

GUIDANCE ON IDENTIFYING SOCIAL LIABILITY FOR THE LOSS OF HCVs 4, 5, & 6

Reviewed and revised on 6th April 2016 & approved on 15th April 2016 by the BHCVWG

RSPO producer members that have not carried out HCV assessments before land clearance may well have cleared areas of land that were important for indigenous peoples, local communities and other users in terms of their High Conservation Values 4, 5 and 6. The standard requirement of HCV assessments is that such areas be identified through the participation of the communities concerned, so that they can show, for example, which areas supply their communities with clean water (HCV 4), which areas provide for their livelihoods, for example, from NTFP, hunting or farming (HCV5) and which areas, like graveyards or sacred sites, are critical to cultural identity (HCV6). Once identified, such areas must not be cleared but must be managed in order to enhance or maintain such values.

In some cases, even where RSPO members have not carried out HCV assessments prior to clearance, they may have undertaken other actions with the participation of local communities which nevertheless identified such areas and either conserved them or provided acceptable compensation. If such actions had identified and compensated for the types of HCVs that a formal HCV assessment would have uncovered at the time then there is no further 'social liability' as a result of the non-compliant clearing. If not, then they will have 'social liability'.

This Guidance Note is designed to help RSPO members:

- Identify and determine the scope and extent of any social liability they have to the affected stakeholders.

Deciding whether the member has social liabilities or not and the scope and extent of any such liabilities should make reference to the relevant HCV Toolkit¹, available at the time that land clearance without a HCV assessment took place, taking into account that RSPO itself adopted revised definitions of HCV areas in 2007 and 2013 and HCVRN has adopted revised toolkits². The member should assess whether the processes undertaken at the time were sufficient to have identified the types of HCVs set out within the relevant HCV guide. If they were not then the company needs to identify the scope and extent of the 'missed' social values that would have been identified at the time (as set out in the relevant HCV tools and guides).

¹Interpretation of these social liabilities should make reference to the HCV toolkits applicable to the region at that time of land clearance. (e.g. HCV 5 under Indonesian HCV toolkit (2008) is defined as natural areas or ecosystem or forest managed by the community in a sustainable manner and its use does not compromise other current values like HCV 1.2 and more than 50% of the local community basic needs depend on this forest.)

² Common Guidance for the Identification of High Conservation Value 2013 (2013 Common Guidance).

Determining the valid toolkit to be used in reference during the period of liability is important as a reference to the interpretation of what is determined as social remediation required for HCV 4, 5 and 6 during the period of liability.³

It is also important to make reference to the evolution of HCV definition.⁴

1. A Summary Report will be initially required by the Panel to assess if the grower has correctly identified its social liability (i.e. zero outstanding social liability). In cases where the grower does have liability, it will need to provide the necessary remediation.
2. The Summary Report should be as thorough and as complete as possible, and should the Panel request for more information, the grower will need to comply. The summary report could reference other more detailed reports by using Annexes or summaries of supplementary documents.
3. In the event that there are no soft copies of pertinent documents, then summaries of the documents would be acceptable unless the panel requires otherwise.

The table below lists examples of documents or information that can be used to demonstrate that the identification of the social liabilities was sufficiently covered at the time of clearance in areas likely to be impacted by the management unit. The list is not exhaustive and is not limited to the examples below.

No	Social Liabilities	Examples of Reporting Guidance/Checklist
1	<p>Communities/users' livelihoods or uses in the permit area at the time of clearance were identified.</p> <p>(Land-use maps based on participatory exercise)</p>	<ul style="list-style-type: none"> • Maps indicating position of villages of communities/users' with reference to the permit area • Samples of Participatory Community Maps that were conducted should be included to determine land use/access for communities (2005 -2014) • Summary of Processes that were taken to identify customary rights holders • Summary of documentation on meetings held • Summary Report of EIAs/SIAs • Summary details of samples of community engagement to obtain consent, including FPIC processes undertaken

³ Example for the years 2005-2007 where the generic HCVs were being used in other regions, except in Indonesia where the 2003 Indonesian Toolkit was being used; 2008-2013 where only a few countries were using the HCV NI and RSPO had clearer regulations; and 2013-beyond, where HCVRN had establish and RSPO agreed to use ALS HCVRN system for New Planting.

⁴ Example from HCV Forest to HCV areas that take into effect in 2007. The change of this definition has significant impact to the identification of HCV 5 and HCV 6, which under the new definition should include non-natural forested areas.

No	Social Liabilities	Examples of Reporting Guidance/Checklist
		<ul style="list-style-type: none"> • A summary of CSR activities that demonstrably maintain, enhance, or remediate for social HCVs • A summary of land claims from communities and processes of resolving these claims • Commentary on any complaints that were received by the company • A summary of consultations with communities to demonstrate no social liability
2	Potential negative social impacts were identified in environmental and/or social impact assessments.	<ul style="list-style-type: none"> • Summary of details of the EIA/SIAs • Evidence of community participation and engagement in identifying social and environmental impacts of any land clearance on welfare, livelihoods and identity • Summary of documents pertaining to the potential negative impacts • Summary of actions taken to avoid, remediate or mitigate negative impacts • Evidence that these actions were agreed by the communities as part of community engagement to obtain consent including FPIC process (see FPIC below)
3	Mitigation and Remediation that was made for these impacts.	<ul style="list-style-type: none"> • Summary of documentation of mitigation/remediation that was made (e.g. compensation) • Evidence that these remedial actions were implemented to the satisfaction of the communities concerned
4	There has been no clearance of areas to maintain environmental services to communities.	<ul style="list-style-type: none"> • Samples that were conducted for Participatory Community Maps that were conducted should be included to determine land use/access for communities • Summary of evidence on remediation/compensation that was agreed by both parties • Summary of process of distribution of remediation/compensation that was provided to affected communities • Summary on complaints and process of resolution related to loss of environmental services experienced by affected communities

No	Social Liabilities	Examples of Reporting Guidance/Checklist
5	There has been no clearance of areas to meet communities' basic needs.	<ul style="list-style-type: none"> • Summary of consultative processes with local communities • Samples of types of Participatory Community Maps that were conducted should be included to determine identified community land use and or land claims • Summary of meetings to identify areas needed to secure basic needs (or livelihoods in general) • Evidence that lands were set aside to meet such needs • Summary of processes of remediation to meet communities' basic needs • Summary on any complaints and process of resolution related to loss of basic needs that were received by the company
6	There has been no clearance of areas to protect areas that are crucial to communities' cultural identity.	<ul style="list-style-type: none"> • Summary of Processes that were taken to identify areas critical to communities' cultural identity • Samples Participatory Community Mapping conducted showing that sites were identified • Summary of meetings which show that sites were protected • Summary of meetings which show that agreements were reached of how any loss of sites should be remedied • Evidence sites were protected • Evidence that agreed remedies were implemented or received • Summary on any complaints and process of resolution related to loss of areas of cultural importance of affected communities
7	Documentation of free, prior and informed consent (FPIC) processes that were conducted via available processes during 2005 and onwards such as EIAs, land legislations requiring notification and compensation and alienation processes.	<p>A summary of the fulfilment of P&C requirements (refer to RSPO FPIC Guide (2015) and National Interpretations. Key verifiers include:</p> <ul style="list-style-type: none"> • Evidence of social survey to identify local communities; • Land tenure study to clarify how customary lands are held, inherited and otherwise transferred; • Minutes of meeting at which communities freely choose their representatives; • Participatory maps showing the extent of customary lands and land use; • Negotiated agreements showing that lands were released for planting and set

No	Social Liabilities	Examples of Reporting Guidance/Checklist
		<p>asides with free, prior and informed consent;</p> <ul style="list-style-type: none"> • Lists of rights holders who received compensation for any relinquishment of rights; • Evidence that agreed compensation or remedy has been provided for lost uses and rights.
8	Documentation of land acquisition process	<ul style="list-style-type: none"> • A Summary of the land acquisition processes and meetings that took place • Evidence that land acquisition processes were undertaken with the Free, Prior and Informed Consent of the communities • Evidence that land acquisition duly compensated communities or persons for losses to environmental services, livelihoods or identity