

**RSPO**

Roundtable on Sustainable Palm Oil

## **Institutionalisation of Respect for Free, Prior and Informed Consent** **(Towards RSPO implementation and verification working for forest, lands and livelihoods of indigenous peoples and local communities)**

PREPARATORY CLUSTER 1: P&C REVIEW PROCESS AND OUTCOME

West Ballroom 2, Resort World Sentosa

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**Social and Environmental Impacts Mitigation**

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## **Introduction**

- **RSPO Standards and FPIC**
- **Cross reference of other criteria**
- **P&C review and FPIC implementation**



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## FPIC case studies

- ▶ Sawit Watch and Forest Peoples Programme undertook a series of fourteen independent studies on Free, Prior and Informed Consent in RSPO member/certified and non-RSPO oil palm plantations across Southeast Asia and Africa (Cameroon, Liberia and Democratic Republic of Congo). Six studies in Indonesia: West, Central and East Kalimantan, and West Sumatra.
- ▶ To provide detailed field information on how and whether the right to FPIC is being applied adequately by companies, to expose any malpractice of palm oil companies and to argue for a strengthening of the RSPO procedures and standards where necessary.



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## FPIC in the RSPO

- ▶ 2.3 Use of the land does not diminish the legal rights, or customary rights, of other users, without their free, prior and informed consent
- ▶ 7.5 No new plantings are established on local peoples' land without their free, prior and informed consent, dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions.
- ▶ 7.6 Local people are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements.



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## FPIC links to other key aspects of RSPO

- ▶ Ensuring Consent to use of land is Free, Prior and Informed, requires adherence to other P&C
  - Land acquisition (2.2, 2.3, 6.4, 7.5, 7.6)
  - Conflict resolution (6.3)
  - Information and participation (1.1, 1.2, 6.2)
  - Carry out participatory social and environmental impact assessments (5.1, 6.1, 7.1 and 7.3)

## Signs of progress

- ▶ RSPO P&C have encouraged companies to begin thinking in terms of rights and to engage in dialogue with rights-holders.
- ▶ The notion of lands conceded being idle or vacant lands is gradually being dispelled as companies are recognising that the lands granted to them are in fact encumbered
- ▶ Companies have committed to dialogue, negotiation and consultation as means of resolving disputes with, and remedying grievances of, local communities.
- ▶ Compensation for land and resources lost by local communities is being paid more systematically, and employment opportunities or smallholder schemes are being offered to local communities.

## Signs of progress

- ▶ The provision of social welfare support, such as educational facilities, water supplies, medical health and infrastructure, is now part of a number of companies' commitments towards local communities
- ▶ Some companies have now developed conflict resolution mechanisms and SOPs, to guide their activities and interaction with local communities.
- ▶ There is some awareness of the relevance of international human rights instruments to the operations and obligations of the private sector and the State with regards to indigenous peoples and local communities.



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## Key findings

- (1) National and international law
- (2) Knowledge of RSPO
- (3) Land rights
- (4) Compensation
- (5) Environment and HCV
- (6) Community welfare
- (7) Certification auditing



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## Conclusions

- ▶ The proliferation of conflicts over land is a vivid manifestation and outcome of the violations of local communities' rights.
  - The rapid expansion of oil palm plantations strengthens the need for robust standards and ground-level monitoring.
  - Many of the companies that were studied are failing to follow the RSPO procedures by not taking steps to recognise customary rights.
  - Many companies are running highly abbreviated processes to secure consent, which are far from being 'free', 'prior' and 'informed'.
  - Certification bodies are accepting procedures and situations that are not respecting the right of affected communities to FPIC.

## Conclusions

- ▶ Designing and putting into practice a full and effective process to respect the right of indigenous peoples and local communities to Free, Prior and Informed Consent in relationship to oil palm plantation development is not an easy task.
  - It requires significant commitments of time, material and human resources, and is often far beyond what is required under national law.
  - It requires wide and iterative participation of all key stakeholders and rights-holders.
  - It requires thinking about what consent means, who gives it, who represents the interests of the communities.
  - Most importantly, it requires on the part of companies a recognition that even where a comprehensive process has been undertaken, before signing an agreement, communities still have the right to say 'no' to oil palm development on their lands.

## Conclusions

- ▶ Independent monitoring and robust verification by third parties remains critical to ascertaining the degree to which community decisions are being respected on the ground.
  - Failing to respect the rights of local communities to the full extent of their lands and to FPIC is the root cause of protracted and at times violent conflict between and within communities, with companies and with the State.
  - Conflicts present serious risks to the communities, but also to plantation companies, investors and to the RSPO itself.

## Conclusions

- ▶ Initiatives to revise national laws which are contrary to international human rights standards and the right to FPIC is also in the State's best interests, placing them in a better position to gain the benefits from investments to avoid reputational risks of being found in breach of international human rights law.
  - Even where companies seek to acquire lands in fair ways, current statutory laws and administrative procedures with respect to land rights, land acquisition, legal personality and representation, make it hard or even impossible for companies to comply.
  - The findings of the studies expose the gulf that exists between the law and the RSPO standard.
  - To close this gap, the RSPO must press governments to carry out tenurial reforms in favour of local communities.

## Conclusions

- ▶ Companies should be obliged to show efforts to secure people affected by their operations from violence and arbitrary arrest and to not make use of mercenaries, privately contracted police and para-militaries.
  - Widespread and effective compliance with the RSPO standard depends on respect for human rights, good governance, transparency, accountability, rule of law and access to justice.
  - If land allocations are made in ways contrary to these principles, there are bound to be serious obstacles to the RSPO approach.
  - Evidence to demonstrate that all relevant information and documents are *received* by local parties in a national or sub-regional language(s) suited to the affected communities, should be mandatory to ensure transparency.
  - Provide evidence that they are in compliance with rule of law, humane treatment and supporting a peaceful environment.

## Conclusions

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  - If land allocations are made in ways contrary to these principles, there are bound to be serious obstacles to the RSPO approach.
  - Evidence to demonstrate that all relevant information and documents are *received* by local parties in a national or sub-regional language(s) suited to the affected communities, should be mandatory to ensure transparency and genuine communication and information sharing.
  - Effective provisions must be set in place to ensure the anonymity of complainants and whistleblowers where requested in cases of conflict, to avoid subsequent harassment, intimidation or abuse.
  - Evidence should be provided that women workers are paid equally to men for equivalent work, and that the company prioritises local community members, rather than labour brought in from outside.

## Conclusions

- ▶ Grievance and redress mechanisms should be developed by companies with the participation and inputs of local communities, and these should guarantee anonymity and the protection of complainants where requested.
- ▶ SOPs on social welfare, environment, conflict resolution, HCVs and others, should also be developed jointly by the company and the communities to create a sense of ownership of the process for communities as rights-holders.

## Recommendations

- ▶ Palm oil operations should provide evidence that they are in compliance with rule of law, humane treatment and supporting a peaceful environment in agribusiness development areas.
- ▶ Companies should be obliged to show efforts to secure people affected by their operations from violence and arbitrary arrest and to not make use of mercenaries, privately contracted police and para-militaries.
- ▶ Evidence of agreements with local residents ensuring access to adequate, clean water for drinking, cooking, bathing and cleaning purposes, should be mandatory to secure their livelihoods, health and basic needs.

## Recommendations

- ▶ HCV assessments and management plans should demonstrate that credible measures have been taken to secure adequate areas for affected communities to meet their basic needs (e.g. food security, health, HCV5).
- ▶ Provisions for the food security of local communities by the company should be highlighted and evidence to demonstrate that the company is supporting and securing local communities' sustainable access to food
- ▶ Companies should support government officials and their staff in accessing information and training to better accommodate the RSPO approach. This training should extend from the level of central ministries, the provincial and district authorities, village level.

## Recommendations

- ▶ Planning agencies also need guidance on how to incorporate HCV zoning and consideration of community land rights into land use and economic planning processes.
- ▶ Clearer language should be provided on how respecting the right to FPIC of local communities is only achievable through a long-term, *iterative*, two-way process, rather than one-off meetings.
- ▶ Evidence should also be sought from local communities that they have been given ample and sufficient time to digest information obtained and to make informed decisions among themselves.

## Recommendations

- ▶ The information shared by the company with local communities should be subject to stricter monitoring by independent third parties, to avoid partial and biased information that fails to address tenure implications and other potential negative consequences.
- ▶ Stronger language must be provided to ensure that information sharing is the responsibility of the company towards rights-holders involved, rather than a reactive action upon the request of rights-holders.
- ▶ All important documents, such as ESIA, HCV, land tenure studies, concession maps, SOP and conflict resolution mechanisms, must all be translated into local languages and dialects and provided to local communities at the initiative of the company.

## Recommendations

- ▶ In the case of New Plantings, the early stages of the process of respecting the right to FPIC of local communities should be initiated prior to the identification of the net land area and well prior to obtaining final permissions.
- ▶ Where land conflicts are protracted and of a serious nature, a moratorium should be imposed on operations within the concession in question pending mutually agreed conflict resolution mechanism.
- ▶ More efficient and direct channels and procedures for communication between the company and local communities should be clarified and publicised, to ensure that communities are equipped with enough information to make use of these channels and address themselves to the right representatives when the need arises.

## Recommendations

- ▶ Stronger requirements are required on the part of the company to train and provide information to local communities on the RSPO, the P&C, and their obligations and rights under them.
- ▶ Companies should also take the initiative to offer third party training workshops and meetings for local communities on their right to FPIC.
- ▶ Stronger and clearer language is needed on the nature of FPIC as a *right* of indigenous peoples and local communities, as opposed to it being a form of consultation or socialisation, to FPIC. Human rights training at the level of the company, government and local communities can be instrumental to this end.

## Recommendations

- ▶ In particular, the participation of local community members in consultation activities should be clarified to these participants as *not* equivalent to their giving consent to the issues discussed.
- ▶ In cases of conflict, evidence should be provided to demonstrate that all possible means of resolution have been introduced to, discussed with, and decided upon, with and by the local community in question.
- ▶ Stronger language in the P&C is critical concerning the importance not only of *processes* in place to resolve conflict, but of the implementation and outcomes of these processes in practice, particularly where SOPs have been developed without the participation of local communities

## Recommendations

- ▶ The diversity of local communities, ethnic groups, land uses and rights within a single area must be much better understood and taken into account by the company in their interactions with these communities, to avoid homogenisation and/or generalising the views and needs of one to all the others. This also needs to be reflected in the standard so that assessors have guidance on how to assure that companies are addressing the diversity of groups.
- ▶ The hiring of armed security forces by the company to operate within oil palm concessions should be subject to strict monitoring and third party supervision, to ensure that the hiring of these forces is legal and proportionate, and that their activities in no way infringe on human rights or the general wellbeing of local communities.

## Recommendations

- ▶ The duration of RSPO certification audits must be sufficient to allow all communities within the concession to participate in the audit in a constructive and sufficiently detailed manner.
  - Stricter standards for audit reporting should also be established to ensure that audits contain sufficient information and evidence to support identified conformances and non-conformances to the RSPO P&C.
  - Formal requirements should be developed for audits to be shared with local communities prior to certification in forms and languages accessible to them, in order to cross-check information contained therein.

## Recommendations

- ▶ Companies should be responsible for keeping full and detailed records of past and ongoing complaints and conflicts within their concessions to help companies and communities identify recurrent causes of conflict and mitigate future conflicts.
- ▶ The RSPO must engage with national governments to revise laws and regulations so that RSPO members can respect the rights of communities to their customary lands and to FPIC.



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# Thank you



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