

Annex 3: Additional Guidance for remediation and compensation for social impacts of loss of HCV 4, 5 & 6

Additional Guidance :

- 1. Identifying lost HCVs 4, 5 & 6 [environmental services (e.g. drinking and bathing waters, river transport), basic needs (e.g. resource-based livelihoods) and aspects crucial to cultural identity (e.g. sacred sites and graveyards)].**

‘This analysis should determine whether negative social impacts related to the loss of HCVs 4-6 occurred and whether or not these impacts have already been sufficiently remediated and/or compensated.’ (Section 12, Draft Procedures August 2015)

This component has two parts: identification of the impacts and identification of the impacted parties.

- 1.1 Historical mapping and interviews with affected parties.* In cases where participatory mapping was not carried out as part of the land acquisition process under 2.2, 2.3 and 7.5, then this has to be carried out as a first step in establishing the extent of community land and resources use and land claims. Participatory mapping must be carried out in conformity with the requirements of the relevant P&C&I and should take into consideration the corresponding Guidance and Guide.¹

On the basis of participatory maps, community meetings should be held to establish the extent of prior land uses that have been cleared, planted or otherwise removed from community use and estimates made of the proportion of these areas which were providing critical environmental services (HCV4), were supplying basic needs (HCV5) and were crucial to cultural identity (HCV6).²

- 1.2 Social mapping of affected parties.* In cases where required land tenure assessments were not made in line with P&C 2.2, 2.3 and 7.5, community meetings must also be carried out to establish clearly which parties within the affected communities lost access to HCV4, 5 and 6. Because impacts will not be uniform over the entire concession area, different communities, families or persons, or even local enterprises, will be differently impacted and this needs to be known and agreed prior to the negotiation of remediation (see next section).

2. Negotiation of an agreed remediation or compensation plan

¹ RSPO and FPP, 2015, *Free, Prior and Informed Consent, A Guide for Members*. RSPO, Kuala Lumpur.

² The definition of HCV6 was changed in 2013 to include impacts on areas of national or global cultural significance, this will need to be taken into account where post 2013 HCV6 impacts are assessed, for which additional Guidance will be needed.

'Identified impacts of loss of HCVs 4-6 shall be adequately remediated and/or compensated through a transparent, participatory and documented process. ... Growers should refer to free, prior and informed consent (FPIC) guidance on consultation with affected stakeholders and communities (refer to RSPO FPIC guidance).' (Section 13, Draft Procedures August 2015)

In cases where losses of HCVs were not discussed prior to land clearance and planting (even if FPIC processes were carried out for other land acquisition for clearance and planting), operators need to carry out a normal negotiation procedure in relation to remediation for HCVs. Where companies have yet to adopt their own land acquisition SOPs, based on the RSPO P&C for land acquisition and FPIC, then they should adhere as closely as possible to the RSPO FPIC Guidance and Guide.³ These details are not repeated here.

Once the extent of losses of HCVs have been established and mutually agreed (see 1.1) and there is clarity about whose cultural identity, livelihoods and environmental services have been impacted (see 1.2), there should be iterative negotiations with self-chosen representatives of the affected parties (communities, families and individuals or local enterprises) to agree:

- **What kind of remediation will be provided for which losses (restoration, substitution or compensation);**

For example, if a hamlet within a concession has lost fresh-water supplies for bathing, drinking and fluvial transport (HCV4) it may agree to be remediated by forest restoration in an affected watershed, the supply of piped water to the affected communities or by cash compensation, or a combination of these measures.

- **To whom such remediation should be provided and on what terms;**

For example, if a single family impacted by forest clearance has lost a stand of fruit trees (HCV5), it may agree to remediation through replanting alternative food sources, or monetary compensation, or a combination of these.

For example, where a community has lost access to its ancestral hunting grounds (HCV5), it may agree to remediation through habitat restoration, provision of an alternative livestock rearing or monetary compensation.

For example, if an individual's rubber plantation (HCV 5) was cleared and planted with oil palm without her consent, she may agree to the restoration of another area with rubber and compensation for lost income in the interim.

For example, if a community's graveyard (HCV6) has been bulldozed to make way for plantations, the community may agree to the erection of a monument celebrating all those

³ Detailed Guidance on FPIC is integrated into the RSPO Generic P&C&I. The revised Guide (see footnote 1), which provides additional advice, is due to be published by RSPO in 2015.

buried there and a compensation sum for damages.

Usually losses of HCV 4 and 6 will need to be agreed with whole villages, hamlets or other groups. This may also be the case with losses of HCV 5 affected whole groups. In such cases, it is especially important that community or group meetings are held to ensure broad consensus both about what remedies are being agreed and how these will be allocated. This is to ensure equitable outcomes (and avoid cheating). However, in many cases, separate agreements will be needed with each impacted sub-group whose particular livelihoods were impacted (see box above). Wherever possible, remediation agreements should be shared transparently with all members of affected groups to maintain consensus and accountability.

3. Allocation of remediation or payment

‘In cases where monetary compensation is agreed upon, the parties may consider several instalments over time, rather than ‘one-off’ payments.’ (Section 13, Draft Procedures August 2015)

Experiences world-wide show that compensation monies, even where openly agreed, are too often spent unwisely and / or are allocated inequitably. This can rapidly result in dissatisfaction, especially from those who feel cheated of a legitimate share of benefits. To mitigate this problem, agreements should be as inclusive and as transparent as possible and measures should be negotiated and agreed to establish accountable bodies that will handle any compensation monies (where these are not being paid just to families or individuals).

Where substantial sums are to be allocated to compensate a community or a group of impacted persons, negotiators may suggest the establishment of a community development fund, incorporated to be subject to agreed oversight and decision-making procedures. Such a body can allocate funds to agreed community development projects of a general benefit. The modalities of how such funds will operate should be part of the negotiated agreements.

4. Monitoring of implementation

As part of the negotiated agreement, a plan for participatory monitoring of implementation should be agreed, as also set out in the FPIC Guide. In the case of monetary compensation, this may include independent audits of the payment and allocation of community funds.