



12. Community and land rights

SPOTT indicators: Does the company disclose...

- | | |
|--|---|
| 77) Commitment to human rights, referencing the UN Declaration of Human Rights or UN Guiding Principles on Business and Human Rights? | 80) Commitment to free, prior and informed consent (FPIC)? |
| 78) Commitment to respect legal and customary land tenure rights? | 81) FPIC commitment applies to independent suppliers? |
| 79) Commitment to respect indigenous and local communities' rights, referencing the United Nations Declaration on the Rights of Indigenous Peoples or ILO 169? | 82) Free, prior and informed consent (FPIC) process? |
| | 83) Process for addressing land conflicts? |
| | 84) Commitment to ensure food security for local communities? |

Relevant SDGs



Context

Human rights violations make up a growing part of the claims raised against the palm oil industry and often originate in property disputes over land, resources or working conditions on palm oil plantations. Human rights claims have been known to bring operations to a complete halt, to significantly deteriorate a company's reputation and lead to asset stranding as development was abandoned. As of 2007, over 100 land disputes had been filed with the local courts of the Malaysian state of Sarawak alone – 40 of which were identified to be palm oil-related.¹

As land is one of the most important resources to an oil palm grower, ensuring that there are no existing or potential conflicts regarding its use over the lifetime of a plantation is fundamental. Many communities using or occupying the land considered for development may rely on it for their most basic needs, including food, shelter, medicine and cultural heritage. As communities often lack legal title to land, it is essential that companies engage with communities through processes of free, prior and informed consent (FPIC) to identify customary rights holders and prevent future claims. A case study by WWF, FMO and CDC Group found that an initial cost of US\$30,000 in community engagement represented an ROI of 880%, as it served to avoid community disputes similar to those which had previously cost the company US\$ 15 million.²

Obligations and expectations

Human Rights are granted by international law and the transposition thereof into national laws. The two most prominent human rights treaties of the United Nations (UN) are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the former with 169 States Parties and the latter with 164 States Parties. They create obligations on States Parties to realize the provisions therein. The articles of the Universal Declaration on Human Rights (UDHR) have arguably obtained the status of customary international law and are thereby binding for all states.

Free, prior and informed consent (FPIC) is an important general principle of international law that emanates from a strong framework as it is included in

Glossary

Free, Prior and Informed Consent (FPIC)

FPIC is obtained through informative and consultative processes to ensure that potentially affected communities give meaningful consent and are able to reject or consent to plantation development. As FPIC relates to land, it underpins many land-based rights and livelihoods issues. FPIC lays the foundation of balanced relationships that will consequently need to be maintained.

⁸Colchester, M. et al. 2007. Land Rights and Oil Palm Development in Sarawak. Forest Peoples Programme and Sawit Watch. [Accessed 2 October 2017]. Available from: forestpeoples.org/sites/fpp/files/publication/2010/08/sarawaklandislifeenov07eng.pdf

⁹WWF, FMO and CDC, Profitability and Sustainability in Palm Oil Production Analysis of Incremental Financial Costs and Benefits of RSPO Compliance. 2012. p.28. [Accessed 2 October 2017]. Available from: rspo.org/file/BUSINESS%20CASE_Profitability%20and%20Sustainability%20in%20Palm%20Oil%20Production.pdf

the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and certain elements of it are enshrined in the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization, the Convention on Biological Diversity, and the African Commission on Human and Peoples' Rights' (ACHPR) Resolution 224 of 2012. FPIC implementation is also required and championed by many capital providers' policies. This includes (but is not limited to) members of the UN Global Compact.³

ZSL: Responding to increased scrutiny on land and community Rights

"Oil palm plantation expansion has been responsible for serious land conflicts and human rights abuses on a significant scale, and weak governance has provided limited protection of the rights of local communities and indigenous peoples.

"Since the launch of SPOTT in 2014, we have observed that the users of the tool – including palm oil buyers, banks and investors – are showing growing concern for the land and community rights issues associated with the palm oil sector.

"ZSL has responded to requests from SPOTT users to include more comprehensive human rights indicators, and more details on how companies are implementing Free, Prior and Informed Consent (FPIC) processes. By expanding the indicator framework to include these issues, SPOTT is pushing for more transparent reporting on land and community rights by companies, to help incentivise better on-the-ground practices."

**Clara Melot, SPOTT Engagement and Impacts Manager
ZOOLOGICAL SOCIETY OF LONDON**

Challenges

- Sole reliance on government assurance of land titles may lead to unexpected customary claims.
- Companies may lack capacity to define the scope of FPIC processes and ensure they are effective. Effective processes require significant amounts of time, resources, due diligence and expertise.
- Companies may experience difficulty in effectively identifying legal and/or customary right-holders and participants in FPIC and socialisation processes.
- Incomplete mapping of all relevant stakeholders can lead to claims being raised at a later stage.
- Insufficient information or inadequate means of communication to ensure that the impacts of new developments are understood can lead to claims after consent was given.
- As there may be overlapping boundaries, companies have an incentive to develop land quickly, which may be in conflict with ensuring communities' rights.
- Changes in customary authorities, or changing ownership or use patterns may raise issues years after plantation development, and ongoing conflicts may be historic (e.g. before RSPO requirements to undertake FPIC processes) or inherited from a subsidiary that changed ownership.



¹⁰UN Global compact, United Nations. [Accessed 2 October 2017]. Available from: unglobalcompact.org/

Best practice for addressing human rights and community land rights

There are several steps that a palm oil company should follow in order to implement best practices:

- When acquiring a concession, companies should not exclusively rely on government assurances regarding land titles as communities may have customary rights and claims, and overlapping areas of land may have also been allocated for other uses.
- Companies should consider a “no development” option and ensure this option is presented fairly to communities.
- Appropriate participatory approaches should be used in the process of engaging communities that take into account local norms and customs, and ensure fair representation of local communities, and consider the heterogeneity of communities. Transparent processes and documentation should also be established.
- To ensure that all relevant stakeholders are involved, the company should undertake participatory mapping of substantive customary land rights and uses surrounding land considered for expansion. This mapping can help inform SEIA processes.
- It is essential to involve women in such processes to take into account their concerns, as women can be often disproportionately affected by land dispossession and land use change.
- Consultation should be set up to discuss two-way dialogue in relation to how plantations may affect livelihoods and what remedies are proposed.
- A baseline study of the current socio-economic status of the communities should be undertaken, and a set of relevant mitigation measures proposed.
- All steps taken in the process should be documented to demonstrate compliance.
- When companies provide compensation, fair and effective social remediation procedures should be followed.

Recommended resources

- Colchester, M. 2011. Palm Oil and Indigenous Peoples in South East Asia. International Land Coalition and Forest Peoples Programme. Available from: forestpeoples.org/sites/fpp/files/publication/2010/08/palmoilindigenouspeoplesoutheastasiafinalmceng_0.pdf
- Colchester, M. et al. 2015. Free, Prior and Informed Consent Guide for RSPO Members. RSPO Human Rights Working Group. Available from: rspo.org/articles/download/d57294a05493ff6

Other SPOTT indicator framework factsheets in the series

This document is part of a series of factsheets in the publication: *From disclosure to engagement: A guide to the SPOTT indicator framework for assessing palm oil producers and traders*. Below is a full list of the factsheets:

- Factsheet 1: Sustainability policy and leadership
- Factsheet 2: Landbank and maps
- Factsheet 3: Traceability
- Factsheet 4: Deforestation
- Factsheet 5: Biodiversity
- Factsheet 6: HCV, HCS and impact assessment
- Factsheet 7: Peat
- Factsheet 8: Fire
- Factsheet 9: Greenhouse gas emissions
- Factsheet 10: Water
- Factsheet 11: Chemical and pest management
- Factsheet 12: Community and land rights
- Factsheet 13: Labour rights
- Factsheet 14: Palm oil certification
- Factsheet 15: Smallholder support
- Factsheet 16: Supplier selection
- Factsheet 17: Governance and grievances

About SPOTT

SPOTT is an online platform promoting transparency and accountability to drive implementation of environmental and social best practice for the sustainable production and trade of global commodities. SPOTT assessments score some of the largest palm oil producers and traders on the public availability of corporate information relating to environmental, social and governance (ESG) issues.

Reframed as the **Sustainability Policy Transparency Toolkit** in 2017, SPOTT now supports transparency for other industries that pose some of the greatest risks to the environment, with SPOTT assessments of timber, pulp and paper companies launched in November 2017.

For more information, visit [SPOTT.org](https://spott.org) or contact SPOTT@ZSL.org.

About ZSL

Founded in 1826, the **Zoological Society of London (ZSL)** is an international scientific, conservation and educational charity whose mission is to promote and achieve the worldwide conservation of animals and their habitats.

Our mission is realised through our groundbreaking science, our active conservation projects in more than 50 countries and our two Zoos, ZSL London Zoo and ZSL Whipsnade Zoo.

Published: November 2017