

**Terms of Reference**  
**Expert Group for the development of a simplified FPIC for Independent Smallholders**  
**(Expert Group for ISH FPIC)**

**1. Background**

In accordance with the RSPO Principles & Criteria (P&C) 2018, RSPO growers, including smallholders, are required to conduct Free, Prior, and Informed Consent (FPIC) before acquiring land for oil palm cultivation. The general requirement of this principle is that members engage in a process which involves discussions, consultations, mapping and a consent from communities, prior any form of development of land relating to the production of oil palm to ensure that the development is free of conflict with indigenous and local peoples.

The current FPIC Guide (endorsed by the RSPO Board of Governors on 20 November 2015) (“RSPO FPIC Guide 2015”) is applicable to:

- The generic RSPO Principles, Criteria and Indicators 2013 for millers and growers and independent smallholders seeking group certification
- Land acquired by an RSPO member, and to which the majority shareholding rule still applies.
- Associated (including schemed) smallholders and all other exclusively contracted out growers of fresh fruit bunch (FFB) being supplied to all units of the member whether they are smallholders or not, since these are defined by the RSPO as part of the supply base of a unit of certification.

However, there was a challenge in the implementation of the FPIC processes for independent smallholders as the suggested methods in conducting FPIC provided by the RSPO FPIC Guide 2015 increases the cost and effort required by Smallholders to comply with this requirement and certification. As the RSPO FPIC Guide 2015 was developed to address larger growers, the application of the same may not be specific to the needs of Independent Smallholders.

As part of the implementation of the RSPO Smallholder Strategy, a separate standard for Independent Smallholders has been developed and endorsed in November 2019. Development of this standard also offers the opportunity to develop a simplified FPIC approach, taking into account the context that independent smallholders operate in.

This Expert Group will be established to oversee the development of the simplified guidance for the implementation of FPIC for Independent Smallholder groups in alignment with the RSPO Independent Smallholder Standard whilst ensuring the protection of the rights of indigenous peoples and local communities. The FPIC guidance for Independent Smallholders will support group managers of Independent Smallholder groups in implementing FPIC procedure on existing farms and new planting in line with the RSPO ISH Standard.

## 2. Objectives

The objectives of the Expert Group for the ISH FPIC are to:

1. Oversee and inform the development of an FPIC guidance for Independent Smallholders
2. Ensure that the guidance document fulfills the following:
  - ISH Group Manager understand the FPIC requirements in Principle 2 of the RSPO Independent Smallholder Standard
  - The information within the guidance is practical and effective for FPIC processes that can be implemented by independent smallholders.
  - Recommendations on how to overcome challenges faced in ensuring consensus with the surrounding communities and affected parties during the process of FPIC implementation and thereafter.
  - Recommendations on how to address and mitigate potential conflicts which may be faced during FPIC implementation and practical tools or methods to conduct FPIC in a simplified manner, suitable to the context of independent smallholders.
  - To address relevant key national level requirements and regulations
3. Ensure the development of an FPIC procedure as contextually appropriate to the scale of smallholders' production
4. Oversee the development of practical tools (e.g. templates) to support the group managers in the implementation of the FPIC procedure
5. Ensure sufficient feedback has been received from smallholder representatives globally.
6. Ensure the guidance document addresses the items mentioned below:
  - Accurately determining simplified FPIC applicability
  - FPIC for new acquisitions and existing lands
  - No deforestation requirement
  - Integrated Conservation and Land Use Plan (ICLUP)
  - Women's right to use land
  - Land legality (Inclusive of accepted forms of legal proof )
  - Rights based approach for land legality.
  - Customary rights
  - Legality issues (e.g: Overlap in legal land title)

## 3. Composition

The Expert Group for ISH FPIC shall be a joint group comprised of nominated members from the Human Rights & Social Compliance Working Group ("HRSCWG") and the Smallholder Standing Committee ("SHSC") as well as members of the RSPO who have experience and expertise in the subject matter. The Expert Group, at its discretion, may invite other experts to participate in discussions requiring specific expertise in practical aspects of smallholders' operations, conservation, environmental management, regulatory frameworks, or certification services as well as expertise on relevant geographies.

The Expert Group will be co-chaired by two members, one from the HRSCWG and the other from the SHSC. Composition of the Expert Group shall represent all categories of RSPO membership. Two members will represent consumer goods manufacturers, retailers and financial institutions. Two members will represent processors & traders and environmental NGOs. Two members will represent Social NGOs. Four members will represent Smallholders (Indonesia, Malaysia, ROW).

<b>Category</b>	<b>Total</b>
Smallholders Representative	4
Social NGOs	2
Processors & Traders and environmental NGOs	2
Consumer goods manufacturers, retailers and financial institutions	2

The composition of the Expert Group will be considered final if even after active consultation and engagement there are no available candidates from the above list.

The discussions and decisions of the Expert Group will be based mainly on the technical expertise of its members and on-the-ground experience of smallholders' operations which will support the work of the group through knowledge-sharing and balancing the interests of different stakeholders.

Members are expected to participate actively in the proceedings or to ensure they are represented by a designated alternate if they are unable to do so. Only the substantive and/or designated alternate member can participate in the meetings. In exceptional circumstances, permission may be sought from co-chairs for a second alternate to attend the meetings.

#### **4. Active Period**

It is proposed that the Expert Group undertakes the task of overseeing and informing the development of the simplified FPIC Guidance for Smallholders from the period of June 2020 to December 2020. At the end of the active period, the RSPO Secretariat will resume full responsibility for reviewing, reporting and verifying the implementation of the Expert Group's decisions and recommendations, and providing recommendations to the appropriate RSPO Standing Committees as and when necessary.

#### **5. Roles and Responsibilities**

The Expert Group for ISH FPIC will report its findings to the Smallholder Standing Committee (SHSC) and the Standards Standing Committee (SSC). The reported findings will be inclusive of recommendations that will result in an informed decision making process.

## **6. Management**

Decisions will be reached by consensus by nominated members and must be made when a quorum, which is defined as 2/3<sup>rd</sup> (4 individuals) of the nominated members, attends a meeting. Voting rights are limited to the Expert Group members.

Invited experts are to only attend parts/on days of the meeting for which their counsel is needed. They are not required to attend all meetings or the entire duration of the meeting and will be required to leave the meeting at times of voting or decision-making.

Each member must declare any conflict of interest any matters on the agenda and/or matters arising at the beginning or during the course of the meeting. Should a conflict of interest exist, the member concerned must recuse themselves from the decision-making process or sensitive discussions.

Members or invited experts who have been privy to the discussions shall not use their position on the Expert Group and/or information obtained to obtain monetary gain or bid for any projects commissioned by the Expert Group directly or indirectly through organization with whom they are associated with. For example, members or invited experts who observe discussions about developing project ToR's will not be allowed to tender, and/or participate in the tender evaluation/selection processes.

## **7. Communication**

The Chatham House Rule aims to provide anonymity to speakers. This rule is applied throughout all meetings as an aid to free discussion, encouraging openness and the sharing of information. The Chatham House Rule reads as follows:

'When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.'

Any public communications related to the Expert Group and its work will be agreed by the members and approved by the RSPO communications team.

Minutes of the meeting and clarifications of decisions made are to be shared desirably no more than one month after the meeting.

## **8. Timeline**

The development of the FPIC procedure for Independent Smallholders is expected to be completed in time to support the implementation of the RSPO Independent Smallholder Standard. It is now planned that the development of the procedure will start in the 1st week of July 2020 and be completed in October 2020 with the expectation to have the procedures endorsed by the Board of Governors in November 2020. However, based on the complexity of the topic and the past experience, the timeline may need to be extended.

It is envisaged that the Expert Group will have 2 face-to-face meetings and organize teleconferences as and when necessary. The Co-Chairs will have frequent communication updates.

The overall timeline for the development of the ISH FPIC guidance is as follows:

Completion of draft 1 of the Simplified FPIC Guide for ISH	2nd week of August 2020
SHSC and SSC approval of draft 1 of the Simplified FPIC Guide for ISH	3rd week of August 2020
60-day public consultation for draft 1 of the Simplified FPIC Guide for ISH	2 <sup>nd</sup> week of September 2020
2nd Expert Group Meeting	October 2020
Completion of draft 2 of the Simplified FPIC Guide for ISH	End of November 2020 (With allocation for extension)
SHSC and SSC approval of draft 2 of the Simplified FPIC Guide for ISH	1st week of December 2020 (If no extension is required for draft 2 completion)
3rd Expert Group Meeting to finalise document	December 2020
Final draft of the Simplified FPIC Guide for ISH completed	2nd week of December 2020
Simplified FPIC Guide for ISH endorsed	End of December 2020

## 9. Role of the RSPO Secretariat

The RSPO Secretariat will provide the financial, human resource and logistical support for the Expert Group to conduct business and achieve its objectives: The RSPO Secretariat will assist and support the Expert Group members with technical reports from in-house and outsourced studies, terms of reference for consultancies, and other information that is requested by the Expert Group to fulfil its objectives. The RSPO Secretariat will also provide suggestions for the Expert Group on other potential experts to participate in discussions requiring specific regional expertise.