

Mandatory Requirement for Certification Bodies in Assessing Free, Prior and Informed Consent (FPIC) in New Planting Procedures

February 2018

Document Name: Mandatory Requirement for Certification Bodies in Assessing Free, Prior and Informed Consent (FPIC) in New Planting Procedures

Document reference code: RSPO-GUI-T01-022 V1.0 ENG

Geographic Scope: International

Effective Date: February 2018

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Assessing company compliance with Free, Prior and Informed Consent in the RSPO New Planting Procedure:

Mandatory Requirements for Certification Bodies

1. Introduction

Respect for the right of indigenous peoples, local communities and other land users ('local peoples') to give or withhold their Free, Prior and Informed Consent to operations planned on their legal and / or customary lands is a key element of the RSPO Principles and Criteria (P&C). Respect for this right is a binding requirement for all oil palm plantings and compliance with this requirement must be assessed prior to all new developments since 1st January 2010 through the New Planting Procedure (NPP).

The New Planting Procedure Working Group recognises that respecting the right to Free, Prior and Informed Consent (FPIC) is an iterative (not a one off) process and not all steps of the full process will be carried out at the same time. This is especially the case for large staged developments, where legal permitting, land acquisition and negotiation with communities may not all occur in the same time period.

However, concerned that audits carried out under the NPP have been failing to adequately assess FPIC - leading to numerous land conflicts and complaints - in 2015 the RSPO Membership passed a Resolution 6h/2015 which *inter alia* requires the development of 'clear, mandatory guidelines on assessments of FPIC in the New Planting Procedure.'

Accordingly, this document summarises the main steps of an adequate FPIC process as required by the P&C, details which elements must be completed before the NPP and then sets out the mandatory requirements for CBs carrying out audits of FPIC at the time of NPPs.

2. FPIC in the P&C

The full requirements for FPIC are set out in the P&C, and detailed in the RSPO's FPIC Guide for Members. The following table sets out the key requirements of an FPIC process relevant to the NPP.

Key Criteria and Indicators of FPIC

1.1: Growers and millers provide adequate information to relevant stakeholders on environmental, social and legal issues relevant to RSPO Criteria, in appropriate languages and forms to allow for effective participation in decision making.

1.1.1: There shall be evidence that growers and millers provide adequate information on (environmental, social and/or legal) issues relevant to RSPO Criteria to relevant stakeholders for effective participation in decision making.

2.2: The right to use the land is demonstrated, and is not legitimately contested by local people who can demonstrate that they have legal, customary or user rights.

2.3: Use of the land for oil palm does not diminish the legal, customary or user rights of other users without their free, prior and informed consent.

2.3.1: Maps of an appropriate scale showing the extent of recognised legal, customary or user rights (Criteria 2.2, 7.5 and 7.6) shall be developed through participatory mapping involving affected parties (including neighbouring communities where applicable, and relevant authorities).

2.3.4: Evidence shall be available to show that communities are represented through institutions or representatives of their own choosing, including legal counsel.

5.2: The status of rare, threatened or endangered species and other High Conservation Value habitats, if any, that exist in the plantation or that could be affected by plantation or mill management, shall be identified and operations managed to best ensure that they are maintained and/or enhanced.

5.2.5: Where HCV set-asides with existing rights of local communities have been identified, there shall be evidence of a negotiated agreement that optimally safeguards both the HCVs and these rights.

6.1: Aspects of plantation and mill management that have social impacts, including replanting, are identified in a participatory way, and plans to mitigate the negative impacts and promote the positive ones are made, implemented and monitored, to demonstrate continual improvement.

6.1.1: A social impact assessment (SIA) including records of meetings shall be documented.

6.1.2: There shall be evidence that the assessment has been done with the participation of affected parties.

6.1.3: Plans for avoidance or mitigation of negative impacts and promotion of the positive ones, and monitoring of impacts identified, shall be developed in consultation with the affected parties, documented and timetabled, including responsibilities for implementation.

6.2: There are open and transparent methods for communication and consultation between growers and/or millers, local communities and other affected or interested parties.

6.2.1: Consultation and communication procedures shall be documented.

6.2.2: A management official responsible for these issues shall be nominated.

6.2.3: A list of stakeholders, records of all communication, including confirmation of receipt and that efforts are made to ensure understanding by affected parties, and records of actions taken in response to input from stakeholders, shall be maintained.

7.1: A comprehensive and participatory independent social and environmental impact assessment is undertaken prior to establishing new plantings or operations, or expanding existing ones, and the results incorporated into planning, management and operations.

7.1.1: An independent social and environmental impact assessment (SEIA), undertaken through a

participatory methodology including the relevant affected stakeholders, shall be documented.

7.3: New plantings since November 2005 have not replaced primary forest or any area required to maintain or enhance one or more High Conservation Values.

7.3.5: Areas required by affected communities to meet their basic needs, taking into account potential positive and negative changes in livelihood resulting from proposed operations, shall be identified in consultation with the communities and incorporated into HCV assessments and management plans (see Criterion 5.2).

7.5: No new plantings are established on local peoples' land where it can be demonstrated that there are legal, customary or user rights, without their free, prior and informed consent. This is dealt with through a documented system that enables these and other stakeholders to express their views through their own representative institutions.

7.5.1: Evidence shall be available that affected local peoples understand they have the right to say 'no' to operations planned on their lands before and during initial discussions, during the stage of information gathering and associated consultations, during negotiations, and up until an agreement with the grower/miller is signed and ratified by these local peoples. Refer also to criteria 2.2, 2.3, 6.2, 6.4 and 7.6 for Indicators and Guidance on compliance.

7.6: Where it can be demonstrated that local peoples have legal, customary or user rights, they are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements.

7.6.1: Documented identification and assessment of demonstrable legal, customary and user rights shall be available.

7.6.2: A system for identifying people entitled to compensation shall be in place.

7.6.6: Evidence shall be available that the affected communities and rights holders have access to information and advice that is independent of the project proponent, concerning the legal, economic, environmental and social implications of the proposed operations on their lands.

3. FPIC in the NPP

The RSPO New Planting Procedure of 2015 already summarises the key elements of FPIC that must be place at the time of the initial audit.

The NPP is meant to be participatory, with meaningful involvement of affected stakeholders. Therefore, relevant stakeholders in local communities potentially impacted by the proposed oil palm development, need to be identified with the participation of those same local people. Throughout this document, the term local people encompasses all members of local communities including indigenous peoples. This is the beginning of the Free, Prior and Informed Consent (FPIC) process whereby local peoples who have legal, customary or user rights to the area, have the right to grant or withhold consent (say “no”) to operations planned on their land. See RSPO guidance on FPIC. The FPIC process should be carried out by qualified (FPIC-trained) company staff, group managers, or private land holders depending on the context. This is because the grower needs to build a long term relationship with the community (and vice versa) and consultants will not be the parties to any agreement. However, this does not prevent the grower from getting advice or training from third parties.

Growers need to be trained to respect the principle of FPIC and to understand that FPIC is an iterative process. This includes adequate training in: participatory mapping to determine the extent of communities’ legal and customary rights and areas of land use; awareness of how to conduct a land tenure assessment; appropriate procedures to allow communities to choose their own representative institutions and; how to mutually agree a procedure for negotiations over land based on the provision of full information and without any coercion or duress (see RSPO FPIC guidance 2015).The grower and the communities shall mutually agree on procedures to:

- Identify the communities’ representatives or representative institutions;
- Identify the extent of legal, customary and/or user rights (e.g. participatory mapping with consent of local communities);
- Document the FPIC process, including the granting or withholding of consent.

On the basis of this stakeholder engagement process, the boundaries of the proposed new development may be modified prior to commencement of the various assessments (SEIA, HCV, etc.). Local communities should grant permission for assessments to be conducted on land over which they have legal, customary and/or user rights. The community engagement and FPIC process should continue during all steps of the NPP process, and local people should have free access to the results of the various assessments, studies and mapping exercises, which will inform their ultimate decision to grant or withhold consent for the planned development.

It is neither realistic nor desirable that, at the early stage in plantation planning when a grower submits the NPP report, that the grower has completed the FPIC process.

However, the following minimum building blocks for an adequate FPIC process should be in place and verified during the NPP:

- There is evidence that growers have been informed by the communities of the composition of their self-selected designated representatives and or representative institutions where land acquisition is planned;

- There is evidence that communities have meaningfully participated in the elaboration of the SEIA and the HCV Assessment;
- The HVC Assessment has clearly recommended which areas need to be managed to maintain and enhance the full range of HCVs including HCVs 4, 5 and 6;
- There are plans, mutually agreed by the grower and the communities, as represented through their chosen representatives, or directly in broad community meetings, on how land tenure assessments, participatory community mapping and negotiations over land will be carried out.

As part of the verification process, the accredited RSPO CB shall provide written verification that the grower has the legal right to use the land, and has at least laid the minimum building blocks for an adequate FPIC process.

4. Mandatory Requirements for CBs

Accordingly, in assessing company compliance with the requirements of the P&C relevant to FPIC, CBs must check that there is clear evidence that:

- the local peoples have chosen who will represent them in dealing with the operator;
- the local peoples agreed to SIA and HCV Assessments being carried out on their lands;
- they have meaningfully participated in SIA and HCV assessments;
- the HCV assessment has been completed, and recommends which areas need to be set-asides to maintain or enhance these values, (including for HCV 4, 5 & 6, that is for environmental services, communities' basic needs and cultural identity).
- a land tenure assessment has been completed;
- participatory mapping of customary lands has been carried out, with the direct involvement of the communities concerned;
- affected communities have agreed to the management plan, which should summarise the mitigation measures that will be implemented.
- community representatives have agreed on the next steps in the FPIC process including how negotiations to acquire communities' lands will be undertaken.

The following verifiers should be used by CBs to assess compliance.

- Evidence of a social survey to identify local communities that live in or near areas of proposed concession / plantings
- Land tenure study or survey showing the company has sought to understand local systems of land ownership (especially where lands are mainly held by custom or under informal tenures and not through statutory land titling)
- Minutes or reports of meetings with local communities to identify which institutions they are choosing to represent themselves
- Evidence or letter of agreement showing company has accepted the self-chosen representatives as representing the communities

- Participatory maps showing the extent of customary lands and of any contested lands
- Survey lists of land owners, based on both customary rights mapping and land cadastres
- Participatory SEIAs
- Participatory High Conservation Value Assessment
- Evidence (eg signed agreement, letter of intent or Memorandum of Understanding) that the self-chosen representatives have agreed a process for FPIC-based negotiation
- Evidence that local peoples understand they have the right to say 'no' to operations planned on their lands at all stages of the FPIC process, from initial discussions up until an agreement is signed and ratified by these local peoples

5. Field verification required

Field verification by CBs of company compliance is required for all situations classed as 'high risk'. These 'high risk' areas include all areas where there are customary claims to land and should include all cases where disputes or conflicts have been reported in the media or by any stakeholders.

To check whether the FPIC process has been initiated in a way agreed to by the local peoples, the CB must hold meetings with the self-chosen representatives of the communities concerned and carry out randomised interviews with a range of members of the communities, to assess the inclusivity of the process and ensure that processes have been participatory.

6. Key Links

RSPO Principles and Criteria 2013: <http://www.rspo.org/key-documents/certification/rspo-principles-and-criteria>

New Planting Procedure 2015: <http://www.rspo.org/certification/new-planting-procedures>

RSPO Generic Checklist for Audits against RSPO P&C 2015: <http://www.rspo.org/key-documents/certification/rspo-principles-and-criteria>

RSPO and FPIC: a guide for members 2015: <http://www.rspo.org/news-and-events/announcements/free-prior-and-informed-consent-guide-for-rspo-members-2015-endorsed>

Resolution 6h/2015: <http://www.rspo.org/file/ga12/GA12-Resolution6h.pdf>

Annex 1: NPP in relation to the P&C. Source: informal discussion document during New Planting Procedures Working Group

Simplified matrix: making RSPO P&C work for new developments

Principle	Main requirements		NPP				
1	Provide information						
2	Legality	Permits		Permits			
2&7	Free, Prior and Informed Consent						
5&6&7	SEIAs						
5&7	HCV assessments			HCVMA's	Adaptive Management and Monitoring		
2&6&7	Just land acquisition			JLA	Clearance	Planting	Production
6	Conflict resolution						
3	Management plan						
4&5&6	Operating procedures						
6&7	Social policies and procedures						
8	Demonstrable improvement						

Simplified matrix: making RSPO P&C work for new developments in existing land banks

Principle	Main requirements		NPP				
1	Provide information						
2	Legality	Permits	Permits				
2&7	Free, Prior and Informed Consent						
5&6&7	SEIAs						
5&7	HCV assessments						
2&6&7	Just land acquisition		JLA		Clearance	Planting	Production
6	Conflict resolution						
3	Management plan						
4&5&6	Operating procedures						
6&7	Social policies and procedures						
8	Demonstrable improvement						

Annex 2: Verifiers of Company Compliance with RSPO P&C relevant to Free, Prior and Informed Consent

(Source Annex 2 of RSPO and FPIC: a guide for members)

- Evidence of a social survey to identify local communities that live in or near areas of proposed concession / plantings
- Land tenure study or survey showing the company has sought to understand local systems of land ownership (especially where lands are mainly held by custom or under informal tenures and not through statutory land titling)
- Minutes or reports of meetings with local communities to identify which institutions they are choosing to represent themselves
- Evidence or letter of agreement showing company has accepted the self-chosen representatives as representing the communities
- Participatory maps showing the extent of customary lands and of any contested lands
- Survey lists of land owners, based on both customary rights mapping and land cadastres
- Participatory SEIAs
- Participatory High Conservation Value Assessment
- Evidence (e.g. signed agreement, letter of intent or Memorandum of Understanding) that the self-chosen representatives have agreed a process for FPIC-based negotiation
- Evidence that local peoples understand they have the right to say 'no' to operations planned on their lands at all stages of the FPIC process, from initial discussions up until an agreement is signed and ratified by these local peoples
- Evidence (letters etc.) showing that communities were provided participatory maps, SEIAs and HCV assessments in a timely fashion prior to negotiations
- Evidence that neighbouring communities (not those directly involved) have endorsed boundaries of land claims of affected groups
- Evidence that the affected communities have endorsed the maps and the findings of the SEIA and HCV assessments
- Evidence that affected communities and rights-holders have access to independent information and advice concerning the legal, economic, environmental and social implications of the proposed operation
- Drafts of negotiated texts showing there has been iterative engagement with the communities involved

- Signed agreement of acceptance by self-chosen representatives of negotiated outcome, signed and ratified by government and / or notary
- Documents showing lists of rights-holders who are entitled to compensation or other agreed benefits and payments
- Evidence that agreed compensation, payments and benefits have been made to these rights-holders
- Evidence of that benefit sharing payments are being made and/ or other elements in signed agreement
- Documents showing company has legal rights to operate in the area
- Standard Operating Procedures and/ or other documents which show that the company has a mechanism to address and resolve disputes
- Signed agreement or other proof that communities accept the conflict resolution mechanism
- Company human rights policy which includes reference to FPIC
- Evidence human rights policy has been communicated with all levels of the workforce and operations
- Evidence that the company has shared information on the RSPO mechanisms for stakeholder involvement, including on their rights and responsibilities
- Company SOP to respond constructively to stakeholders, including a specific timeframe to requests for information
- Company policy and system to ensure anonymity of complainants and whistleblowers which aims to reduce risks of reprisal

Annex 3: FPIC in the New Planting Procedure

(Source: text from ‘Chalk and Talk’ video #15 on RSPO and FPIC)

#	Chalk	Talk
1	<p>New Planting Procedure:</p> <ul style="list-style-type: none"> • Obligatory from 1st January 2010 • Revised NPP from 1st January 2016 	<p>All RSPO members that plan any new planting must follow the ‘New Planting Procedure’. The procedure became obligatory from 1st January 2010. An updated version became obligatory from 1st January 2016. This module summarises those aspects of the NPP most relevant to local communities and to securing their Free, Prior and Informed Consent.</p>
2	<ul style="list-style-type: none"> • Ensures early compliance • Allows for NGO & community inputs 	<p>The NPP helps operators make sure their developments start out in compliance with key elements of the RSPO P&C. The NPP also helps ensure that the interests of local communities and other stakeholders are taken into account.</p>
3	<p>Requirements re FPIC:</p> <ul style="list-style-type: none"> • EIA • SIA • HCV Assessment • Legal 	<p>To comply with the NPP, operators must show they have already carried out key RSPO requirements. Those most relevant to FPIC include Environment and Social Impact Assessments, and HCV Assessments. Operators must also show they are legal.</p>
4	<ul style="list-style-type: none"> • FPIC procedure underway • Assessments participatory 	<p>One requirement of the NPP is that the FPIC procedure itself is already underway and the assessments have been undertaken with the agreement and participation of the local communities</p>
5	<p>Summaries assessed by CB</p>	<p>Summaries of all these actions need to have been assessed and endorsed by an accredited Certification Body which writes up and signs off on these summaries.</p>
6	<p>Posted on RSPO website</p>	<p>These summaries are then submitted to the RSPO and are posted on the RSPO website for comment</p>
7	<p>FPIC need not be completed but</p> <ul style="list-style-type: none"> • Key elements must be in place 	<p>Operators are not expected to have fully completed the FPIC process at the time of NPP notification – after all FPIC is an iterative process – but they do need to show that key elements are already in place</p>
8	<ul style="list-style-type: none"> ○ Self-chosen representatives ○ Participatory SIA & HCV assessments ○ HCV set asides identified (inc. HCV 5&6) 	<p>These include evidence that: the communities have chosen who will represent them in negotiations; they have meaningfully participated in SIA and HCV assessments; the HCV assessment has been completed, and recommends which areas need to be set-asides to maintain or enhance these values, including for HCV 5&6, that is for communities’ basic needs and cultural identity.</p>
9	<p>Agreements on how to carry out:</p> <ul style="list-style-type: none"> ○ Land tenure survey ○ Participatory mapping ○ Negotiations 	<p>The FPIC summaries also need to provide evidence that community representatives have agreed on the next steps including: how land tenure will be assessed; how participatory mapping will be carried out and; how negotiations to acquire communities’ lands will be undertaken.</p>

#	Chalk	Talk
10	<ul style="list-style-type: none"> ○ Management plan ○ Mitigation <p>Sound basis for full FPIC</p>	<p>The grower is also required to show that its management plan has the FPIC of any local communities whose lands will be affected. The management plan should summarise the mitigation measures that will be implemented.</p> <p>This should ensure that the plantation is developed with the agreement of the communities and is subject to their FPIC</p>
11	<p>Where there are HCVs and local land claims, CBs must undertake field check.</p>	<p>It is important to note that before submitting agreed summaries to the RSPO, the Certification Body must verify their accuracy through a field visit. This applies in any cases where there are HCVs and where local people have land claims.</p>
12	<ul style="list-style-type: none"> ● Opportunity to check accuracy 	<p>This provides an important opportunity for the CB to interview the local people and check that they agree with the summaries.</p>
13	<p>NPP posted on web:</p> <ul style="list-style-type: none"> ● Opportunity for comment 	<p>Once the NPP has been submitted to the RSPO and posted on the website, any parties have 30 days to comment.</p>
14	<ul style="list-style-type: none"> ● If NPP is challenged, clearance is frozen 	<p>If any communities have concerns, this is another opportunity for them to voice them.</p> <p>Land clearance will then be frozen while any dispute is addressed.</p>
15	<ul style="list-style-type: none"> ● Disputes are then resolved ● Avoids later conflicts 	<p>The NPP thus provides an important early opportunity, for both the grower and the communities, to sort out any disagreements and so avoid later conflicts.</p>