

Methodology for the evaluation of the FPIC Policies and Standard Operating Procedures of ten Corporate Groups producing, processing and trading forest-risk commodities in South-East Asia

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Introduction and methodology

An evaluation has been conducted of the published policies and Standard Operating Procedures (SOPs) on the fulfilment of the rights of communities to give or withhold their Free, Prior and Informed Consent (FPIC) to any development on their lands, for the following ten Corporate Groups: Best Industry Group, Genting Group, Jardine Matheson Group, Korindo Group, Rajawali Corpora, Royal Golden Eagle, Salim Group, Sinar Mas Group, Triputra Group, and Wilmar International. The evaluation has been undertaken by comparing the published policies and SOPs of each Corporate Group on the fulfilment of FPIC rights that were available on the date of August 12th 2020, against the requirements related to FPIC rights that are contained in the High Carbon Stock Approach Social Requirements (HCSA SRs)¹ and associated Implementation Guidance (IG).²

The findings of the evaluation are organized and presented according to an overall summary of the findings of the evaluations of all ten Corporate Groups policies and SOP, along with individual evaluations for each Corporate Group, with the results presented in three matrices and a high-level summary. The first matrix details the key findings from the evaluation of the published policies of the Corporate Group, or its affiliated subsidiary or company where relevant (referred to collectively as “**Corporate Group**”³), that are related to the fulfilment of the rights of Free, Prior and Informed Consent (FPIC). The second matrix presents key findings on how the Corporate Group’s specific FPIC Standard Operating Procedures (SOPs) that have been developed and published, where these exist, compare to the

¹ High Carbon Stock Approach Social Requirements. <http://highcarbonstock.org/wp-content/uploads/2020/08/HCSA-Social-Requirements-Apr-2020.pdf>

² High Carbon Stock Approach Implementation Guidance. <http://highcarbonstock.org/wp-content/uploads/2020/08/HCSA-Implementation-Guide-Apr-2020.pdf>

³ Corporate Group is as defined by the Accountability Framework Initiative including those subsidiaries or companies where there is formal ownership, investments, and/or an ownership or management relationship, as well as those where there is family control, financial control, beneficial ownership and/or shared resources. https://accountability-framework.org/definitions/?definition_category=41

four tenets of FPIC⁴ and other elements of the fulfilment of FPIC rights that are required as part of the High Carbon Stock Approach Social Requirements (HCSA SRs). The third matrix presents key findings from a comparison of the FPIC SOPs to the specific actions that are required for FPIC rights to be effectively fulfilled, as set out in the HCSA SRs, including the Social Requirements themselves, especially SR 7 on FPIC and SR 2 on fair representation and agreeing a process for consent, as well as other SRs 1, 10, 12 and 13, and in the detail on their operationalization that is provided in the Implementation Guide on them.

The findings set out in each matrix draw on publicly available sources, generally the sustainability webpages of the Corporate Groups. The evaluation of policies and Standard Operating Procedures on FPIC rights is undertaken at the level of the Corporate Group, and encompasses the approach of each Corporate Group to the fulfilment of FPIC rights by the totality of legal entities to which it is affiliated in a relationship in which either party controls the actions or performance of the other. This includes but is not limited to affiliated subsidiaries, in which the group has formal ownership, investments, and/or an ownership or management relationship, affiliated companies where there is family control, financial control, beneficial ownership or shared resources, and other companies throughout the global forest-risk commodity supply chains of the Corporate Group and its affiliated subsidiaries and companies, with which the relationship is one of third party direct or indirect supplier of raw or processed materials, such as palm oil, wood products or fibre.⁵

The evaluation of each Corporate Group sets out the findings of a desk-top assessment of their published policies and SOPs conducted by a researcher with extensive knowledge of the tenets of FPIC and of the High Carbon Stock Approach Social Requirements and Implementation Guidance. These findings in no way represent an evaluation of the extent to which any Corporate Group or associated company is, or is not, in compliance with these requirements for the fulfilment of FPIC rights, whether in their own operations or in their supply chains. Detailed evaluations of the fulfilment of the rights to FPIC by each Corporate Group remain of paramount importance, and should be undertaken in the field by qualified social experts, with meaningful participation of affected communities. They should use full compliance with the High Carbon Stock Approach Social Requirements and Implementation Guidance as their benchmark for assessing the fulfilment of FPIC rights.

⁴ That consent can be given or withheld by affected communities; the process is free of coercion; it takes place prior to any development; and it is based on sufficient information

⁵ As the evaluation is concerned with the role in the production, processing and trade of forest risk communities by the ten Corporate Groups, only their affiliated subsidiaries and examples of affiliated companies involved in these activities have been included in it. Due to the complex nature of many Corporate Group structures and the varying levels of disclosure, some relevant companies may have been missed out.

High Level Summary of Findings

A high level summary of the findings of the evaluations is presented for each of the ten Corporate Groups' policies and SOPs, as well as an overall summary of the findings for all ten groups, and their implications in relation to No Exploitation pledges and other human rights commitments.

Matrix 1 Published Policies and Standard Operating Procedures related to the fulfilment of FPIC rights

The first matrix sets out the published policies and policy statements and Standard Operation Procedures (SOPs) of each Corporate Group, or affiliated subsidiary or company where it has been necessary to look at that level, that are related to the fulfilment of FPIC rights. These FPIC-related policies and SOPs are categorised as follows:

- An explicit Corporate Group sustainability policy with specific commitments related to the fulfilment of FPIC rights.
- An explicit sustainability policy with specific commitments related to the fulfilment of FPIC rights of any affiliated subsidiaries and companies.
- Any specific Standard Operating Procedures (SOPs) that set out the operationalization of these policy commitments to the fulfilment of FPIC rights.
- Any policies, policy statements, or commitments made by the Corporate Group, or by its affiliated subsidiaries and companies, on ensuring the fulfilment of FPIC rights by affiliated subsidiaries and/or companies. These include those subsidiaries or companies where there is formal ownership, investments, and/or an ownership or management relationship, as well as those where there is family control, financial control, beneficial ownership and/or shared resources.
- Any policies, policy statements, or commitments made by the Corporate Group, or by its affiliated subsidiaries and companies (as defined), on ensuring the fulfilment of FPIC rights by third party suppliers of processed and raw materials to downstream and upstream facilities.

- Any other policy that makes reference to FPIC rights, such as an explicit stand-alone policy entailing a commitment by the Corporate Group to respecting Human Rights, including FPIC rights, in all its business activities,⁶ and/or any other sustainability policy or policy statement that makes reference to respecting FPIC rights.
- A commitment to the fulfilment of FPIC rights via the Corporate Group’s membership of the High Carbon Stock Approach (HCSA). This entails commitments to the fulfilment of FPIC rights, as set out in the Social Requirements (SRs) and their Implementation Guidance (IG),⁷ and to ensure their fulfilment across the HCSA member’s global operations and investments, and by third party suppliers throughout the member’s forest-risk commodity supply chain/s.
- A commitment to the fulfilment of FPIC rights via membership of any other certification schemes with a certification standard that requires the fulfilment of FPIC rights.
- Any other public statements related to the fulfilment of FPIC rights, such as endorsement by the Corporate Group and/or any of its affiliated subsidiaries and companies of forest risk commodity-specific or sector-wide policies containing commitments related to the fulfilment of FPIC rights, or No Deforestation, No Peatland and No Exploitation (NDPE) statements

Published Policies and SOPs related to the fulfilment of FPIC rights	Yes	No	Description of Policies or SOPs where these exist
An explicit Corporate Group sustainability policy with specific commitments on the fulfilment of FPIC rights			
Any sustainability policy of the Corporate Group’s affiliated subsidiaries or companies which includes references to the fulfilment of FPIC rights			
SOPs on the operationalisation of these policy commitments on the fulfilment of FPIC rights			
Any explicit commitment by the Corporate Group, and/or its affiliated subsidiaries/companies, to ensure the fulfilment of FPIC rights by any affiliated subsidiaries/companies			

⁶ Such as through a commitment to uphold the Universal Declaration of Human Rights (UDHR), the UN Declaration on Rights on Indigenous People (UNDRIP), the International Covenants on Civil and Political Rights (ICCPR) and Economic Social and Cultural Rights (ICESCR), the International Labour Organisation (ILO) Convention on Indigenous and Tribal Peoples (ILO 189), the UN Guiding Principles on Human Rights and Business (UNGPs), and/or the Food and Agricultural Organisation (FAO) Voluntary Guidelines on the Responsible Governance of Tenure (VGGT), all of which contain articles relevant to FPIC and self-determination (see Box 1 below)

⁷ The High Carbon Stock Approach (HCSA) has included a commitment to respecting FPIC rights from its inception in 2014-15. FPIC rights were set out in full in SRs 2, 7, and 12 (adopted in Jan 2017). Detailed guidance on the operationalisation of these rights was provided in Toolkits 1 and 2 (2015, May 2017), and in the Implementation Guidance (IG) on the SRs (Nov 2018). The latest versions of the HCSA SRs and IG were published on August 12, 2020.

Any explicit commitment by the Corporate Group and/or its affiliated subsidiaries/companies (as defined) to ensure the fulfilment of FPIC rights by all third party suppliers			
Any other policy that makes reference to FPIC rights, such as an explicit Corporate Group stand-alone policy on human rights including FPIC rights, or any other sustainability policy with commitments to FPIC rights			
Membership of HCSA, entailing commitments to the fulfilment of FPIC rights in all developments, by all affiliated subsidiaries/companies, and by third party suppliers			
A commitment to the fulfilment of FPIC rights via membership of any other certification schemes with a certification standard that requires the fulfilment of FPIC rights.			
Any other public statements by the Corporate Group and/or its affiliated subsidiaries/companies containing commitments to respect human rights including FPIC rights, such as commodity-specific or sector-wide policies with commitments to the fulfilment of FPIC rights, or 'NDPE' statements			

Matrix 2 High-level summary evaluation of the Published Free, Prior and Informed Consent (FPIC) Standard Operating Procedures against the key tenets of FPIC and the HCSA Social Requirements

The second matrix gives a high-level summary evaluation of the published Free, Prior and Informed Consent (FPIC) Standard Operating Procedures (SOPs), where these exist, of the Corporate Group, against the four core tenets of the fulfilment of the rights to FPIC, and the High Carbon Stock Approach (HCSA) Social Requirements (SRs),⁸ according to the criteria set out below. Where there are no SOPs on the fulfilment of the rights to FPIC, as is the case for many of the Corporate Groups included in this evaluation, relevant content from other policies has also been considered.

⁸ High Carbon Stock Approach Social Requirements. <http://highcarbonstock.org/wp-content/uploads/2020/08/HCSA-Social-Requirements-Apr-2020.pdf>

- Whether the four tenets of FPIC - that consent can be given or withheld by communities to any development on their lands, that the process is free of coercion, that it takes place prior to any development and based on sufficient information - are set out sufficiently clearly, including the right of each affected community to withhold consent and withdraw from the process at each of the four FPIC Gates detailed in the HCSA SRs.
- The level of detail the SOPs contain, as is necessary to cover all the many elements involved in the fulfillment of FPIC rights (as set out in Matrix 3), especially SR 2 (on fair representation and agreeing the process for consent) and SR 7 (FPIC itself).
- The SOPs' coverage of the requirement on fair and non-discriminatory representation, required by SR 2 (on fair representation and agreeing the process for consent) and SR 12 (on non-discrimination).
- The SOPs' coverage of the requirement that the engagement, assessment and negotiation processes are genuinely participatory, meaningful and fair, and are conducted in good faith, in keeping with the fundamental principle and right of self-determination from which FPIC rights derive,⁹ and with the 'information' tenet of FPIC (SR 7).¹⁰
- The SOPs coverage of the requirement that the FPIC process be fully transparent at all stages, in keeping with the 'information' tenet and with the fundamental principle of self-determination.¹¹
- The SOPs' coverage of aspects related to quality assurance and independent verification (QA/IV), including the documentation requirements set out in Matrix 3, as is required for the effective fulfillment of all human rights.¹²
- The SOPs' provisions for addressing any grievances that arise as part of the process, in keeping with SR 7 (FPIC) and SR 10 (on effective grievance mechanisms and remedy), and again as is required for the effective fulfillment of all rights.¹³
- The SOPs coverage of the requirement for FPIC rights to be fulfilled in relation to existing operations, in keeping with SR 13 (on implementing the SRs when applying the HCSA to existing operations) and SR 10 (on effective grievance mechanisms and remedy processes).¹⁴

⁹ As set out in international human rights treaties and resolutions, including Articles 1-8 and 33-34 of UNDRIP, and in Article 1 of the UDHA and ICCPR and ICESCR

¹⁰ And with requirements on the participatory nature of information and assessment processes set out in SR 1 on Social Knowledge and SR 5 in relation to assessment of food security and livelihood needs

¹¹ This includes making its human rights commitments and associated obligations known to all affected communities; providing information to communities in a form and language of their choosing; and publishing information about its FPIC policy and how it is being implemented. See also documentation requirements set out in Matrix 3

¹² This should include provisions for ongoing monitoring, with adaptive management and continuous improvement

¹³ The importance of the rights of affected communities to effective grievance mechanisms and remedy processes is reflected in this being the third pillar of three in the UN Guiding Principles for Business on Human Rights

¹⁴ This includes making clear when and how FPIC will be sought from already-impacted communities, if they have not yet given their FPIC, such as when complaints arise, before replanting, or when the company undertakes conservation planning (such as during the Integrated HCV - HCSA Assessments),

- Any other relevant or noteworthy aspects related to the fulfillment of FPIC rights, whether in keeping with SRs 2 and 7, which cover the core FPIC rights, and/or any other relevant SRs

Important note to consider when reviewing Matrix 2: No SOP = No published Standard Operating Procedure.

Evaluation criteria for FPIC SOPs, where applicable	Corporate Group FPIC SOPs coverage of this aspect¹⁵	Strengths and weaknesses
<p>Are the four tenets of FPIC set out sufficiently clearly?</p> <p>In keeping with SR 7</p>		
<p>Do the SOPs contain a sufficient level of detail?</p> <p>Necessary to guide the operationalization of SRs 2, 7, and others</p>		
<p>What provisions exist in relation to the requirement that all sections of affected communities are represented fairly and without discrimination?</p> <p>In keeping with SRs 2 and 12</p>		
<p>What provisions exist in relation to the requirement that the process is genuinely participatory, with meaningful engagement and negotiation conducted fairly and in good faith</p>		

¹⁵ Where there are no published FPIC SOPs, relevant references to the fulfillment of FPIC rights in other policies are considered instead

In keeping with the principle of self-determination, and with SRs 1 and 7, the information tenet		
What provisions exist in relation to the requirement that the FPIC process be fully transparent at all stages as part of fully informing rights holders In keeping with the information tenet of FPIC in SR 7		
What provisions exist in relation to the quality assurance aspects of the process including independent verification? ¹⁶ Necessary for the effective fulfillment of all rights including FPIC rights		
What provisions are made for addressing any grievances that arise during the process? In keeping with SRs 7 and 10, and fundamental to the fulfillment of all rights including FPIC rights		
What provisions exist in relation to the fulfillment of FPIC rights in existing operations? In keeping with SRs 10 and 13		
Any other relevant or noteworthy aspects related to the fulfillment of FPIC rights?		

¹⁶ This should include provisions for ongoing monitoring, with adaptive management and continuous improvement

In keeping with SRs 2 and 7, the core FPIC rights, as well as any other relevant SRs		
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Matrix 3 – Comparison of the Published Free, Prior and Informed Consent (FPIC) Standard Operating Procedures to the specific actions required for the fulfillment of FPIC rights under the High Carbon Stock Approach Social Requirements and Implementation Guidance.

The third matrix presents key findings from a comparison of the FPIC SOPs to the specific actions that are required for the fulfillment of FPIC rights under the HCSA Social Requirements, including the Social Requirements (SRs) themselves and the detail on their operationalization provided in the Implementation Guide (IG).

The first column of the matrix sets out the specific required actions detailed in the HCSA SR and IGs, in a very concise summary of more comprehensive requirements and guidance detailed in both documents.¹⁷

The second column summarizes the associated documentation requirement that is necessary for the fulfillment of FPIC rights. This includes which aspects must be documented and how, and how this information is made available to the affected communities (ACs).¹⁸ These documentation requirements are necessary both for the fulfillment of FPIC rights directly, and for the purposes of quality assurance and independent verification (QA/IV) of the FPIC process.

The third column shows whether or not these actions are covered by the published FPIC SOPs of the Corporate Group, and to what extent, with further details and comments on the gaps between existing procedures and the HCSA SRs. The final column sets out what further actions need to be included in the Group’s FPIC SOPs for these to fulfill FPIC rights more effectively and in accordance with the HCSA SRs and IG.

¹⁷ High Carbon Stock Approach Social Requirements. <http://highcarbonstock.org/wp-content/uploads/2020/08/HCSA-Social-Requirements-Apr-2020.pdf>
 High Carbon Stock Approach Implementation Guidance. <http://highcarbonstock.org/wp-content/uploads/2020/08/HCSA-Implementation-Guide-Apr-2020.pdf>

¹⁸ Affected communities (ACs) are defined by the HCSA to include Indigenous People and local communities, as set out in the introductions of the SRs and IG

Important note to consider when reviewing Matrix 3: No SOP = No published Standard Operating Procedure.

Actions required for the fulfilment of FPIC rights under the HCSA SRs and IG	Documentation requirements	If and how the action is covered in SOPs	Necessary additions to SOPs to align with HCSA SR and IGs
<p>1. Identify all potentially affected communities (ACs) in the Area of Interest (AOI)¹⁹</p> <p>SR 2 IG Step 1.3a</p>	<p>List of all ACs located in AOI, with indication of extent/ways in which likely to be affected</p>		
<p>2. Visit each AC and inform them²⁰ of :</p> <p>a. The proposed development plans and their potential positive and negative impacts; details on compensation and other benefits; and possible alternative means of meeting local development needs²¹</p> <p>b. Their right to say no to the proposed development</p>	<p>Full records of engagement with each AC, including lists of attendees, detailed agendas, and minutes and/or recordings of the content of all meetings and other interactions²³</p> <p>Compilation of relevant information on a-f</p> <p>These records and all the relevant information are made accessible to ACs and other stakeholders, in appropriate format/language, according to</p>		

¹⁹ Affected communities (ACs) are defined by the HCSA to include indigenous people and local communities, as set out in the introductions of the SRs and IG.

High Carbon Stock Approach Social Requirements <http://highcarbonstock.org/wp-content/uploads/2020/08/HCSA-Social-Requirements-Apr-2020.pdf>

High Carbon Stock Approach Implementation Guidance <http://highcarbonstock.org/wp-content/uploads/2020/08/HCSA-Implementation-Guide-Apr-2020.pdf>

²⁰ All information must be shared transparently with ACs, in a format and language accessible to all sections of communities

²¹ The corporate ownership of the proposed project; the scale of the development; the length of the permit and nature/stage of the permitting process; and any other associated planned infrastructure such as roads, ports, warehouses, processing facilities etc., must also be disclosed fully to the ACs that may be affected by it

²³ These records should reflect (and so help to ensure) fair representation, full information disclosure, and the genuinely participatory/meaningful/good faith/fair nature of the process throughout the engagement, assessment and negotiation processes

<p>c. Their rights to : determine their own representatives; appoint advisors to support them throughout the process; set the terms for engagement, in line with customary rules, protocols and structures for decision-making; and agree the timing of the process; and the associated requirement that these processes are fair and non-discriminatory. (In line with SRs 2, 12)</p> <p>d. The company’s obligations with regard to FPIC (under national law, and according to international norms, including as set out by the HCSA SRs and other sustainability mechanisms).</p> <p>e. That these obligations include the establishment of a grievance mechanism, if ACs do give their consent, in order to mediate any issues arising during the process of engagement, assessment and negotiation²²</p> <p>f. What is involved in the assessment and land-use planning processes (land tenure and usage study (LTUS), HCV-HCS assessment, and Social and Environmental Impact Assessment (SEIA)), and in the engagement and negotiation processes</p>	<p>arrangements that have been mutually agreed²⁴</p>		
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²⁴ SR 1 mandates the establishment of a ‘social knowledge dossier’ in which all relevant documentation related to the proposed development can be stored and made available as appropriate to rights holders and other stakeholders, with rights holders involved in setting the terms of access.

²² According to mutually agreed arrangements and in line with international human rights norms on grievance mechanisms

SRs 7,2, 10			
<p>3. Ensure that each AC has an opportunity during this preparatory stage to either consent to continued participation in the processes of engagement and assessment, or to withdraw from them, with sufficient time for consulting with advisors if they so choose</p> <p>FPIC GATE 1</p> <p>SRs 7, ,2, 1 IG Step 1.3c</p>	<p>A formal record of the decision of each AC, and of how it was reached, showing that the process has been free of coercion, representative and non-discriminatory²⁵</p> <p>Also made accessible to each AC</p>		
<p>4. Establish the actual mechanisms for ensuring genuinely participatory assessment and land-use planning processes, and for ensuring meaningful engagement and negotiation processes conducted fairly and in good faith including:</p> <p>a. Who will be involved in which aspects, including which members of each AC and independent and/or technical advisors on each side</p>	<p>Full records kept of engagement process, including attendees and minutes/ recordings of all meetings</p> <p>Documented details of the agreed arrangements in relation to all aspects (a-d)</p> <p>Made accessible to ACs in appropriate format/language</p>		

²⁵ Independently verified quality assurance is necessary at this point, during the process (*ongoing monitoring*) to ensure that this is the case, by checking that the written and video records show: (i) meetings attended by good proportion and representative cross-section of ACs; (ii) that meetings have covered fully/sufficiently all the necessary points in 2 from a to f; (iii) the FPIC gate has been formally documented, and the process only continued with those ACs that have given consent; (iv.) this only occurs following the independent verification of this first stage (preparation stage 1 in the SRs' Implementation Guide)

<p>b. The forum, format and frequency of interactions for engagement and negotiation, ensuring sufficient time for full consideration by the AC at each stage</p> <p>c. Procedures for recording and communicating information, including records and outputs of engagement processes, of assessments, and of the negotiations. These must all be made accessible to ACs in an appropriate format and language</p> <p>d. Procedures for reporting and addressing any grievances that arise during the assessment and engagement processes (and possibly beyond)</p> <p>SRs 2,7,12,10 Step 1.3d/2.1</p>			
<p>5. Conduct participatory assessments in conjunction with each AC as follows:</p> <p>a) Land Tenure and Usage Study (LT&US)²⁶</p> <p>b) Social and Environmental Impact Assessment (SEIA) (done by assessors)</p> <p>c) HCV-HCS assessments (done by assessors)</p>	<p>Outputs from the LT&US and two major assessments, the HCV-HCSA Assessment Report and the SEIA Report, which demonstrate the genuinely participatory nature of the process (QA done by HCVRN-ALS)</p> <p>Made accessible to ACs in appropriate format/language according to agreed arrangements</p>		

²⁶ Involving preliminary participatory mapping and the collection of other information on tenure and usage patterns.

<p>Full discussion of findings with each AC, and their endorsement of the recommended land-use allocations based on it (done by assessors)</p> <p>SRs 1,7 Steps 1.4 and 2.3b/c</p>			
<p>6. Provide each AC with two more opportunities during the assessment stage to either consent to continued participation in the process, or to withdraw from it.</p> <p>FPIC GATE 2 follows the scoping phase of the HCV-HCS assessment, when assessors visit ACs (or a sample of them) before the main assessment takes place, to conduct due diligence on the process thus far.²⁷</p> <p>FPIC GATE 3 follows the full discussion of the findings of the participatory assessments with each AC, when each has another chance to withdraw from the process.</p> <p>SR 7 Step 2.3a and 2.3d</p>	<p>Record of decision of each AC, and of how reached, showing that process has been representative and non-discriminatory</p> <p>Made available to each AC</p>		

²⁷ The due diligence conducted by the HCV-HCSA assessors includes (or should include) ensuring that full information has been provided to ACs, and that their initial consent to the process was granted at FPIC GATE 1 without coercion, and with all sections of ACs fairly represented. This due diligence can be conducted with a sample of ACs to show the general pattern of the engagement process and whether it meets the requisite standards.

<p>7. Co-develop with ACs the proposed Integrated Conservation Land Use Plan (ICLUP) and associated management and monitoring plans (MMP), and the accompanying 'package' of other measures (related to benefits, conservation, employment, 'CSR' grievance mechanisms etc.)</p> <p>SR 7 Step 3.1</p>	<p>Full records kept of engagement process including attendees of meetings and minutes/recordings.</p> <p>The output of the process, i.e. the proposed ICLUP, MMP and 'package'</p> <p>Made available to ACs</p>		
<p>8. Conduct negotiations in good faith with each AC on the proposed ICLUP, MMP and package, with sufficient time allowed for full consideration, and independent advice available, in accordance with agreed arrangements</p> <p>This leads to the FINAL FPIC GATE, as each AC either gives their binding consent to what becomes the final ICLUP, or rejects it, and either withdraws from the process, or may enter further negotiations.</p> <p>SR 7 IG Step 3.2</p>	<p>Record of engagement and negotiation process</p> <p>Legally-binding record of the agreement itself, if consent is given</p> <p>The final agreed ICLUP, MMP and package</p> <p>All made fully available to ACs in accessible format</p>		
<p>9. Ensure this consent or rejection has met all the requirements of FPIC as set</p>	<p>Evidence that QA standards have been met, and IV conducted of the</p>		

<p>out above, before development proceeds, through independent verification of the documentation of all the FPIC procedures set out (including all 4 FPIC gates), thereby confirming the consent or rejection of proposed and final ICLUP by each AC.</p> <p>SRs 2, 7, 12 IG Step 3.3</p>	<p>procedures required for the fulfillment of FPIC rights as set out in this matrix, including desk-checks of all the documentary records and field-checks with a sample of ACs</p>		
<p>10. Ensure effective operation of grievance mechanisms as arranged, during the engagement, assessment and negotiation processes, and subsequently for the duration of the ICLUP.</p> <p>SRs 7, 10 Step 1.3d, 2.1, 4.3</p>	<p>Evidence that a grievance mechanism exists and is functioning effectively, with periodic QA and IV to ensure this is the case</p>		

The specific actions that are required for the fulfilment of FPIC rights under the HCSA SRs, along with the associated documentation requirements, are set out here as comprehensively as possible. These are all absolutely essential for the fulfilment of FPIC rights and must therefore be taken by any Corporate Group or its affiliated subsidiaries and/or companies that have a policy commitment to respect FPIC rights.

Appendix: International human rights instruments with relevance for FPIC rights

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007) – includes the most clearly articulated references to FPIC rights, including directly in Articles 19 and 32 (in the context of States), as well as in Article 18, as well as relevant points on the rights to self-determination in Articles 3 and 4 (see below). Ratified by Indonesia, endorsed by Malaysia.

<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>,

ILO Convention 169 on the Rights of Indigenous and Tribal Peoples (1989) – refers in Article 6 to the ‘*principle of free and informed consent*’ in the context of the relocation of indigenous peoples from their land. Not ratified by Indonesia or Malaysia.

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

Universal Declaration of Human Rights (UDHA) (1948), the **International Covenant on Civil and Political Rights (ICCPR)** 1966, and the **International Convention on Economic, Social and Cultural Rights (ICESCR)** 1966 - all refer in their first articles to the right to self-determination, on which the rights to FPIC are based. Ratified by Indonesia, not ratified by Malaysia.

<https://www.un.org/en/universal-declaration-human-rights/index.html>

<https://2covenants.ohchr.org/About-The-Covenants.html>, <https://www.un.org/en/universal-declaration-human-rights/index.html>

UN Food and Agricultural Organization’s (FAO) Voluntary Guidelines on the Responsible Governance of Tenure (VGGTs) (2012) refer to the FPIC rights of indigenous peoples and other communities with customary tenure systems in Article 9.9 (see below).

<http://www.fao.org/3/i2801e/i2801e.pdf>

UN Guiding Principles for Business and Human Rights (UNGPs) (2011), require human rights due diligence to be conducted before any proposed project to assess potential human rights impacts, including through ‘*meaningful consultation with those affected*’, as well as consultation on the design of grievance mechanisms.

https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

UN Global Compact (2000) – the first of ten principles is that ‘*businesses should support and respect the protection of internationally proclaimed human rights.*’

Its Draft Business Reference Guide to UNDRIP (2012) also states that if a group self-identifies as indigenous, companies should proceed with seeking FPIC on this basis, even if this is not required by the government, and that if FPIC is granted, engagement and communication must continue throughout.

<https://www.unglobalcompact.org/what-is-gc/mission/principles>

Relevant Articles of UNDRIP

Article 3 Indigenous peoples have the **right to self-determination**. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4 Indigenous peoples, in exercising their **right to self-determination**, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 18 Indigenous peoples have the **right to participate in decision-making** in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19 States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order **to obtain their free, prior and informed consent** before adopting and implementing legislative or administrative measures that may affect them.

Article 28 1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without **their free, prior and informed consent**. 2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 32 1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order **to obtain their free and informed consent** prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Relevant sections from the FAO VGGTs

3B.6 Consultation and participation: engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power

imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.

9.9 States and other parties should hold good faith consultation with indigenous peoples before initiating any project or before adopting and implementing legislative or administrative measures affecting the resources for which the communities hold. Such projects should be based on an effective and meaningful consultation with indigenous peoples, through their own representative institutions in order **to obtain their free, prior and informed consent under the United Nations Declaration of Rights of Indigenous Peoples** and with due regard for particular positions and understandings of individual States. Consultation and decision-making processes should be organized without intimidation and be conducted in a climate of trust. The principles of consultation and participation as set out in paragraph 3B.6 should be applied in the case of other communities described in this section.

12.7 In the case of indigenous peoples and their communities, States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments, **including as appropriate from the International Labour Organization Convention (No 169) concerning Indigenous and Tribal Peoples in Independent Countries and the United Nations Declaration on the Rights of Indigenous Peoples**. States and other parties should hold **good faith consultation with indigenous peoples before initiating any investment project affecting the resources for which the communities hold rights. Such projects should be based on an effective and meaningful consultation with members of indigenous peoples as described in paragraph 9.9**. The principles of consultation and participation of these Guidelines should be applied for investments that use the resources of other communities.

Relevant sections on FPIC in the HCSA Social Requirements

SR 7 Free, Prior and Informed Consent

Principle: Indigenous peoples, local communities and other land users have the right to give or withhold their FPIC to operations planned on their lands, as expressed through their own freely chosen representatives or 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 plantings, HCV and HCS forest areas.

SR 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 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 whether and how to enter into 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.

<http://highcarbonstock.org/wp-content/uploads/2020/08/HCSA-Social-Requirements-Apr-2020.pdf>

Relevant sections on FPIC in the HCSA Implementation Guide

Preparation stage

IG Step 1.3 Initiate Engagement with Affected Communities, including a. identify potentially affected communities to include in FPIC process, b. fully inform them of all relevant aspects, c. seek their initial consent to the process, and d. develop mechanisms to manage further engagement, if consent granted.

IG Step 1.4 Conduct Land Tenure and Usage Study in order to develop an early understanding of local land tenure and usage patterns.

Assessment stage

IG Step 2.1 Continue Engagement with Communities including in relation to the mechanisms of engagement, as well as other relevant aspects such as conservation benefits, employment and grievance mechanisms.

IG Step 2.3 Conduct the HCV-HCSA Assessment, including a. due diligence by the assessment team, b. participatory mapping and other participatory social assessment, c full consultation on the findings with communities, and d. preparation of the final assessment report (the basis of the proposed Integrated Conservation Land Use Plan or ICLUP).

Negotiation stage

IG Step 3.1 Further Consultation with Communities on the proposed Integrated Conservation and Land Use Plan (ICLUP) and associated management and monitoring plans, as well as other relevant aspects including employment and compensation.

IG Step 3.2 Negotiated Consent or Rejection of the final ICLUP, with its formal notarization if consent is given.

IG Step 3.3 Quality Assurance for the Negotiation Stage including field based independent verification to ensure that the FPIC rights of affected communities have been fulfilled in practice.

Operational stage

IG Step 4.3 Continue Engagement with Communities in relation to ongoing monitoring and management, according to existing mechanisms of engagement, and with adaptations as necessary.

<http://highcarbonstock.org/wp-content/uploads/2020/08/HCSA-Implementation-Guide-Apr-2020.pdf>

Definition of FPIC in the Forestry Stewardship Council (FSC) Glossary of Terms

Free, Prior, and Informed Consent (FPIC): A legal condition whereby a person or community can be said to have given consent to an action prior to its commencement, based upon a clear appreciation and understanding of the facts, implications and future consequences of that action, and the possession of all relevant facts at the time when consent is given. **Free, prior and informed consent includes the right to grant, modify, withhold or withdraw approval** (Source: Based on the Preliminary working paper on the principle of Free, Prior and Informed Consent of Indigenous Peoples (...) (E/CN.4/Sub.2/AC.4/2004/4 8 July 2004) of the 22nd Session of the **United Nations Commission on Human Rights, Sub-commission on the Promotion and Protection of Human Rights, Working Group on Indigenous Populations, 19–23 July 2004**). Source: FSC-STD-01-001 V5-2

<https://ca.fsc.org/preview.fsc-glossary-of-terms-fsc-std-01-002.a-833.pdf#:~:text=FSC%20Glossary%20of%20Terms%20Accreditation%3A%20Third-party%20attestation%20that,accordance%20with%20applicable%20scheme-owner%20requirements.%20Source%3A%20FSC-STD-20-001%20V4-0>