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# HCSA

HIGH CARBON STOCK APPROACH



## **IMPLEMENTATION GUIDE**

### FOR THE SOCIAL REQUIREMENTS OF THE HIGH CARBON STOCK APPROACH

## **APPENDIX 6**

VERSION 1.1  
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## APPENDIX 6:

# SR 13 IMPLEMENTING THE SRS WHEN APPLYING THE HCSA TO EXISTING OPERATIONS

### Introduction

This appendix provides information on SR 13. More detailed implementation guidance will be developed based on member experiences of implementation and learning from other sectors. Input will also come from the SRs sub-working group established to discuss the scope and applicability, implementation challenges, and other relevant aspects of this SR. Guidance on the implementation of this Social Requirement by companies, their suppliers, smaller companies etc., will also be developed. In the meantime, companies should seek to prioritise actions that address the most serious areas of non-compliance, as well as any areas where a delayed response would make rights abuses and other aspects of non-compliance irremediable. Companies are encouraged to engage with the HCSA as part of this process of implementation and piloting approaches in this area of retrofitting the SRs, in order to contribute to the development and documentation of innovative approaches to good practice.

The SRs apply to all the operations of HCSA member companies and their suppliers, and not only those that are being newly established. Where the SRs were not implemented at the time of establishment, or only implemented partially, developers must apply them retrospectively, and in full. This may require an in-depth assessment of what has already been done in relation to the various SRs. The different steps that companies must take in order to implement the SRs retrospectively are set out in a box at the end of the text on each stage of a company's operations.

There are two key objectives involved in implementing the SRs when applying the HCSA to existing operations. First, to ensure that the SRs are applied fully going forward, so that the rights and livelihoods of affected communities are protected as required, and secondly, to remedy any past harms caused by instances of non-compliance with the SRs. The right to remedy is required as part of SR 10 on grievance procedures, and is enshrined in international human rights law.

It may be necessary to conduct an independent assessment, in conjunction with affected communities, to determine which SRs have already been applied, and which need further attention, as well as to identify any areas in which the right to remedy applies due to their non-application in the past. This assessment can be implemented initially with a sample of communities, in order to identify the broad issues and likely scope of any remedy requirements.

If required, further fieldwork could then be combined with any other assessments that are being done or redone, whether the HCV-HCSA assessment or the Social and Environmental Impact Assessment (SEIA), although according to distinct objectives and terms of reference. The findings and recommendations of this assessment then form the basis of subsequent discussions with communities, and the development of action plans in fulfilment of the two objectives of future protection and remedy of past harms.

Communities may in some cases choose to seek a balance between the comprehensive provision of remedy in relation to any past infringements of their rights, and the agreement of a way forward that will fulfil their various interests in the most effective way. Their choices will depend both upon the nature and degree of the impacts of the company's operations so far, as well as on the perceived incentives, benefits and welfare gains that they can expect from their continued and future participation and consent.

Any settlement will thus be a matter of negotiation, taking as its starting point the full recognition of and respect for the legal and customary land and resource rights and uses of the affected communities, as protected by these SRs. Any agreement that is reached can of course only proceed with the free, prior informed consent of each affected community and its members, and with the different views and interests of sub-groups within communities taken into account. This includes both those who have been most affected by past operations, as well as those who will be most affected going forward.

*‘Developers applying the HCSA to existing operations which lead to changes in land use that will have direct or indirect social impacts shall assess the impacts and negotiate with local people to ensure that their rights, livelihoods, food security and cultural values are assured.’*

Principle, SR 13. Implementing the SRs when applying the HCSA to existing operations.

## Overview

This Appendix addresses some frequently asked questions (FAQs) about the application of the Social Requirements to existing operations (SR 13), and then summarises the current guidance on the recommended steps from the different sections of the Implementation Guide.

The application of the Social Requirements (SRs) to existing operations that are still under development, and where a full HCV / HCSA assessment process will take place, can be carried out with little deviation from the guidance given in the main text of this Implementation Guide. However, the application of the SRs to older, well-established operations is likely to need a slightly different approach. The SRs themselves will remain unchanged, but some aspects, including those related to the most appropriate methodologies for their implementation, are still under discussion.

More detailed guidance will be developed in the next work-phase, based on experience of implementation and on learning from other sectors. In the mean time companies must prioritise actions that address the most serious areas of non-compliance, as well as any areas where a delayed response would make rights abuses and other aspects of non-compliance irremediable.<sup>74</sup> Companies are encouraged to engage with the HCSA as part of this process, in order to contribute to the development and documentation of innovative approaches to good practice.<sup>75</sup>

<sup>74</sup> See UN Guiding Principles on Business and Human Rights ([www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)). Guiding Principle 24.

<sup>75</sup> See UN Guiding Principles on Business and Human Rights ([www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)). Guiding Principle 24.

## Frequently asked questions (FAQs) on application of the Social Requirements to existing operations

- **Applying the Social Requirements to all operations would be an enormous undertaking. How can this be a realistic commitment?**

The application of the Social Requirements to all operations, and the full recognition of rights at all sites, is an essential condition for the fulfilment by companies of their no-exploitation pledges. This applies both to HCSA members and to their third-party suppliers. However, this will clearly take time to implement fully. Much training and capacity-building will be needed, and more detailed guidance on implementation will need to be developed as lessons emerge from experience. Because of the challenges faced in the full application of the Social Requirements across all of a company’s operations, the HCSA Executive Committee and Steering group will develop a staged timeline for compliance with this Social Requirement.

- **How far back in time do investigations into land tenure / rights issues need to go?**

Rights do not diminish or become extinguished with the passage of time, and therefore there can be no time limit on how far back investigations into the past application of the Social Requirements will need to go. It will not always be possible to determine whether there have been un-remedied abuses of local people’s land tenure and use rights prior to establishment of a plantation, but every reasonable effort must be made to do so. Where evidence is found of abuses, these need to be remedied through a process of negotiation with those affected, as part of the establishment of effective grievance mechanisms.

- **What happens when there have been past rights abuses by actors other than the company?**

Where there have been past rights abuses by actors other than the company, remediation measures must be negotiated with those local people who have been negatively affected. For example this applies where land has been expropriated by the state authorities

prior to the establishment of a plantation, including where land was awarded to companies without full respect for local people's land rights (SR3) or without their genuine FPIC (SRs 2 and 7). Companies are required to go beyond the requirements of national legislation if necessary in order to meet the international human rights standards that are enshrined in the Social Requirements.<sup>76</sup>

In relation to the company's role in remediation, in line with the UN Guiding Principles on Business and Human Rights, companies must not only "avoid causing or contributing to human rights impacts through their own activities, and address such impacts when they occur" but must also "seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services... even if they have not contributed to those impacts."<sup>77</sup>

Where appropriate, companies should use their leverage and resources to support communities in gaining access to remedy from government and other third parties for abuses in the past that are related to their operations.

- **Under what conditions is an independent field assessment required in order to consult with communities?**

In all cases, an independent desk assessment must be conducted by external consultants with the requisite social research skills and experience (see step 1.2, below). A field visit by an independent assessor is also recommended good practice in all cases, and is a requirement in the following circumstances:

- Where a new land-use zoning process is to be undertaken, where new HCV / HCSA conservation areas are proposed, and / or where a new ICLUP is to be developed.
- Where there is evidence of past or current rights abuses, or specific information that points to a need for further investigation of potential abuses. This relates not only to land tenure and use rights, but also to other aspects of the Social Requirements, including labour conditions (SR 11).
- Where there is evidence of negative welfare impacts, or specific information that points to a need for further investigation of potential negative impacts.
- Where there are particular concerns about the ability of local people to express concerns without fear of reprisal<sup>78</sup>.

The more complex the situation, the greater the role of external expertise and mediation may need to be in order to ensure that effective and equitable ways forward are developed and agreed.

## Summary of recommended steps to be taken during the four phases of site development<sup>79</sup>

### 1. PREPARATION STAGE

- **Step 1.1**

Designate who within the company is responsible for overseeing the implementation of retrospective application. The designee must then compile a dossier of existing information on issues related to the Social Requirements. Information may be contained in internal company documentation and/or in external reports, studies and assessments.

- **Step 1.2**

Commission an independent assessment into the past implementation of relevant Social Requirements, and whether any harms have been caused as a result of any actions or inactions that are linked to the company's operations, either by the company or by others actors, that may require remedy. This assessment must be conducted by one or more external consultants with the relevant research skills and experience related to human rights impact assessment, and must include a WIA to provide information both to help assess past harms, and as the basis of more effective implementation of the Social Requirements going forward.

<sup>76</sup> The UN Guiding Principles assert 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 over and above compliance with national laws and regulations protecting human rights. Given the UNGP's emphasis on remedy, this implies that even where the State does not recognise or protect rights company's must recognise community rights including their right to remedy, given that the right to remedy arises wherever there is a violation of a human right. The same legal principle applies to stolen property. Even if someone acquires stolen property without knowledge of its provenance, they cannot claim it is legitimately theirs, and it should thus be restored to its owner once this becomes known. Caveat emptor!

<sup>77</sup> UN Guiding Principle 13(b). See also principle 19.

<sup>78</sup> Especially individuals "from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men". UN Guiding Principles, page 1.

<sup>79</sup> Drawn from the boxes at the end of the sections on each stage of the Implementation Guide.

- **Step 1.3**

Share the findings and recommendations of the assessment with each affected community or group of communities and discuss possible next steps in the following areas, with assistance for either party from external advisors and/or facilitators if required:

- obtaining initial consent, and mechanisms for subsequent interactions associated with the conduct of assessments/re-assessments (SR2);
- initial discussion of what form of remedy may be appropriate, in cases where harms have been identified.
- discussion of what additional measures may need to be put into place in fulfilment of the Social Requirements.

- **Step 1.4**

Where information is incomplete, out of date or lacking in evidence of appropriate and adequate community participation, redo/do the Land Tenure and Use Study (SR3), or parts of it as necessary, as well as the Social Background Study and bibliography (SR1). Both can be done by company staff, or with external assistance where necessary.

- **Step 1.5**

Quality assurance of all these studies and of the community engagement process should be carried out to ensure that they have all been conducted effectively.

## 2. ASSESSMENT STAGE

- **Step 2.1**

Continue engagement and trust-building with communities, including discussions on the mechanisms of engagement; on gaps in the Social Requirements application and how to address them; and on means for remedying past violations, if any.

- **Step 2.2**

Do/re-do the SEIA to the extent required, depending on how well it was done in the past, and which if any aspects need to be redone.

- **Step 2.3**

Do/re-do the HCV-HCSA assessment to the extent required.<sup>80</sup> Existing data and analysis should also be used as far as possible, with updating and gap-filling as necessary. If an environmental re-assessment is also taking place, and/or an SEIA, all the different assessments should be closely coordinated.

- **Step 2.4**

Where a full HCV-HCSA assessment or re-assessment is to be undertaken, quality assurance for step 2.3 is provided by the HCVRN-ALS quality assurance mechanism.

## 3. NEGOTIATION STAGE

- **Step 3.1**

Consult with communities on the findings and recommendations of the assessments, on the draft ICLUP, and associated participatory management and monitoring agreements, and where required, on proposed measures for remedy. The latter must be treated separately however, and remedy for serious harms must not be set off against other aspects of the negotiations.

- **Step 3.2**

Negotiated consent or rejection leading to binding and notarised agreement.

- **Step 3.3**

Quality assurance for the negotiation stage currently involves a desk-check. An additional field check is recommended as good practice, in order to verify with communities whether they feel that the retrospective application process has been implemented properly.

<sup>80</sup> A pragmatic balance should be sought between doing or redoing both these assessments fully and doing only those aspects that are necessary for the effective application of the Social Requirements going forward. Box 2 Implementing the SRs when applying the HCSA to existing operations – (re)-assessment stage.

#### 4. OPERATIONS STAGE

- **Step 4.1**

Hire and train staff.

- **Step 4.2**

Translate the ICLUP and other plans into SOPs for implementation. These two steps can occur simultaneously.

- **Step 4.3**

Continue engagement with communities, including on new elements related to remedy for past harms, where relevant.

- **Step 4.4**

Conduct a welfare impact assessment and other monitoring and auditing actions, again taking account of additional goals related to remedy.



## FURTHER INFORMATION

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