be carried out to assess the degree of compliance with the principles described in this module. In particular, because conserving HCS forest areas implies that additional areas will either not be available for development or have constraints on use, this may directly affect the lands of local people by possibly reducing the areas available for traditional livelihoods, new smallholdings and future generations. This may substantially decrease the benefits that local people had anticipated when consenting to the presence of a developer and, for example, HCV conservation set-asides.

Operators may therefore need to revise and repeat several planning steps in order to achieve compliance. This may imply renegotiating agreements and management plans with communities so that new conservation areas do not deprive them of benefits, lands or livelihoods, or squeeze rotational farming and other land use systems onto too little land to be sustainable or compensating for these deprivations.

The case study at the end of this module illustrates the challenges of retrofitting the HCS Approach process onto an existing development area when an integrated, inclusive approach is not followed from the beginning.

and land uses. Where appropriate, the village administration or council should be included in monitoring procedures.

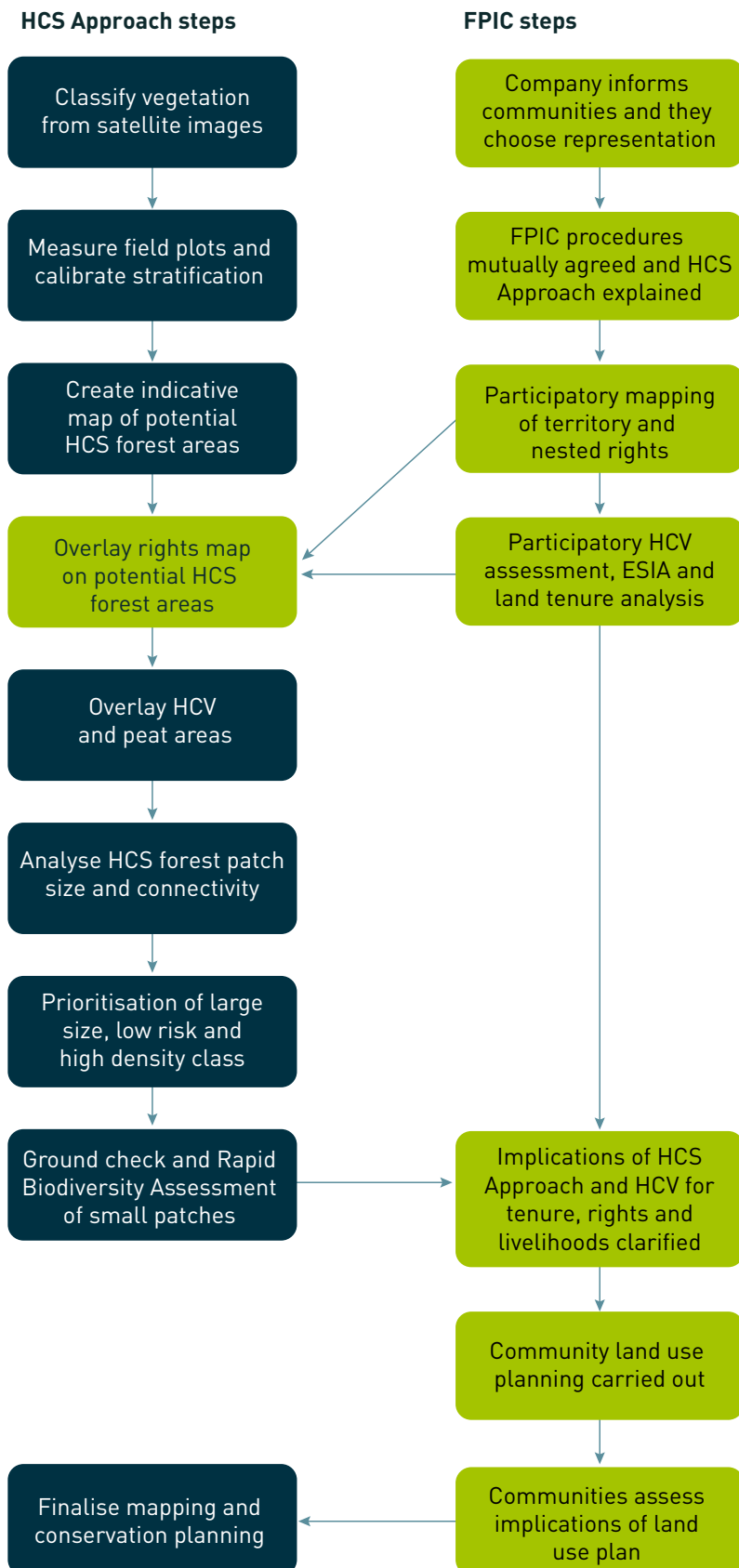
Innovative tools have already been developed for participatory monitoring of HCVs. These can be adjusted to also monitor HCS Approach conservation areas. Such tools recommend, inter alia: the creation of local teams that regularly walk trails to check on compliance and identify threats, geo-tagged SMART reporting systems using simple software that integrate field reports in almost real time with computerised mapping, and systems for ensuring community validation of findings.²

Feedback systems

To ensure that misunderstandings (e.g. between communities and operators) do not escalate into disputes, grievance mechanisms need to be agreed in advance with corresponding procedures to investigate complaints and act on them. Procedures also need to be in place for implementing recommendations from monitoring and grievance processes to adjust management practices, land allocations and responsibilities. In cases of serious dissent, agreements may need to be revisited and revised.

“Innovative tools have already been developed for participatory monitoring of HCVs. These can be adjusted to also monitor HCS Approach conservation areas.”

² See: www.forestpeoples.org/topics/palm-oil-rspo/publication/2013/monitoring-protocol-high-conservation-values-5-and-6-guideline (accessed 27 April 2017)



“When establishing new plantations, the HCS Approach should be integrated from the very beginning into processes such as HCV identification, HCV protection and FPIC.”

Figure 1: Part 1 – Integration of HCS and FPIC approaches: summary of steps

At each step in the FPIC process, the community has the right to say ‘no’ to further discussions, negotiations or agreements. In such cases, the subsequent FPIC and HCS Approach steps are not undertaken.



Photo: Ulet Ifansasti ©

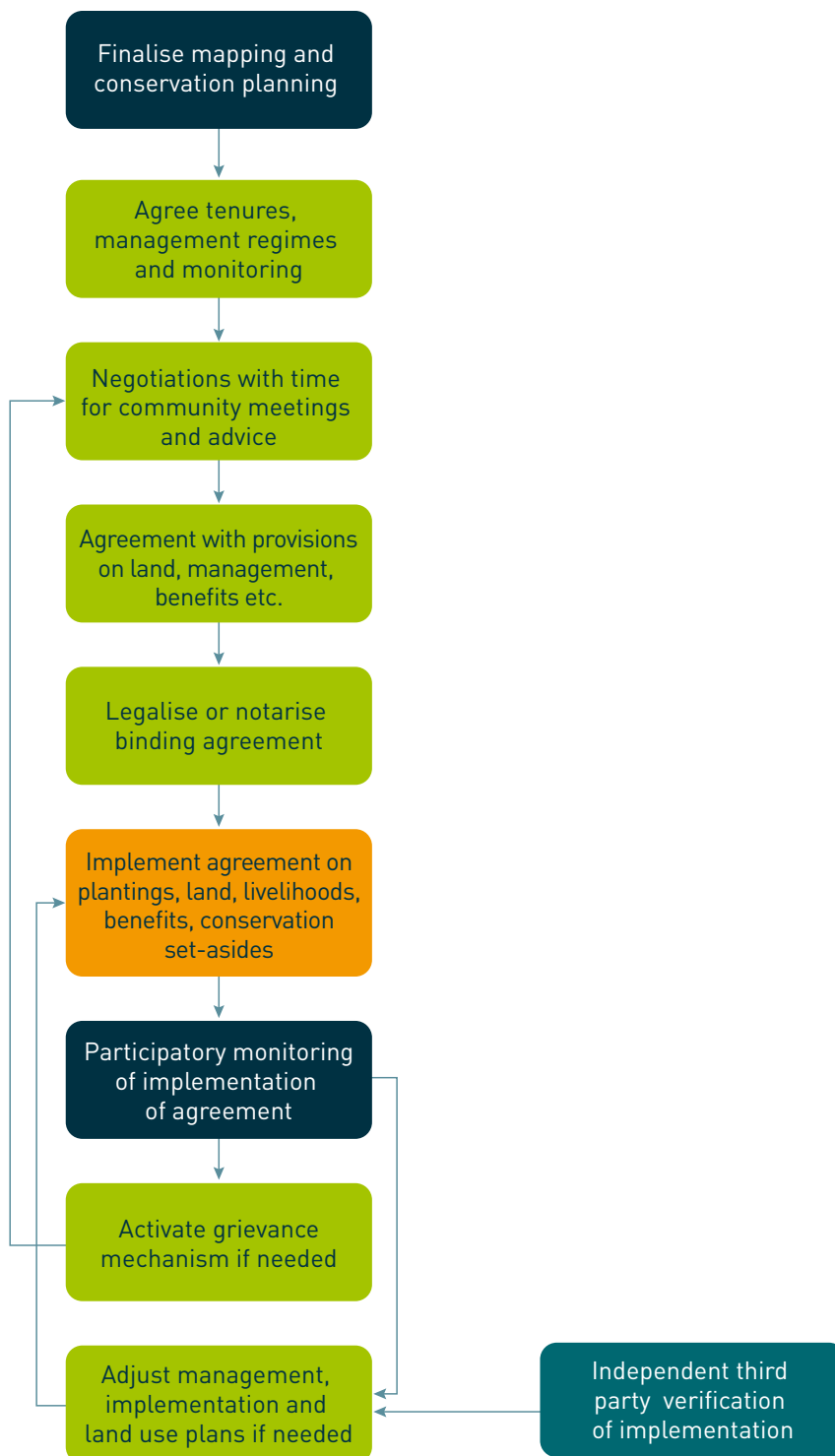


Figure 2: Part 2 - Integration of HCS and FPIC approaches: summary of steps

CONCLUSIONS: INTEGRATING RESPECT FOR COMMUNITIES' RIGHTS TO LANDS AND FPIC INTO THE HCS APPROACH

Since respecting communities' rights to lands and FPIC is an ongoing requirement and not a one-off exercise, elements of FPIC need to be fully integrated into the HCS Approach. Module 3 of this toolkit concerns Integration of HCV, HCS and FPIC processes. However, it is important to understand that FPIC processes will always vary from place to place and a prescribed sequence may not suit all cultures, communities or locales. In each case, the developer should make clear (both internally and to communities) the expected inputs, outputs and outcomes at each stage in the FPIC process. Broader and more detailed guidance is needed for both companies and communities on approaches to the management of HCS forests. Surveys of efforts to date will be collected and shared by the HCS Approach Steering Group in the future.



Photo: Ulet Ifansasti ©

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CASE STUDY

The importance of community engagement in the HCS Approach: a case study of PT KPC

**By Jana Nejedlá (TFT) and
Pi Li Lim (Golden-Agri Resources)**

The authors would like to thank Agung Wiyono, Guntur Tua Aritonang, and Stephany Iriana Pasaribu from TFT for providing helpful background information to compile this case study.

INTRODUCTION

This case study focuses on the importance of community engagement in the HCS Approach. It highlights lessons learned in a pilot HCS Approach project at PT Kartika Prima Cipta (PT KPC), a palm oil development area in Kapuas Hulu, West Kalimantan Province in Indonesia, a subsidiary of Golden Agri-Resources Ltd (GAR). The purpose of this pilot project is to test the implementation of GAR's Forest Conservation Policy and support the creation of a framework for the successful implementation of HCS forest conservation and No Deforestation policies for the broader oil palm plantation industry.

"Like the rest of West Kalimantan, there are large-scale land use changes in Kapuas Hulu district due to oil palm development by private companies."

Background

Kapuas Hulu district is an upland area famous for its large lakes, extensive peat swamps and productive inland fisheries. Compared to other districts, Kapuas Hulu already has large areas allocated for conservation. Like the rest of West Kalimantan, there are large-scale land use changes in Kapuas Hulu district due to oil palm development by private companies. Since PT KPC started operations in the area in 2007, it has faced mixed reactions to oil palm cultivation from the local Dayak and Malay communities in some villages – both 'for' and 'against'. More recently, the company has even been handling disputes and grievances from communities who initially supported oil palm development and surrendered their lands. These communities argue that the promised benefits of development have been slow to materialise and that planted areas for smallholder farms are not as extensive as expected.

These social issues, coupled with the communities' varied understanding of the implications of HCV conservation set-asides, made it hard to explain and gain acceptance from communities for the new HCS Approach concept. Many people feared that HCS forest conservation would result in additional land being closed off to their use, limiting their opportunities to generate livelihoods from NTFPs such as rubber and fisheries. The company and TFT made an effort to share the HCS Approach concept with key local stakeholders as early as September 2012 as part of the socialisation process. The communities had strong concerns about the HCS Approach pilot project, including uncertainty about impacts to their livelihoods resulting from loss of access to areas identified for HCS forest conservation. They were also unsure whether the company would develop plasma (palm oil smallholdings under a government-regulated scheme) for them, or whether the company would take over their customary forest.

In particular, the communities feared that HCS Approach zoning would not allow them to continue their practice of traditional shifting agriculture. This is a mobile system of farming that makes use of forest areas for relatively short periods, after which the lands are left to rest to allow forest regrowth and soil fertility regeneration before the cycle of clearance and use begins again.



Gaining community consent

In response to these concerns, PT KPC and TFT developed a plan to improve the relationship with the communities and gain their consent to participatory mapping for the HCS Approach pilot project. The first steps undertaken at PT KPC as part of this plan were an NTFP study and a participatory mapping process. Given its importance in the HCS Approach, this case study focuses on the participatory mapping process.

Preparation is essential for ensuring that the participatory mapping process is implemented effectively. The activities that took place prior to the mapping included:

- Capacity building for PT KPC management so they could provide guidance on the participatory mapping exercise to the public.
- A comprehensive, multi-stakeholder socialisation in order to create awareness and gain community support for the HCS Approach process.
- Training and facilitation to build communities' technical capacity to engage in the mapping process.

The participatory mapping exercise was implemented in the villages of Desa Mensusai, Desa Kerangas, and Desa Mantan from January through August 2014. While all villages in the PT KPC development area were approached to take part, these three villages were selected as they had the resources and willingness to collaborate with PT KPC and TFT. The village of Desa Menapar was also willing to cooperate in the participatory mapping process, and was added later to the project scope. The participatory mapping process at Desa Menapar was started with support from PT KPC and TFT as an early success story and example to the other villages.

The village head of Desa Kerangas noted the following regarding the participatory mapping process:

"With participatory mapping things will get better, because the goal is to protect the next generation. Now the village boundaries are quite clear to us. For example, although the villagers have always had an understanding of the other villages that surround ours, we now know the borders to the north and to the east. Also, all village assets such as rubber plantations and sacred forest have now been identified. The impact of this process will be to protect the interests of the next generation, for a better future."

Progress to date

To prepare for the participatory mapping process, the PT KPC employees involved in the process were trained (starting in January 2014) on the participatory mapping concept, the identification of NTFPs, FPIC and basic mapping competencies. TFT also conducted intensive discussions with groups of local and international NGOs active in the Kapuas Hulu area in order to gain a more comprehensive understanding about the local communities.

Interestingly, the most time-consuming and challenging socialisation processes were those held with local governments, including the Kapuas Hulu District government, the Suhaid sub-district government and the village government (Village Office and Representative Village Body/BPD). Local governments were concerned about setting aside even more land for conservation, which could potentially affect economic development in the district. The pilot project showed that engagement with local governments is a key success factor for the participatory mapping exercise. Participatory mapping and the consensus building that follows is an important buy-in process.

PT KPC and TFT teams faced various challenges in trying to gain FPIC for the HCS Approach process from villages and local governments because:

- The HCS Approach is a new concept and this was the first time participatory mapping had been conducted in the villages, meaning a very low level of understanding about either.
- Communities were sceptical, as various NGOs and other parties had approached them about land tenure issues in the past, and villagers were unwilling to believe they would benefit this time. Also, the company had continued to approach some communities that had previously withheld their consent for oil palm development.
- Communities were hesitant to cooperate with the company and provide information.

It was important for PT KPC to plan and manage local community interactions with care and sensitivity in order to break down these barriers. PT KPC and TFT led a series of activities, including training for communities on the participatory mapping and HCS forest conservation process, and discussions with the government to provide answers and objective information relating to its questions and concerns. These activities started with the Suhaid sub-district

government, which gave permission in February 2014 to continue the activities at sub-district level with local government and village representatives. After the socialisation at sub-district level, the activities began in targeted villages.

To explain the participatory mapping process and the benefits to local communities, local languages and different media types (such as pictures and presentations) were used. This ensured that the information shared was well received and understood. In many cases, it was important to involve special interest groups in the conversations, such as women's groups, as opinions on palm oil and willingness to take part in participatory mapping differed among different community segments. It was also necessary to understand the decision making process at village community level and take this into consideration in all activities undertaken.

PT KPC and TFT provided GPS devices and training to the communities and the communities chose which members would participate. The teams for each of the four villages included village officials, residents with good knowledge of the village boundaries, representatives from indigenous groups, as well as representatives from neighbouring villages. The mapping team also used notes from community discussions and input from community leaders who know the village borders and understand the agreements with neighbouring villages.

Although PT KPC and TFT developed a comprehensive scope for the participatory mapping exercise, the actual outcome of the activity was derived from the participation of the communities and the prioritisation of information important to them. The field mapping resulted in GPS coordinates for village boundaries,



roads, and settlements, as well as places important for local people's sociocultural functions, such as cemeteries, water sources, educational facilities and local cultural sites. Areas assigned for future planting and development of the village community were also included.

The mapping specialist team from TFT incorporated these data into draft maps, which were shared with the mapping teams in each village for re-validation. Photographs were provided as reference material. Further mapping of the four villages in 2015 clarified the communities' current and future land use plans. The final draft maps were discussed with representatives from neighbouring villages and the sub-district government to ensure that data provided by the communities matched what was already known by sub-districts.

"...this case study demonstrates that community relations and buy-in are crucial for HCS forest conservation... Such constructive engagement can only be built on a basis of trust and open communication."

When all parties have agreed on final versions, the maps will be given to the respective villages to be signed by village leaders, administrators and representatives of indigenous groups. The final maps will indicate the boundaries of village lands, certain aspects of land use (e.g. agriculture, customary forest, housing, public facilities), as well as features that are important to the communities, including infrastructure, natural resource areas and sacred places.

Conclusions

The PT KPC case demonstrates the importance of participatory mapping as a critical step in the land use planning process, as well as the basis for fulfilling local and indigenous peoples' rights to FPIC. Likewise, the rights and livelihoods of these local communities need to be embedded in the HCS Approach methodology to ensure they are recognised and secured. This includes addressing how HCS forest areas can be protected and managed, and how communities can participate in that process. An important outcome of the HCS Approach pilot is that participatory mapping is now included in the HCS Approach.



Above all, this case study demonstrates that community relations and buy-in are crucial for HCS forest conservation. All stakeholders need to understand the objectives and be engaged in shaping policies and practices on the ground. Such constructive engagement can only be built on a basis of trust and open communication. This process requires all parties to have patience and a willingness to invest in constructive dialogue to find solutions that benefit all stakeholders.

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SECTION B

Working Draft of Social Requirements for Conserving High Carbon Stock Forests in Oil Palm Development

Working draft adopted 22 January 2017.

INTRODUCTION

In response to global concern about the social and environmental impacts of tropical forest clearance for plantations, a converged High Carbon Stock Approach method has now been agreed to assist companies to improve land use planning and management and so assure markets that they are not clearing forests and contributing to climate change.

As an integral part of the converged HCS methodology, it was agreed that a multi-stakeholder group should compile a text setting out the Social Requirements for the HCS Approach, comprising NGOs, academics, and industry suppliers and downstream users, and involving HCS Approach proponents as well as the Roundtable on Sustainable Palm Oil (RSPO) and the Palm Oil Innovation Group (POIG).

This document constitutes a working draft of the Social Requirements for Conserving High Carbon Stock Forests in Oil Palm Development and is based on a consultation draft developed in July 2016, comments received on the draft during a six-week consultation period, and extensive inputs through a rights holders' workshop held in mid-October 2016.

NEXT STEPS IN THE PROCESS

This working draft is now to be trialled in pilot operations and a further revision of the text is then anticipated based on the lessons learned which can be used to develop more detailed guidance and/or indicators and verifiers.

These pilots will focus on implementation challenges encountered in the practical application of these standards on the ground, the identification of effective solutions, including through impact measurement and assessment, and the further elaboration of complementary procedures in relation to monitoring, verification and auditing. They will also consider the application and relevance of principles and approaches developed as part of other mechanisms with similar objectives of protecting rights and livelihoods, such as FAO norms on food security and standards for biofuels.

SCOPE

The converged HCS Approach and RSPO NEXT both recognise that in developing land for oil palm, developers must also take responsibility for the soils, forests, rights and livelihoods in the overall 'area of interest' or 'area of influence' of the development. High Conservation Values shall be identified and lands managed and/or set aside to maintain or enhance those values. Likewise, areas of High Carbon Stock (both forests and soils) must be identified and managed to secure wider environmental values. Areas of High Carbon Stock forests and high carbon soils (peat and other) must not be developed. The aim is to develop an overall land use and management plan that secures these values.

Community land use planning is a critical component within this broader framework. Since almost all these lands are inhabited by people with existing rights and livelihoods, and with their own visions, priorities and values, sustainable and socially responsible development must respect these realities and ensure these people have a decisive voice in determining what happens on their lands. This document compiles already agreed norms for ensuring this. These norms are necessary not least because if communities' rights and livelihoods are not accommodated then they are unlikely to agree to, and may be obliged to use, areas set aside for conservation.

There is a need for greater discussion about how the HCS Approach is applied to the wider landscape. Companies committed to zero deforestation do not have jurisdiction over areas outside their land titles or permits but, of course, communities' livelihood zones and customary rights areas may well spread over a wider area. At the least, land use planning for company areas shall take account of these wider land use linkages of importance to the communities involved. Those applying the HCS Approach should also seek synergies with landscape and jurisdictional approaches, which are currently being piloted in many countries.

The HCS Approach is best suited to fragmented landscapes, with a mix of tall forests, secondary forests and fallows, and degraded lands and farmlands. A working group is now considering whether and under what circumstances these methods apply to 'High Forest Cover Landscapes'. The Social Requirements proposed in the following pages apply to both.

Palm oil producers, refiners and traders have accepted that their commitments to 'zero deforestation' apply not just to their own estates but to their whole supply chain. The challenge for these companies is not just to trace who all these suppliers are but to ensure their compliance, even if they are not members of multi-stakeholder voluntary standards schemes like RSPO. This means they cannot just say that HCS Approach compliance requires compliance with the RSPO Principles and Criteria or RSPO NEXT, as many of their suppliers are not RSPO members.

This Social Requirements document thus addresses not just RSPO member companies but also others applying the converged HCS Approach and applies equally to their suppliers, who may not be subject to certification. It sets out the requirements that shall be observed by palm oil producers to secure a 'social licence' to operate and sell to the HCS Approach supply chain. Hence this document refers to 'Social Requirements', not just the RSPO standards. It speaks to 'developers' and not just RSPO members.

To date the HCS Approach has not been adapted to suit oil palm smallholders, another key set of stakeholders, including those attached directly to plantations and independent smallholders. A separate working group has been set up to develop suitable guidance for smallholders on the HCS Approach, so that they are not excluded from 'zero deforestation' supply chains, as is currently the case. Accordingly, this draft document has not been adjusted to suit smallholder realities.

This work has been funded through the contributions of the participating organisations with additional support from IDH and P4F. We are grateful for all this support.

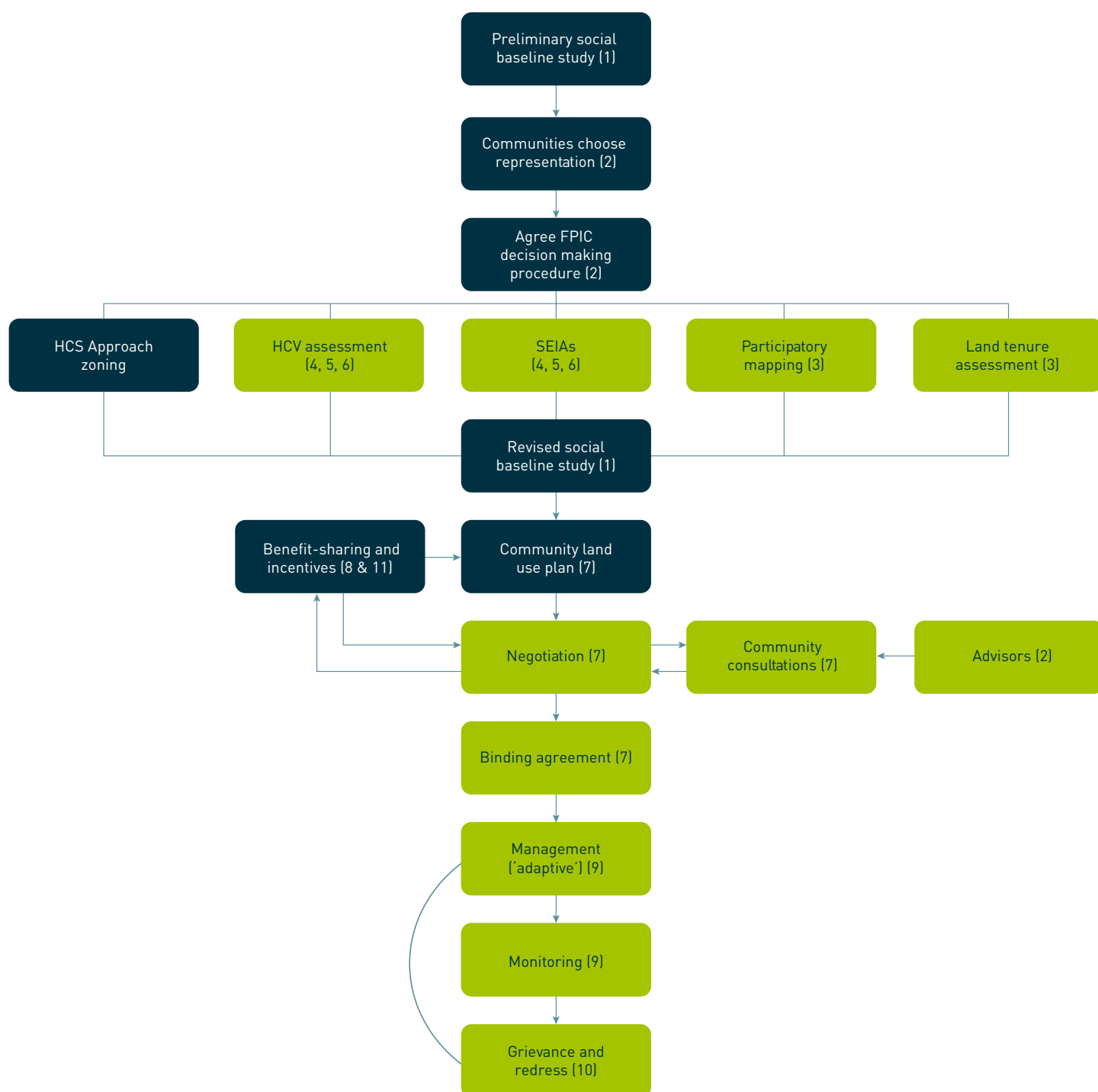


Figure 3: Simplified flow chart showing the sequence in which key steps of the Social Requirements are carried out. In practice, engagement between the various parties will be iterative and there will be more feedback than is shown here. Up until the binding agreement, a community can decide to withhold its consent for undertaking of further steps.

1. Social Baseline Study

Principle:

Developers shall conduct thorough and participatory research on the social, economic and political dynamics in affected communities in order to understand these as fully as possible. This research is compiled into a Social Baseline Study that informs decision making processes and provides the basis for subsequent research and engagement and the assessment of impacts and outcomes. As such, it must be comprehensive, thorough and accurate.

Requirements:

Developers carry out research for the Social Baseline Study during the early stages of the proposed development. The research is conducted in a participatory and inclusive manner with affected communities and other local stakeholders, with due consideration given to responsible and sensitive engagement in order to avoid raising expectations. The study can be conducted in-house or externally, but shall be carried out by credible and experienced social scientists with the requisite local expertise and cultural sensitivity.

The study is based on a desk survey and fieldwork and covers all relevant social, economic and political dynamics in the target area. These include food security, livelihoods and the local economy more broadly, including distribution and equity considerations. The study assesses existing community practices in relation to livelihoods and conservation, including usage patterns of areas to be proposed as conservation set-asides, whether economic, social or cultural. Access to water, health and education facilities and other social and economic infrastructure are also considered. Land tenure and rights are covered in detail, including in relation to inheritance and transfer, and potential or actual areas of conflict. Relationships between different ethnic groups present in the area, and local and national political dynamics are also covered, with a historical perspective on all these issues where relevant. The developmental aspirations and options of affected communities and local stakeholders should also be considered, including possible alternatives to palm oil where relevant. These elements all contribute to ensuring land use decisions are fully informed.

The Social Baseline study shall take into account the potential impacts of the proposed development on land use patterns, water quality and availability, labour, infrastructure, and on agricultural production and the local food economy, over the time frame of the development. Potential impacts from any expected influx of migrant labour into the area are also covered, including social and cultural implications as well as economic aspects. While the geographical scope of the study varies on a case-by-case basis, it includes all the areas beyond the boundaries of the proposed development that are relevant to the livelihoods of directly affected communities, as well as any neighbouring communities that may also be affected. While the study should aim to be comprehensive, with a wide enough scope to provide the basis for planning at the landscape level, it also contains some flexibility to reflect the variety of situations covered.

Many of these elements are already analysed and assessed as part of existing procedures, including land tenure surveys, participatory mapping, Social and Economic Impact Assessments (SEIAs) and High Conservation Value assessments (HCVAs). Developers may produce a preliminary version using existing sources including NGO and community assessments, and then expand this into a more advanced version once their own assessments become available.

As well as informing land use decision making processes, the study provides a baseline against which subsequent social outcomes can be assessed, and is an important element in later monitoring, verification and evaluation.

Resources:

RSPO FPIC Guidance (2015), HCVRN Common Guidance (2006), RSPO New Planting Procedure Guidelines (2015), RSPO NEXT (2016), POIG (2013).

Examples:

The extent of the geographical scope of the study is a question of judgment rather than a hard and fast rule. In Gabon, for example, Olam included populations on the other side of the forest and river within their development area in their assessments, as their rights and livelihoods were clearly affected by the decisions being made on forest conversion, including in relation to water (HCS+ case study).

The ramifications of the failure by developers to conduct thorough and participatory research can be seen in cases where negative impacts of badly-planned developments clearly derive from insufficient knowledge of local conditions. In Liberia, for example, populations living in areas that fell inside the historical boundaries of existing development areas but had not previously been converted, had well-established livelihood strategies and associated user rights. The developers' relatively superficial assessment exercises failed to identify these patterns however, and the resulting inadequate allocation of land for community food security had highly negative consequences in some cases (Atkinson HCS + case study). Better understanding of local land use and livelihood patterns could have contributed to greater allowances being made for local community land needs and better fulfilment of their rights.

2. Fair representation and agreeing a process for consent

Principle:

In line with international law on indigenous peoples, developers shall recognise people's right to choose how they will be represented in their dealing with the developer and with other stakeholders such as government representatives, and that they have the right to decide how they should be consulted and enter agreements.

Further, in line with the principle of non-discrimination, measures shall be agreed to ensure that the views of all sections of local communities and indigenous peoples are taken into account in decision making.

Requirements:

Developers proactively inform indigenous peoples, local communities and land users that they have the right to choose their own representatives before undertaking any actions on the ground. Time and opportunity are provided to those concerned to choose how they want to be represented in further dealings with the developer.

Developers also respect the right of parties to choose their own independent legal counsel or other advisors to guide them through negotiations. Developers do not allow such advisors to substitute for the voice of the community representatives.

Developers agree procedures to allow all sections of the community to have a voice and be included in wider discussions, including women, youth and vulnerable groups.

Developers engage with the communities to agree on the procedure by which agreements will be reached by the community and in negotiation with the developer. This includes agreements about: who will be involved in participatory assessments and mapping; procedures for two-way communications and information sharing; involving advisors and third parties; community meetings to consider information; and negotiations towards obtaining Free, Prior and Informed Consent (see Section 7).

Developers agree and follow a policy for sharing information with local communities and other stakeholders that includes providing them adequate information on environmental, social, financial and legal matters relevant to the following sections, in appropriate languages and formats. This shall include responding in a timely way to requests for additional information and clarification of outstanding matters of uncertainty.

Early engagement to develop an agreed procedure for informed decision making is vital for building trust.

3. Recognising land rights as a basis for ensuring just land acquisition

Principles:

Developers seeking to access land for oil palm development are required to respect the rights of those who already own, occupy or otherwise use the land. They shall acquire such land through a fair process that first recognises these rights and then obtains the agreement of these rights holders and land users (to acquire lands by force or against the will of the people concerned is described as 'land grabbing').

The rights of those using the lands, who may not be the owners, shall also be recognised. Such users can include tenants, sharecroppers, farm workers and other companies with leases on the land, or those with legal or informal permits to access and use the lands and natural resources.

Requirements:

The developer will engage with the local communities to carry out a land tenure assessment to understand how they own, control and manage their lands based on literature, government data sets, and interviews with community representatives, both men and women. The assessment should clarify, in particular, which institutions have authority over lands, and who controls how lands are acquired, inherited and transferred.

Before developers can start acquiring land, they must also understand who already has rights to which land as owners and users, including those with statutory rights, those with customary rights and those with informal rights.

This shall be done through participatory mapping, done jointly by the developer and the communities. Mapping shall: include representatives, freely chosen by the communities, in the full process of making maps; identify the key values in the land through community meetings; train community members in how to make maps; identify both the boundaries of customary land and land uses; distinguish which areas are subject to which rights (some collective, some individual, sometimes both); involve both land owners and land users; include the knowledge of old and young, male and female, and diverse ethnic groups; involve neighbouring communities to avoid disagreements about boundaries; and ensure draft maps are checked and agreed through inclusive meetings. Informal and user rights also need to be identified, especially where there have been influxes of migrants. Fishing rights and natural resources collecting also need to be identified in a participatory way with fair representation of all stakeholders.

The developer shall accept the agreed maps as the basis for negotiations about proposed land use for oil palm and the maintenance of livelihoods and conservation set-asides.¹ Such maps should remain the property of the communities and only be used subject to their agreement.

¹ For details, see: RSPO HRWG, editors (2015) Free, Prior and Informed Consent: guide for RSPO members. Kuala Lumpur, Malaysia: RSPO. Available from: www.rspo.org.

Current land use is also identified through SEIAs and HCVAs. It is required that these assessments and the participatory mapping are carried out subject to the communities' Free, Prior and Informed Consent (see Section 7) and with the full participation of local rights holders and users.

Developers are required to identify and respect both collective and individual rights to lands and resources. Among indigenous peoples and local communities that maintain collective rights to land, it is common that they recognise individual rights as nested within collective rights and subject to the oversight or authority of the collective. Customary rights exist independent of (and often prior to) the state or the developer's permit. Customary laws often prohibit individuals from transferring lands out of the collective. Especially in frontier areas, where land markets have not emerged, the implications of land sales, leases or rents may be unfamiliar to local communities. Developers shall respect these customary laws and ensure that customary owners or informal land users are properly informed of the legal, environmental and social implications of any land deals before they agree to them.

In engaging with the land owners and users, developers shall recognise and respect all these rights and uses. They then negotiate for access, use or restrictions on the use of these lands, **including the lands to be set aside as HCV management areas, and HCS forests**. Developers shall fully inform communities of the legal implications of accepting such proposed developments and conservation set-asides and explore options for tenure, management and monitoring (see Section 9). Developers shall also clarify what restrictions and compensatory benefits would apply to communities' livelihoods and land use options as a result of areas being classed as HCV and HCS conservation set-asides or otherwise managed to maintain or enhance these values.

As explained in more detail below, lands can only be acquired, for both oil palm and conservation set-asides, subject to the **Free, Prior and Informed Consent** of the communities concerned (See Section 7).

Guidance:

Education and FPP (forthcoming) RSPO: FPIC 'Chalk and Talk' videos.

RSPO Human Rights Working Group (2015) Free, prior and informed consent: guide for RSPO members.

FAO (2014) Voluntary Guidelines on the Responsible Governance of Tenure to Lands, Fisheries and Forests in the Context of Food Security.

UN (2011) Guiding Principles on Business and Human Rights.

Common challenges: some examples

While developers shall comply with national laws, they also need to go beyond the law in recognising informal, customary and users' rights. In some cases, national laws make this complicated. For example, in Malaysia, national land laws do recognise 'native customary rights' but in a restrictive way that does not align with international law, constitutional requirements, the common law and court judgments. Forestry laws also extinguish customary rights. However, developers need to recognise customary rights in these areas even where the land and forestry administration may not require this.

In Indonesia, the administration treats customary rights as weak rights of use on State lands. To acquire a permit to develop oil palm, companies are required to compensate land users for surrendering their rights. These rights are then permanently extinguished by the issuance of the legally required business use permit (HGU), which can only be issued over lands unencumbered of rights. As communities become aware of the legal consequences of land deals, they are refusing to accept that companies acquire HGU over their customary lands. However, developers need to recognise customary rights as the equivalent of ownership rights, and to ensure that communities are informed that cession of their lands is permanent. Alternative tenurial arrangements do now exist for communities to accept oil palm without surrendering their rights in perpetuity, but have yet to be applied.

In Peru, indigenous communities' land titles often only extend over very small parts of their customary lands. However, international laws ratified by Peru and the Peruvian courts recognise that indigenous peoples' land rights extend over the wider territories they have traditionally owned, occupied or otherwise used. Developers need to recognise and respect the communities' rights to their wider territories and not just the small areas to which they have so far been able to secure titles.

(Source: RSPO Complaints Panel website www.rspo.org/members/status-of-complaints/)

4. Securing ecosystem services for communities

Principle:

High Conservation Values (HCV) identified through HCV assessments shall be maintained or enhanced through collaborative land use planning, the establishment of conservation set-asides, the adoption of suitable management practices, and participatory monitoring. This shall include basic ecosystem services in critical situations, including areas for the protection of water catchments, water filtration, coastal protection, prevention of fires and control of erosion of vulnerable soils and slopes (HCV 4).

Requirements:

HCV assessments shall be carried out by multi-disciplinary teams led by an assessor who is licensed by the Assessor Licensing Scheme administered by the High Conservation Value Resource Network (HCVRN) and observe the HCVRN's detailed Common Guidance.

Developers and their technical advisors shall work in a participatory way with indigenous peoples, local communities and other users, to identify basic ecosystem services in critical situations of importance to them.

The developer shall protect water catchments and areas of water filtration, taking account of seasonal changes in water flow and unseasonable weather events such as drought and flooding, including through securing riparian zones and buffers.

Careful attention shall be paid to the prevention of fires in vegetation and soils, especially through the drying of peatlands through changes in ground-water level due to weather events or drainage.

In consultation with the communities concerned, developers shall ensure that proposed land use changes and management practices maintain or enhance these values, and shall ensure that suitable management plans are adopted to conserve set-asides (see Section 9).

Definitions:

Ecosystem services: The benefits people obtain from ecosystems, including provisioning services such as food and water; regulating services such as regulation of floods, drought, land degradation, and disease; cultural services such as recreational, spiritual, religious and other nonmaterial benefits; and supporting services such as soil formation and nutrient cycling. Such basic services become HCV 4 in critical situations (see below).

Critical situations: An ecosystem service is critical where a disruption of that service poses a threat of severe catastrophic or cumulative negative impacts on the welfare, health or survival of local communities, on the functioning of important infrastructure (roads, dams, reservoirs, hydroelectric schemes, irrigation systems, buildings, etc.), or on other HCVs.

(Source: HCVRN (2006) Common Guidance documents)

5. Securing livelihoods and local food security

Principles:

Developers shall ensure that local livelihoods and food security are not adversely affected by their operations and instead are maintained or strengthened, in line with internationally recognised rights (FAO 2009). Developers shall achieve positive overall impacts on community welfare.

The actual impacts of operations shall be assessed in order to verify that these commitments are being met.

Requirements:

Developers avoid and mitigate any negative impacts from their operations on the livelihoods and food security of affected communities. These have resulted in the past particularly due to insufficient land being available for the continuation of existing agricultural activities, negatively affecting food security and contributing to land conflicts. Developers instead ensure that sufficient land is available to meet the food security and livelihood needs of affected communities for both current and future generations, taking into account possible changes in livelihood choices and patterns. Negative impacts on water quality and availability shall also be avoided or mitigated and compensated.

While the actual amount of land necessary to secure food security shall be determined on a case-by-case basis, through collaborative land use planning processes including participatory mapping, an absolute minimum of 0.5 ha² of farmland per person in a family unit shall be allocated for this purpose. Access to areas for hunting, fishing, trapping, and the collection of non-timber forest products shall also be assured in line with HCV 5, taking into account current and projected future usage patterns. This guarantees access to '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 them'. The expected impacts of the palm oil operation on the local food economy and agricultural production shall be considered as part of this determination, including the substitutability of grown with bought food, and any increased pressure on food sources as a result of inward migration. The additional food requirements of migrant workers in particular shall also be considered, along with other impacts likely to result from their presence.

The areas designated for food security and livelihood purposes shall then be protected and managed effectively. Management and monitoring agreements shall be developed in partnership with affected communities and other stakeholders including local authorities, through inclusive participatory processes that include representatives from minority, marginalised and vulnerable groups, and subject to their Free, Prior and Informed Consent (FPIC) (see Section 7). Ongoing monitoring, consultation, and adaptation if necessary are required to

ensure effective implementation of the resulting Community Land Use Plans (CLUPs) that form part of broader land use planning and management processes. All these processes must be carried out in close and genuine collaboration with communities themselves, in order to ensure that their local knowledge and practices are fully reflected in the planning process, and that their current and future needs are fully assured by the land use plan that is being developed.

As well as protecting existing livelihoods and food security, developers shall also achieve overall positive impacts from their operations at the local level, beyond their contribution at the national level through corporate and export taxes. As well as providing employment and other inputs into the local economy, such as economic infrastructure, developers contribute through the provision of health, education, and water and sanitation facilities, especially where existing government provision is lacking or inadequate. Support for these facilities may be provided for workers and their families or for the whole community. At present, the nature of these inputs are unspecified and determined on a case-by-case basis, and further specification could contribute to greater clarity about the extent of developers' commitments and the role of other parties. Other mechanisms to promote positive impacts include fair and equitable schemes for attached smallholders, support for independent smallholders and other local income-generating activities.²

The nature of these inputs should be agreed with communities and other stakeholders including local authorities during the participatory planning phases. Their implementation should be monitored in a transparent way with documentary records readily accessible to all involved (see Section 9 on management). Developers shall produce independent assessments of the actual impacts of their operations on the lives and livelihoods of affected communities. These are necessary in order for them to demonstrate that they are meeting their commitments to protect livelihoods and food security and contribute positively to community welfare. Such impact assessments should also guide policy development and inform any changes in approach where necessary. Impact assessments should be based on detailed and credible evidence. They should cover incomes including distributional aspects, food security, and access to education and health facilities and clean water. The Social Baseline Study (Section 1) provides a baseline against which changes resulting from the development can be measured. One possible method for assessing impacts is the Palm Oil Welfare Index (POWI) (see following box).

Tools for measuring impact

The POWI is a composite index that captures the local welfare impacts of palm oil operations by assessing changes within affected communities in incomes, food security, access to clean water, and to health, education and electricity facilities, that can be directly attributed to developers' activities. These changes may be positive or negative. These indicators are measured according to accepted methods using a combination of new data gathered during fieldwork and existing data sets. The index aims to achieve a balance between robust data and simple and cost-effective data collection methods. The index shows both the overall impacts on welfare from the developers' activities as well as impacts on the various components. It does not as yet measure potentially negative impacts on equality from palm oil operations, or their potentially positive broader economic impacts such as from infrastructure development. The POWI currently only shows the impact of developers' activities, but could be modified to reflect other factors such as provision of social infrastructure by government. This tool is untested and is to be further developed and refined through field-trials. (Source: HCS+ (2015) Independent Report of the Technical Committee)

² HCS Approach Toolkit 2.0, Module 2. The nature of these are being considered in detail by the HCS Approach Smallholder Working Group, while the FAIR Partnership and other initiatives also set out principles in this area.

Definitions:

Livelihood: A person's or a group's way of making a living, from their environment or in the economy, including how they provision their basic needs and assure themselves and following generations secure access to food, clean water, health, education and the materials needed for their life and comfort either through their own direct use of natural resources or through exchange, barter, trade or engagement in the market. A livelihood includes not just access to resources but the knowledge and institutions that makes this possible, such as time for community participation and integration, personal, local or traditional ecological knowledge, skills, endowments and practices, the assets that are intrinsic to that way of making a living (e.g. farms, fields, pastures, crops, stock, natural resources, tools, machinery and intangible cultural properties) and their position in the legal, political and social fabric. (Source: RSPO (2013) Principles and Criteria for the Production of Sustainable Palm Oil)

Food security: When all people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life (Source: World Food Summit, 1996).

Right to food: The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear. (Source: UN Special Rapporteur on the Right to Food (2001)).

Guidance:

RSPO P&C (2013), HCVRN Common Guidance (2006), RSPO NEXT (2016), POIG Verification Indicators (2016).
FAO, editors. (2009) The right to adequate food and indigenous peoples. How can the right to food benefit indigenous peoples? Rome, Italy: FAO.

Roundtable on Sustainable Biomaterials (2011) RSB Food Security Guidelines, RSB-GUI-01-006-01 (version 2.0).

6. Cultural diversity and identity

Principles:

International law recognises and protects the diversity of cultural expressions of tangible and intangible cultural heritage and requires respect for, and equitable access to, such heritage for present and future generations.

High Conservation Values (HCV), identified through HCV assessments, shall be maintained or enhanced through collaborative land use planning, the establishment of conservation set-asides, the adoption of suitable management plans and participatory monitoring. This includes sites, resources, habitats and landscapes of global or national cultural, archaeological or historical significance, and/or of critical cultural, ecological, economic or religious/sacred or spiritual importance for the traditional cultures of local communities or indigenous peoples, identified through engagement with these local communities or indigenous peoples (HCV 6).

Requirements:

As part of required HCV assessments, developers and their technical advisors shall work in a participatory way with indigenous peoples, local communities and other users, to identify and safeguard lands and other resources, which the people concerned consider of critical importance for their cultural identity.

Developers shall ensure that sites of importance for periodic visitors, who may not be locally resident, are also identified and protected, such as places of importance for cultural reasons, pilgrimage, religious rituals or other ceremonies.

Developers shall respect the cultural traditions, values and knowledge of indigenous peoples, local communities and other users, and shall not make use of or portray their knowledge without their Free, Prior and Informed Consent as expressed through their own representative institutions (see Section 2).

In collaboration with, and with the Free, Prior and Informed Consent of, the people concerned, developers shall take measures to secure and protect such areas from damage or intrusion, and will ensure and/or limit access to the area, subject to community norms and choices. To maintain the identified values, buffer zones may be established and secured around such areas.

Definitions:

Cultural diversity: Refers to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies. Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.
(Source: UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005)

Cultural heritage: Refers to (1) tangible forms of cultural heritage, such as tangible moveable or immovable objects, property sites, structures, or groups of structures, having archaeological (prehistoric), paleontological, historical, cultural, artistic, and religious values; (2) unique natural features or tangible objects that embody cultural values, such as sacred groves, rocks, lakes, and waterfalls; and (3) certain instances of intangible forms of culture, defined as the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognise as part of their cultural heritage.
(Source: UNDP Social and Environmental Standards (No. 4 Cultural Heritage)).

Other relevant international norms:

World Heritage Convention (1972).

UNESCO (2013) Convention on the Safeguarding of the Intangible Cultural Heritage.

Convention on Biological Diversity (1992) (especially Articles 8j and 10c).

Guidance:

Brown, E., et al. (2013) Common Guidance for the Identification of High Conservation Values.

HCV Resource Network. Available from: www.hcvnetwork.org/ [accessed 27 April 2017]

7. Free, Prior and Informed Consent

Principle:

Indigenous peoples, local communities and other land users have the right to give or withhold their Free, Prior and Informed Consent (FPIC) to operations planned on their lands, as expressed through their own freely chosen representative institutions.

This principle applies to planned estates and smallholdings, and to any wider land use classifications, management and land use constraints and benefits resulting from palm oil plantings, HCV and the HCS Approach.

Requirements:

Developers shall inform communities and other land users of their right to FPIC. Developers make clear that they shall respect community decisions and that FPIC includes the right to say 'no' to proposals.

Developers shall ensure that the communities, users and their freely chosen representatives are not subject to coercion, bribery or other forms of duress. Developers do not accept lands expropriated by governments in the national interest ('eminent domain'). Developers prohibit the use of mercenaries and para militaries in their operations. Developers prohibit extra-judicial intimidation and harassment by security forces.

Developers shall not take out permits, designate lands or commence any operations that may affect peoples' rights prior to obtaining their FPIC.

Developers shall ensure that communities and users are fully informed of the implications of any agreements. Information shall be provided in appropriate forms and languages. Information shall include summaries of participatory SEIAs, participatory HCV assessments and management plans, HCS stratification and management plans and land use restrictions, and proposed compensation, benefit-sharing and legal arrangements. Information shall be provided on the legal and financial implications of proposed smallholder arrangements and of proposed implementation, participatory monitoring and grievance procedures. Full dissemination and transparency is crucial to building the trust between companies and communities that forms the basis of productive working relationships. This is especially important in situations where there is a history of land disputes.

Prior to negotiations, developers and communities agree in advance the procedure to be used for sharing information, discussion of development and conservation options, and negotiation. Developers shall respect communities' culturally-preferred methods of negotiation and decision making.

During negotiation, developers provide time and opportunity for communities to: confer among themselves without outside intervention; seek advice from their chosen legal counsellors and technical advisors; seek clarification from the developer or their consultants on the implications of HCV and HCS conservation set-asides; propose alternative arrangements; and exclude any or all of their lands from planting and conservation.

Developers shall provide communities time to carefully and independently review agreements prior to signing. Agreements are binding on both/all parties and shall be ratified by local government or notary. Copies of any negotiated agreement shall be shared with all the parties involved.

Developers shall document the process and outcomes of any negotiated agreements and compensation arrangements, with evidence of the participation of affected parties, and make these publicly available.

Guidance:

RSPO Human Rights Working Group (2015) Free, prior and informed consent: guide for RSPO members.

8. Equitable incentive systems for conservation

Principles:

Mutually agreed, equitable incentive systems are developed to encourage the full participation of indigenous peoples, local communities and other land users in the conservation and management of HCV and HCS conservation set-asides, while assuring them continued access to natural resources in a sustainable manner, in line with HCV 5.

Requirements:

Incentives are offered to communities to encourage their support for effective conservation and should include: secure tenure for their lands, including those agreed as HCS forests; rewards to maintain HCS forests; and the creation of employment opportunities as part of HCS forest protection. Integrated conservation and development packages should also be established in which support for the provision of social and economic infrastructure and/or alternative livelihoods is directly linked to active community support for conservation. Any such programmes have to be developed in a fully transparent and participatory manner, with the communities themselves determining their own development priorities, as full community support and participation is essential to achieve effective conservation outcomes. Community management and co-management options should also be encouraged (see Section 9).

Incentives must be additional to the existing commitments by companies with respect to protecting rights and livelihoods, with the fulfilment of these a prerequisite for effective conservation from the point of view of the community. Incentives must also be clearly differentiated from any other benefits received, including compensation. Incentive packages must take account of existing usage patterns of the proposed conservation set-asides, as well as of community knowledge and existing conservation practices. Continued access for communities to conservation set-asides must be assured as part of incentive schemes, on terms designed to ensure that continued usage is sustainable.

For those communities opting to participate in the development as smallholders, further incentives could include training in how to identify and maintain HCS forests; subsidised or free access to remote sensing and other tools for HCS assessments such as LiDAR; subsidised or free access to independent verification of the maintenance of HCS forests; training in plantation crop establishment, management, harvesting and sales; high quality seedlings and fertiliser at subsidised prices; institutional support for cooperatives; support for improved access to credit facilities; and increased prices for produce in return for maintenance of HCS forests.

Options for incentive packages

Incentive systems for community management of conservation set-asides must be accompanied by wider land use planning to ensure basic needs, secure livelihoods and food security. Incentive packages need to be clearly defined and subject to FPIC. Preference should be given to non-cash rewards and contributions to enhance long-term benefits and sustainability, and so discourage improvidence among communities unused to markets or to the cash economy. Baseline studies and community land use plans will be important for this. A community's past role in maintaining these 'HCS' forests needs recognition and wherever possible local ecological knowledge (indigenous knowledge) needs to be respected. Conservation set-asides will only be acceptable to communities if they have secure land rights, and are assured access and use of resources such as non-timber forest products (NTFPs), hunting and limited timber production. The sequence with which elements of the agreed package are delivered also needs to be agreed in advance. Mechanisms are needed to ensure that incentives and benefits go directly to communities for not clearing HCS forests on their lands. If funds are to be secured from government and donors these should not be channelled through the companies. Careful thought needs to be given to how to govern such areas and prevent third party access. The terms (number of years) for set-aside arrangements need to be clearly defined (for example 25 years consistent with the cycle of palms). Agreement is also needed with local government to determine how community tenures and 'set-aside' areas will be secured under national and local laws (land and forest tenures).

9. Management and monitoring of conservation areas

Principle:

Where areas need to be set aside or their use restricted, in order to maintain or enhance HCV areas and HCS forests, and these areas overlap the lands owned, occupied or otherwise used by indigenous peoples, local communities and others, these are integrated into community land use plans, and participatory management and monitoring plans are then adopted, subject to their Free, Prior and Informed Consent.

Requirements:

Based on participatory mapping, assessments and community land use plans, developers, communities and other stakeholders including local authorities work together to develop an agreed participatory management and monitoring plan.

This plan shall include: baselines of agreed key values; descriptions and locations of each value present and how these values are to be protected, maintained and/or enhanced; identified threats; clearly mapped areas for conservation set-asides, restricted use, livelihoods and oil palm plantings; clarification of what activities are prohibited and permitted in which areas; and who will be allowed and prohibited from each activity and/or have access to which areas. The management plan shall make clear: who will monitor adherence to the plan; how such measures will be encouraged and enforced (see also Section 8); that these norms and procedures apply to the developer as well as others; and that special care shall be taken to ensure that land conversion, land preparation, planting, road, mill and bridge construction, agro-chemical use and mill effluents do not affect downstream users, including fisheries and farming.

The management and monitoring plan will also clarify: which areas and activities will be under community control and management; which areas and activities will be under the control and management of the developer; which areas and activities will be controlled and managed by third parties such as government agencies or NGOs; what, if any, arrangements will be made for co-management; which tenures will be applied to secure this management; and the legal, livelihood, cultural and rights implications of these arrangements.

Subject to the Free, Prior and Informed Consent of the communities for the implementation of the participatory management and monitoring plan, culturally appropriate measures shall be taken to: train community members in monitoring techniques; jointly define baselines; identify threats; measure changes in relation to the baselines; and agree steps to be taken to encourage and enforce agreed plans and maintain or enhance identified values. The developer shall share information, derived from remote sensing and other off-site monitoring, with the other stakeholders.

Developers shall also consult with and inform communities about the land use restrictions to be observed in the conservation areas it is maintaining in nearby areas which do not overlap community lands.

Where monitoring reveals the need to change management plans or land use ('adaptive management') to achieve agreed objectives, the plans shall be renegotiated with the relevant rights holders and land users.

Guidance:

Brown, E. and Senior, M. (2014). Common guidance for the management and monitoring of High Conservation Values. HCV Resource Network.

Forest Peoples Programme (2013) Monitoring Protocol for High Conservation Values 5 and 6 with Guidelines on Best Practices in Community Engagement.

WWF (2015) *Community-Based Monitoring, Reporting and Verification Know-How: sharing knowledge from practice*.

Tebtebba Foundation (2015) *Basic Course on Community-Based Monitoring and Information Systems (CBMIS) for Community Trainers and Organizers*, Baguio.

High Carbon Stock Approach Steering Group (2015) High Carbon Stock Approach Toolkit 1.0.

10. Grievance and redress procedures for social requirements of the HCS Approach

Principle:

Under international law, violation of a human right gives rise to a right to remedy in the form of effective restitution, rehabilitation, compensation, satisfaction and/or guarantees of non-repetition.

There is a mutually agreed and documented system for dealing with complaints and grievances which is inclusive, comprehensive and transparent, and which meets internationally recognised human rights standards.

This is an active right and applies to past actions not in compliance with these HCS Approach social requirements, which shall be addressed and remedied.

Requirements:

Developers shall establish an effective and proactive system to address any grievances or complaints that arise under the HCS Approach Social Requirements. This system shall be mutually agreed, balanced and accountable. All elements of the process shall be fully documented and accessible to all stakeholders, including translation into local languages where necessary. Developers shall ensure that complainants can access independent legal and technical advice of their choice to support them, and provide the option of third party mediation.

All procedures shall be established through consultative processes that are agreed and understood by all, with full representation of all those affected, and all parties fully informed of all developments.

Where grievances or conflicts arise, whether in relation to land use or land acquisition processes, harassment or abuses in the workplace, or other factors, developers shall take action to resolve them and provide documentary evidence of this. Procedures shall be clear and known, with time frames also specified, and outcomes shall meet internationally recognised human rights standards.

Compensation procedures shall equally be documented and accessible and shall be mutually agreed through an inclusive consultative process. They shall also be non-discriminatory and take into account any differences in the ability to claim rights due to gender, ethnicity, nationality etc., that arise from national legal regulations.

As part of their procedures for addressing grievances and complaints, developers shall explicitly address any contradictions between national legal regulations and requirements based on international human rights standards.

Developers shall also address any grievances arising from flawed past social engagement processes. They shall provide redress for any issues arising from inadequate FPIC in situations of replanting or acquisition of an existing plantation, with retroactive identification of HCVs 4, 5 and 6 that existed before conversion, where necessary (see also Section 13).

Guidance:

RSPO P&C (2013), RSPO NEXT (2016), POIG Verification Indicators (2016).
UN (2011) Guiding Principles on Business and Human Rights.

11. Protecting labour rights

Principle:

Developers accord full labour rights to all their workers in relation to compensation, working conditions, and freedom of association. These rights are set out clearly in the developers' labour policy from the start of the development and apply to all workers regardless of status.

Developers respect the international conventions that set out these labour rights and their prohibitions on child, forced and compulsory labour.³

Requirements:

Labour standards, expectations and commitments should be established early as part of negotiations. Developers shall pay workers at least the legal minimum wage, or a 'decent living wage', as defined and determined using accepted methods (RSPO Principles and Criteria, Criterion 6.5). The total compensation package is mutually agreed with workers through a documented and transparent process. Developers provide safe and fair working conditions for their workers. This includes the total prohibition of contact with hazardous materials for workers under 18 years of age and pregnant women, the provision of adequate safety equipment for all others, and the avoidance of some specified substances altogether. Developers also provide fair methods of payment, hours of work and overtime arrangements, and leave entitlements. Developers ensure both that workers are able freely to organise and represent themselves for the purposes of collective bargaining and negotiation, and that they are fully informed of their rights in this regard. This includes migrant workers who may not be aware of their rights to trade union membership and representation.

These standards shall apply to the entire workforce, whether casual, temporary or permanent workers, employed directly or via contractors, and whether migrants or nationals. Developers should employ as high a proportion as possible of their workforce as permanent rather than temporary or casual workers, as the latter are far more likely to experience non-fulfilment or abuse of their rights. Where contract workers are employed during particular phases of the operation, developers monitor the compliance of contractors with these requirements.

Developers take active measures to comply fully with the provisions of international conventions on forced or compulsory labour and child labour, ensuring and demonstrating that no child labour or forced or trafficked labour is used in their operations. Further specific actions are necessary to ensure that migrant workers' rights are also protected, including their right to retain their documents and valuables and their right not to be charged excessive recruitment fees.

Developers are required to establish standard operating procedures (SOPs) which set out in detail the various policies in all these areas, designating time frames, allocating responsibility for implementation, and establishing indicators for monitoring and assessment. These should be in place from the start of the development even if they are only fully applied later as a larger and permanent workforce is recruited.

³ ILO Conventions 87, 98, 29, 105, 138, 182, 100, 111, 155, 161, 181, ILO Multilateral Framework on Labour Migration, Non-binding Principles and Guidelines for a Rights-based Approach to Labor Migration (2005), the ILO Declaration on the Fundamental Principles and Rights at Work (1998), and the UN Palermo Protocol (2000).

Guidance

RSPO P&C (2013), 6.5-9; RSPO NEXT (2016), HR 4.1-4.8; POIG Verification Indicators (2016), 2.5.1-10. Humanity United (2015). Free and fair labor in palm oil production: principles and implementation guidance.

Examples

Research conducted in Indonesia highlighted the much more positive impacts of earlier palm oil operations in which workers benefitted from housing, job security, as well as reasonable wages, compared to the current low wages and lack of bargaining power of landless temporary workers, many of whom are women (Li 2015). In Liberia, even though wages paid by developers meet national minimum wage levels, they are widely seen locally as being insufficient to provide a decent living, with casual workers employed through contractors even worse off (Atkinson 2015; HCS+ Study 17). Conversely, some employers such as POIG member Agropalma of Brazil, provide a much more generous overall employment package to their stable workforce in recognition of the clear benefits that accrue to all as a result.

12. Ensuring non-discrimination:

Principle:

In keeping with well-established international principles of non-discrimination, developers shall ensure that they treat all parties and stakeholders equally and fairly whatever their religion, race, ethnicity, nationality, gender, age, sexual orientation or political affiliation.

Requirements:

Developers are prohibited from practising any form of discrimination. As well as ensuring equality of treatment in relation to wages, working conditions and freedom of association, they shall also ensure that there is no harassment or abuse in the workplace and that reproductive rights are protected. Wherever there is a non-negligible proportion of women in the workforce, developers establish a gender committee managed by women in order to address their particular issues.

Developers shall extend fair and equal treatment to all including migrant workers. This includes their labour rights as discussed above as well as the provision of benefits such as education for their children, even where this conflicts with national requirements.

Developers shall ensure non-discrimination in relation to all, their communication and consultative processes with affected communities. These processes shall include representation from minority, marginalised and vulnerable groups of all kinds in order to establish effective and transparent relationships and processes (see following guidance box). These processes shall be accessible and transparent, and translated into local languages where necessary. Developers shall also demonstrate a fair and non-discriminatory approach in their complaints procedures, including by taking account of differences in the ability to claim rights in relation to land ownership claims.

Developers shall put into place SOPs that set out in detail policies in all these areas, with time frames of implementation, allocation of responsibility and monitoring and verification indicators.

Guidance:

RSPO P&C (2013), RSPO NEXT (2016), POIG (2013).

Challenges:

National laws and administrative systems sometimes prevent or discourage indigenous peoples, communities and workers from choosing their own representatives. Customary institutions may lack legal personality, imposed local government structures may occlude or replace customary authorities, female representatives may be discriminated against, independent trades unions may be harassed or banned.

Decision making through such non-democratic structures is often viewed as coercive and unfair by community members and increases the risk that any agreements reached about land use and land management shall be resented and later repudiated or ignored. Where this is the case, agreements about land use, benefit-sharing, land management and any limitations on the use of HCV or HCS conservation set-asides, may not be respected by local people, workers and their dependants, thus jeopardising the sustainability of both oil palm plantings and conservation efforts.

13. Applying the HCS Approach to existing operations

Principles:

Developers applying HCS Approach and HCV standards to existing plantations and previously acquired lands shall negotiate with communities and redress any lack of application of the above requirements when the plantations were established or lands acquired.

Requirements:

Where applying HCS Approach and HCV conservation set-asides would change the extent of areas for oil palm (including smallholdings) and for community rights and livelihoods, the developer will renegotiate with the communities concerned and obtain their Free, Prior and Informed Consent to any proposed changes. This must include any plans to restore and rewet peatlands.

In conformity with the requirements of Sections 2, 3 and 7, and in collaboration with the communities and prior land users concerned, the developer shall revise (or carry out) participatory mapping of their previous customary rights areas and land uses.

Revised spatial plans showing which lands are now proposed for set-asides for HCS forests and HCV shall be shared. The implications of any proposed set-asides for rights and livelihoods will also be clarified.

Time and resources shall then be allowed for community planning so communities develop land use plans for how they will accommodate the livelihoods and basic needs of current and future generations, taking account of proposed changes in land allocations to oil palm and conservation set-asides.

The developer and the communities shall then renegotiate agreements over lands, land use and plans for management and monitoring, including developing mutually agreed plans on how to restore, compensate for, maintain and enhance lost social and environmental values.

Challenges:

Applying the HCS and HCV approaches to areas that have already been acquired or planted creates challenges both for existing communities and companies, who may have agreed the proposed development plan in the expectation that areas will either be planted with oil palm (including smallholdings) or remain available for other uses, such as community livelihoods.

Late application of the HCV and HCS approaches may then restrict areas both for oil palm and livelihoods. Peatlands may need to be rehabilitated and rewetted, forest corridors re-established for wildlife, water catchments, steep slopes and riparian strips reforested, buffer zones established, areas for basic needs expanded and sacred sites restored. Lost forests may need to be compensated for. These changes may be challenging both for communities, as they may restrict livelihoods and incomes, and for companies, as they imply new costs and reduced profits. Both companies and smallholders may also face new difficulties repaying loans taken out to develop land. In these changed circumstances, it is in the interests of both parties to renegotiate their agreements in accordance with the principle of Free, Prior and Informed Consent (FPIC).

More challenging are situations where companies have acquired lands without the Free, Prior and Informed Consent of indigenous peoples, local communities or other users. In such cases, renegotiation is required, in line with international human rights laws (see Section 10).

Further reading:

HCS+ Science Study (2015): Consulting Reports 14 and 16.

FPP (2016) How can 'Zero Deforestation' policies accommodate the rights and livelihoods of local communities and indigenous peoples? Lessons from the field. Paper presented to the World Bank Conference on Land and Poverty, 14-18 March 2016.

14. Implications of HCS Approach zoning for communities

Principle:

Developers and their technical advisors need to recognise and accommodate the rights and livelihood implications of allowing conversion of forest fragments in one location in exchange for protection or restoration of forests to link larger forest areas somewhere else.

Requirements:

Where these proposed actions overlap lands owned, occupied or otherwise used by communities, they shall also only be carried out with the Free, Prior and Informed Consent of the communities involved and after social assessments at both sites.

The further apart these communities are, the more complicated negotiating consents is likely to become. As the impacts on the different communities may be quite different, options for sharing costs and benefits between the two communities need to be explored.

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FURTHER INFORMATION

Contact the HCS Approach
Steering Group Secretariat:

EMAIL

info@highcarbonstock.org

TELEPHONE

+60 3 2072 2130

+60 3 2070 0130

WWW.HIGHCARBONSTOCK.ORG

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