



**global witness**

## **Global Witness comments on the Sustainable Natural Rubber Initiative (HoD/SNR-i/22-05)**

30<sup>th</sup> April 2015

These comments by Global Witness elaborate the contributions we made that the 12<sup>th</sup> February 2015 Stakeholder Information Meeting of the Sustainable Natural Rubber Initiative (SNR-i). These cover comments three areas: a) the criteria, b) the key performance indicators for each criterion, and c) the governance mechanism for their implementation.

In general, we are very supportive of this initiative as it is timely and clearly responds to real risks facing the natural rubber sector, builds upon consumer demand, as well as parallel initiatives across other comparable supply chains. We believe that Global Witness' experience researching the potential social and environmental risks associated with rubber plantations in Cambodia and Laos, our in-depth engagement with the rubber companies in question about how to resolve these problems, and our long-term experience working to improve supply chain sustainability within other natural resource sectors, places us in a position to be able to constructively contribute to the SNR-i.

### A) Comments on Criteria

We have one overall comment on the five criteria:

1. We are concerned about the lack of focus of land rights and land tenure within the criteria as they are currently defined. The best solution to this would be to add a new sixth criteria which is focused entirely on land tenure, alternatively, criteria three could be expanded to include a third indicator on land rights (and subsequently revise the title of this criteria to be "Support Forest Sustainability and Protect Land Rights").
2. We recommend that the entire initiative be based on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries in the context of National Food Security (VGGTs), recently adopted by the UN intergovernmental Committee on World Food Security in 2012<sup>1</sup>.
3. We recommend that the methodology used by the SNR-i to recognise the protect land rights and land tenure in any new or expanding rubber operationsis the principle of Free, Prior and Informed Consent (FPIC), as defined by the Un Declaration on Indigenous Peoples' Rights<sup>2</sup>

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<sup>1</sup> The guidelines are available for download here: <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

<sup>2</sup> Available for download here: [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).<sup>3</sup> The principle of FPIC for indigenous peoples is also part of the International Finance Corporation's Performance Standards (number 7)<sup>4</sup> and the VGGTs, whereas the Roundtable on Sustainable Palm Oil has gone further and uses FPIC as a requirement for all potentially affected communities (principle 2.3).<sup>5</sup>

The following are specific, detailed comments on the current criteria:

1. Criteria 1: Support improvement of productivity
  - a. In addition to the technical performance indicators listed here (which we agree with), we would suggest adding a fourth indicator which focuses specifically on ensuring that smallholders maintain an important and significant role in sustainable natural rubber supply chains. We would suggest the following text "Promoting small-holder involvement in sustainable rubber production";
2. Criteria 2: Enhance natural rubber quality
  - a. We are confused about the meaning of Performance Indicator 2.1, in comparison to a commitment to implementing the whole of the SNR-i, can this be clarified?
3. Criteria 3: Support forest sustainability
  - a. As above, the criteria need to be expanded to include land tenure and land rights issues. We recommend creating a new and dedicated criteria for land issues, or as a second option, expanding the welcome inclusion in performance indicator 4.1 on compliance with customary water use rights to also cover customary land use rights. Explicit focus on land tenure and land rights would move the SNR-i towards meeting the provisions of the VGGTs;
  - b. We welcome the commitment to compliance with relevant local legal requirements under Performance Indicator 3.1, but think this indicator is very unambitious given that this is something which companies are already legally required to do under national law. According to the International Union for Conservation of Nature, only 2% of the world's intact forest landscapes are under strict protection, with neither China, Cambodia, Laos nor Vietnam providing any forests this degree of protection.<sup>6</sup> Therefore in order for the SNR-i to affectively protect forests, it has to adopt a standard equivalent the Forest Stewardship Council<sup>7</sup> or the Roundtable on Sustainable Palm Oil, which is dependent on the conservation value of the forests, not the level of legal protection given to them.
  - c. In addition, reliance on statutory legal requirements is not going to be enough to ensure rubber operations are not responsible for negatively impacting on forests or

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<sup>3</sup> Available for download here: <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>

<sup>4</sup> Available for download here:

[http://www.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7\\_English\\_2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES)

<sup>5</sup> The full principles and criteria are available for download here: <http://www.rspo.org/certification/how-rspo-certification-works>

<sup>6</sup> Further information is available here: <http://www.intactforests.org/world.map.html>

<sup>7</sup> Further information is available here: <https://us.fsc.org/>

local peoples' land rights. For example, research suggests that much forest land conversion to large-scale agriculture concessions is in fact illegal, even though it is done under the remit of government-issued licenses and permits.<sup>8</sup> We would therefore suggest that in addition to national legal requirements this indicator also explicitly refers to customary and user rights, and ratified international laws (as included in the RSPO);

- d. In terms of Performance Indicator 3.2, we would suggest this not just cover new plantations, but all natural rubber operations, for example those which have plans to expand. In addition, we are concerned about the focus in this indicator of only protecting forests which are within formally recognised protected areas. In many countries, there are significant areas of forests which have high conservation value, are high carbon stock areas, as well as supporting the livelihoods of local communities, but which are not formally protected. This condition is not included as a standard in comparable community supply chain commitments and therefore we would recommend it be removed and this commitment be extended to all forests, with specific focus on High Conservation Value forests;
- e. In addition, we find the focus of Performance Indicator 3.2 very narrow with regard to broader environmental issues, in comparison to other supply chain commitments, for example the natural rubber sourcing policy of Olam. We would recommend that the following additional requirements are added – Environmental and Social Impact Assessments; Environmental Management Plans; biodiversity and soil conservation measures within plantation sites; protection of peat land; exclusion of fires from rubber operations; and commitments relating to climate change and carbon emissions.

#### 4. Criteria 4: Water management

- a. We strongly agree with the inclusion of compliance requirements to both legal requirements and customary water use rights, and hope such a broad commitments can be used as a model for the indicator on land rights (see above);
- b. We are confused about the limit of treatment requirements for water to just “industrial” waste water. The definition for this term provided in the criteria and performance indicator documents describes “any water waste carry materials / wastes that result from the processing of natural rubber”, which could be some small processing as well as large, industrial scale. However, the guidance note refers only to facilities, implying they are operating on a large-scale. We consider that all environmental pollution, especially water-based, should be minimised and therefore would recommend this performance indicator be expanded to cover all scales of processing;

#### 5. Criteria 5: Respect human and labour rights

- a. Although the title of this criteria could be interpreted as covering all human rights, the performance indicators are focused on the narrow area of labour rights. We

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<sup>8</sup> Lawson S, *Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations*, report for Forest Trends, September 2014. Available here: [http://www.forest-trends.org/documents/files/doc\\_4718.pdf](http://www.forest-trends.org/documents/files/doc_4718.pdf)

really do not think this is adequate and would suggest that the performance indicators are expanded to cover the full range of human rights impacts potentially caused by natural rubber operations, and are in line with the UN Guiding Principles on Business and Human Rights;

- b. We would recommend the SNR-i is expanded to include all human rights, particularly those within the Convention of Economic Social and Cultural Rights (such as the right to food and right to adequate housing) and the Convention on Civil and Political Rights (such as freedoms of expression, association and assembly). For the latter convention, these would need to be applicable across the entire organisation's operations, not just in association with collective bargaining. This again would align the SNR-i with the VGGTs.

## B) Comments on the Key Performance Indicators (KPIs)

The comments below build on and provide further detail to the comments made above, where they apply to specific performance indicators and KPIs.

Definitions:

- “Sustainable” should be defined and we would recommend using that given by the World Commission on Environment and Development in 1987;<sup>9</sup>
- There are some models of production, such as out-grower schemes, which are not included in this list of definitions, can they be added?
- The thresholds between a large SNR grower and a small SNR grower are not clearly defined;
- Likewise, the definition of SNR processor is not clear, the definition gives no threshold of scale, but the subsequent indicators implies this is targeting only industrial-scale processors

Criterion 3 – Support forest sustainability:

- In order for the SNR-i to be in line with the RPSO and other relevant international standards, then this section should refer to the following provisions:
  - undertaking environmental, social and human rights impact assessments
  - preparing and implementing environmental management plans, which explicitly include soil conservation measures
  - the impact of SNR operations on biodiversity within the plantation as well as the surrounding areas
- KPI 3.1.1
  - could benefit from further elaboration on how local legal requirements are defined and assessed
  - its not clear why there is no target for SNR small and large growers for this KPI
  - how the guarantee from SNR suppliers is obtained needs further clarifying, particularly the means of verification (MoV), we would suggest replacing these KPI targets with procedures based on standard due diligence practices

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<sup>9</sup> World Commission on Environment and Development (WCED). *Our common future*. Oxford: Oxford University Press, 1987 p. 43.

- KPI 3.1.2
  - can more detail be given about what kind of “official identification” of land as being suitable for rubber plantation is acceptable and how this KPI will deal with any contestations about the suitability of land? For example, the term “suitability” could be interpreted as a narrow agro-climatic assessment, without including very important elements such as the availability of free and un-used land
  - as with KPI 3.1.1, the MoV used by SNR suppliers to SNR traders and downstream users needs to be further elaborated and should be based on due diligence procedures
- KPI 3.1.3
  - There appears to be some overlap between this KPI and Performance Indicator 3.2, please can the difference be clarified?
  - As above, we have significant concerns about the limitation of this indicator to legally protected areas or within habitats of protected species. We would recommend that the standard language from RSPO, FSC and other standards of areas of “high conservation value” be used instead
  - As with the two previous KPIs, the MoV for SNR traders and downstream users need further clarification
- We would recommend that a specific performance indicator relating to land rights and tenure risks be inserted here and suggest the SNR-i uses the principle 3.6 from Olam’s sustainable rubber policy “operations recognise, respect and uphold the legal and / or customary rights of local communities”
- Performance indicator 3.2
  - We are not clear for the rationale of only new plantations being covered by this indicator, can it be expanded to all plantations, or is this the differentiation between KPI 3.1.3 and Performance Indicator 3.2?
  - As above, we would recommend the use of “protected areas” in this performance indicator and following KPIs be replaced by “areas of high-conservation value”, to be in line with the FSC, RSPO and other international standards
- KPI 3.2.1 and KPI 3.2.2 – as above the MoV for SNR traders and downstream users are not clear
- Performance Indicator 4.1
  - We strongly support the inclusion of compliance with both legal and customary water use rights, and recommend that such a provision be expanded also to land use rights. Land and water use rights are inextricably linked on the ground and to separate the two out will not be practical to implement within the SNR-i.
  - KPI 4.1.1 and KPI 4.1.2 - as above, it is not clear why SNR small and larger growers are excluded from these indicators
- Performance indicator 4.2
  - as discussed above in the section on definitions, it is not clear what threshold of processors this indicator and KPI applies to, particularly recommending that waste water from small scale processing be included here

C) Comments on the governance mechanism for their implementation

In order for members of the SNR-i to “know” internally that they are meeting the KPIs of the initiative and then “show” it to their clients and the general public, then a number of changes are recommended to the implementation procedure:

- Clear means of verification should be developed for each KPI, based on due diligence procedures, we would recommend looking at the OECD guidelines on due diligence for relevant international best practice
- Members of the initiative should publicly report on their progress towards implementing these measures, on an annual basis, to be able to demonstrate to their peers, the rubber sector as a whole and the wider public that the initiative is being successful
- The self-regulated measures by members should be complemented by independent verification of progress towards the KPIs on a regular basis (at a minimum, annually)
- Clear systems and procedures should be put in place to address problems of non-compliance, including sanctions which ultimately lead to membership being removed, if non-compliance continued. We would recommend the multi-stakeholder Extractive Industry Transparency Initiative<sup>10</sup> as a model for a mechanism which is voluntary to join, but which has a robust compliance and sanction mechanism, if the targets of the initiative are not met
- In order for consumers further down the supply chain to be able to be confident that natural rubber produced under the SNR-i is truly sustainable then the “mass-balance” system (credit system) must be replaced by a fully traceable system throughout the entire supply chain. We support TFT’s position that only a fully traceable initiative will have the transformative impact on the way in which all natural rubber is grown, that the SNR-i hopes to achieve

Finally, we again suggest that a broader set of stakeholders should be brought into the discussion about the SNR-i, in particular, civil society groups and NGOs working on the ground in the countries where rubber production expansion is proving problematic, namely Cambodia, Laos and Myanmar. Global Witness works closely with these groups and would welcome the opportunity to provide introductions and / or facilitate meetings.

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<sup>10</sup> Further information is available here: <https://eiti.org/>