

Implementation Reporting Framework: Land Rights Methodology

Version 01

September 2019

This document provides guidance on the approach taken through the Implementation Reporting Framework (IRF) for reporting on progress in meeting land rights commitments in palm oil. It outlines the allocation criteria developed for measuring categories of progress as well as providing additional guidance and definitions.

In your feedback, we invite you to consider the following questions:

- Are the allocation criteria capturing the **relevant activities that are currently being carried out at mill level** to address labour rights and land rights issues?
- Are the activities (besides certification) to be **considered ‘delivering’ on these issues feasible**? Are there mills currently fulfilling the level of progress and action needed to be Delivering on No Exploitation?
- The framework rests on the assumption that, to be Delivering, a mill has a **responsibility to implement No Exploitation commitments in its own operations as well as in its third party supply base**, though these responsibilities will differ. Is this clear, and do you agree? Does the level of difference in activities reflect realities on the ground?
- Is there any **similar existing work** you are aware of that we can use to improve these drafts?

1. Background

The Implementation Reporting Framework (IRF) is a tracking and reporting tool designed to help supply chain companies to systematically understand and track progress (or lack of progress) in delivering responsible sourcing commitments across all their volumes. For palm oil, these commitments are often referred to as NDPE: No deforestation, no peat and no exploitation. The palm oil IRF is therefore referred to as the NDPE IRF.

As supply chain companies implement activities ranging from certification to supplier engagement and from landscape initiatives to smallholder support, the NDPE IRF provides a tool to systematically capture all the different activities which are underway to deliver these commitments and clarify how each activity contributes to progress towards full compliance. The framework captures progress from early actions that create an enabling environment for sustainability, such as workshops and policy development, all the way through to implementation activities in the production base which deliver full compliance with commitments.

Companies can then consistently report on this information and pass it down the supply chain. Having a consistent framework for reporting on these activities, and particularly on the proportions of the total production base to which they apply, will allow individual companies and the industry collectively to identify gaps, monitor progress and drive improvement.

2. Land rights allocation criteria

Land rights commitments

The allocation criteria in Table 1, have been developed based on the commitments many upstream and downstream companies have made to respect the land rights of people affected by their operation and supply chain. In the palm oil sector, this usually refers to the land and resource rights of Indigenous Peoples and local communities affected by the establishment of oil palm plantations, both recent and historic. Most companies reference the concept and process of Free, Prior and Informed Consent (FPIC) as required for ensuring the right of these people have been respected.

Allocation mechanism

These allocation criteria have been developed to measure the level of progress a mill is doing on meeting land rights commitments. At this stage, the progress category for the mill will be assigned by the first aggregator (refinery, loading port, etc.) buying volumes directly from the mill.

Allocation criteria

The allocation criteria are divided by different Action types covering the spectrum of actions a mill can be taking on meeting land rights commitments. Depending on the actions and/or combinations of actions a mill is taking it will be assigned to a category of progress – Awareness, Commitments and starting actions, Progressing and Delivering. In some cases the allocation criteria are cumulative, and therefore a mill must be taking a number of different actions to be assigned to a category (where it says “AND” in the table), whereas in other cases one action is sufficient, e.g. being RSPO Identify Preserved or POIG certified (where it says “OR” in the table).

As can be seen in the table, actions required to be assigned to the categories of “Awareness” and “Commitments and starting actions” can be at the group or mill level as these focus on preliminary high-level actions for starting to meet land rights commitments, e.g. participating in a training or developing a policy. Whereas actions required to be categorized as “Progressing” or “Delivering” on meeting land rights commitments must be at the mill and supply base level. In these categories the mill must be taking action in the different parts of its supply base where it is receiving FFB from – Own concessions, Smallholders, Third party concessions and Dealers – to ensure that the land rights of affected people are being respected.

	Actions can be at mill or group level		Actions must be by mill and supply base level	
Action type	Awareness	Commitments and starting actions	Progressing	Delivering
Internal systems to understand supply base and respond to issues	Participation in an NDPE training, workshop, or similar capacity building activity that includes land rights as a topic. OR Public statement acknowledging the importance of respecting land rights.	There is a written policy that explicitly commits to respect the land rights of all legitimate land tenure holders that applies to the mill(s) and the mills' suppliers.	There is an action plan to implement land policy including plans for a due diligence process for suppliers and a grievance mechanism covering all sourcing.	Mill is implementing the land policy action plan, and has at minimum, (1) an operational due diligence process for suppliers and (2) grievance mechanism covering all sourcing.
		AND	AND	AND
Capacity to deliver		All relevant mill staff trained on land policy.	<ul style="list-style-type: none"> There is a plan to conduct a participatory situational assessment of land rights and uses within and impacted by the mill's supply chain. Integration of land policy throughout supply chain started. 	<ul style="list-style-type: none"> All relevant mill staff trained on due diligence process and grievance mechanism. A participatory situational assessment of land rights and uses within and impacted by the mill's supply chain completed. Integration of land policy throughout supply chain completed.
			AND ALL ITEMS IN AT LEAST ONE OF THE SUPPLY BASES BELOW: OWN CONCESSIONS OR SMALLHOLDERS OR THIRD-PARTY ESTATES OR DEALERS	AND ALL OF THE FOLLOWING

Supply base	Own concessions*			<ul style="list-style-type: none"> • Compliance with applicable local, national, and international laws and best practices governing land rights. • Evidence of a legitimate right to use the land - this must include proof of following the principles of FPIC. • Proof that an independent assessment of potential social and environmental impacts was conducted prior to any land use change conducted by or on behalf of the mill after April 2013. 	<ul style="list-style-type: none"> • Compliance with applicable local, national, and international laws and best practices governing land rights. • Evidence of a legitimate right to use the land – this must include proof of following the principles of FPIC. • Proof that an independent assessment of potential social and environmental impacts was conducted prior to any land use change conducted by or on behalf of the mill after April 2013.
	Smallholders			<ul style="list-style-type: none"> • Evidence of a legitimate right to use the land - this must include proof of following the principles of FPIC. 	<ul style="list-style-type: none"> • Evidence of a legitimate right to use the land - this must include proof of following the principles of FPIC.
	Third party estates			<ul style="list-style-type: none"> • Compliance with applicable local, national, and international laws and best practices governing land rights. • Evidence of a legitimate right to use the land - this must include proof of following the principles of FPIC. • Proof that an independent assessment of potential social and environmental impacts was conducted prior to any land use change conducted by or on behalf of the mill after April 2013. 	<ul style="list-style-type: none"> • Compliance with applicable local, national, and international laws and best practices governing land rights. • Evidence of a legitimate right to use the land - this must include proof of following the principles of FPIC. • Proof that an independent assessment of potential social and environmental impacts was conducted prior to any land use change conducted by or on behalf of the mill after April 2013. • Effective mechanism in place to receive and address grievances raised by any individual or group impacted by the estate's operations (including sourcing).

				<ul style="list-style-type: none"> Effective mechanism in place to receive and address grievances raised by any individual or group impacted by the estate's operations (including sourcing). 	
	Dealers			<ul style="list-style-type: none"> Details of FFB suppliers provided to mill (incl. single point coordinates) 	<ul style="list-style-type: none"> Details of FFB suppliers provided to mill (incl. single point coordinates)
		OR	AND	AND	AND
	Grievances (in any part of the supply base)	Verified/ acknowledged land-related grievance	If there is a land-related grievance, starting to take action	If there is a land-related grievance with legitimate land tenure holder(s), progressing on resolution	No unresolved, land-related grievances with legitimate land tenure holder(s).
			OR		OR
	Landscape		Mill is actively engaged in a landscape programme that has defined metrics for measuring performance against international best practices for respecting land rights.		Mill only sources from a landscape that's performance on land rights is verified to be in alignment with international best practices.
		OR		OR	OR
	Certification	ISPO ¹		MSPO ² or RSPO ³ Mass Balance	RSPO Identity Preserved/Segregated or POIG ⁴

Table 1. IRF allocation criteria on respecting land rights

These criteria have been developed through a collaboration between Proforest and Landesa.

¹ Indonesian Sustainable Palm Oil certification scheme

² Malaysian Sustainable Palm Oil certification scheme

³ Roundtable for Sustainable Palm Oil certification scheme

⁴ Palm Oil Innovation Group (POIG) scheme

3. Definitions and guidance

3.1 Definitions

Some of the allocation criteria refer to various terms around land rights. For this framework these have been defined below.

Land rights: The rights that people (as individuals and groups) have to occupy, use, access, control, and transfer land. These rights may be derived from and recognized by formal and/or customary law. Notably, these rights can overlap, be divided, and held by different people or groups for the same piece of land, meaning that different individuals and groups can hold different rights, which may be acquired in different ways and held for varying durations. This concept is commonly referred as the entirety of the land being a "bundle of rights."

Land tenure: Refers to the relationships and rules that exist between people and the land. It concerns the ownership, use, access, control, and transfer of rights to land as established under formal and/or under customary law.

Land use change: Refers to a modification in the way land is owned, occupied, or utilized.

Legitimate land tenure holder: A person, family, community, or legal entity with rights to the land or associated natural resources, whether the right is based in national law, indigenous rights, or customary/traditional practice, regardless of whether the right is currently protected by law or formally recorded. This means, for example, that land rights, including use and access rights held by women, short-term rights held by tenants and sharecroppers, and common property rights, are still considered legitimate even if they are undocumented, socially vulnerable, or otherwise less visible, and they must be identified, respected, and compensated for.

Free Prior and Informed Consent (FPIC): FPIC is the right of indigenous peoples and local communities to give or withhold their consent to projects that affect their land, property, livelihoods, and environment. The primary requirements of FPIC are *Free*, *Prior*, and *Informed Consent*. Consent should be given voluntarily (in the absence of coercion or manipulation) and prior to the project going ahead. The principle is applied through an open conversation between the community and the operator where information on the environmental and social impacts of farming activities with surrounding communities is shared. In some cases, a third party may be necessary to help mediate the discussions and document the process. Information should be shared transparently in an understandable manner, in advance of negotiations. The process should be documented and applicable laws and regulations should be consulted. For more information, you can refer to RSPO's [Free, Prior, and Informed Consent Guide for RSPO Members \(2015\)](#), FAO's [Respecting Free, Prior and Informed Consent: Practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition](#), and Landesa's [Responsible Investments in Property and Land \(RIPL\) FPIC Primer](#).

Groups vulnerable to social and economic exclusion: Those who may be more likely to be adversely affected by the land use change than others. Such an individual/group is also more likely to be excluded from/unable to participate fully in consultation, negotiation, and compensation processes and as such may require specific measures and/or assistance to do so. These individuals will vary by national and local context, but may

include women, youth, elderly, ethnic or religious minorities, indigenous people, pastoralists, migrants, tenants and sharecroppers. For more information, you can refer to Landesa's RIPL Primers on [Gender](#) and [Vulnerable Groups](#).

International best practices for respecting land rights: International best practices for respecting land rights can be defined as those set forth in the [IFC Performance Standards](#) and [VGGT](#). FAO's technical guide on [responsible governance of tenure for investors](#) is a good resource that summarizes the VGGTs for agricultural investment. RSPO's [2018 Principles and Criteria For the Production of Sustainable Palm Oil](#) provides a strong summary of the applicable international best practices for respecting land rights within the palm oil sector. Landesa's [RIPL Guidance](#) also summarizes international best practices that include (1) identifying all land rights, including access, use, secondary, and communal rights recognized under both formal and customary law affected by the project; (2) providing notice to all land tenure holders including groups vulnerable to social and economic exclusion; (3) engaging and consulting with communities' self-appointed representatives about how to design and implement the project; (4) recognizing existing land rights through participatory mapping; (5) assessing land impacts via an impact assessment; (6) mitigating impacts (such as potential displacement) and social and environmental risks that may be caused by the project; (7) asking land tenure holders to consent freely, with the option to decline; (8) inviting land tenure holders to negotiate a fair agreement; (9) ensuring equitable compensation; and (10) establishing and implementing grievance mechanisms.

3.2 Guidance

Guidance around what each allocation criteria consists and how actions should be carried out has also been developed. This outlines aspects such as:

- What an adequate policy and action plan on land rights should include
- Key elements required to show FPIC has been properly carried out and achieved
- What should be included to ensure an adequate due diligence system and grievance mechanism

This guidance is meant to help the user understand the logic and what is required behind each criterion. This can help refineries in assigning mills to a progress category and in a future stage determine what proofs would be required.

4. Points for further discussion/consideration

Wider issues of Indigenous Peoples and local community engagement and rights

Although the allocation criteria as developed focus on land rights, and to certain extent wider resource rights given the broad definition of land rights, it may at a future stage be important to think how these criteria cover wider responsibilities and commitments companies have to respecting the human rights of Indigenous Peoples and local communities. As noted in the [Accountability Framework Initiative's \(AFI\) Core Principles 2.2](#), this also includes their rights to resources, territories, livelihoods, or food security.

Cut-off dates

Further discussion will take place over setting cut of dates for being able to demonstrate proper acquisition of land, i.e. before which date is it acceptable for a mill to not be able to demonstrate FPIC was carried out and is able to provide alternative proof for legitimate right to use the land.

Smallholders

Further discussion on if and how allocation criteria should be differentiated for smallholders.

Dealers

Allocation criteria for volumes coming from dealers must be discussed further in light of the challenges around traceability of these volumes and leverage over suppliers.

At scale initiative (i.e. landscape/jurisdictional initiative)

As with the criteria for deforestation, peat and labour, it remains to be agreed whether criteria for land rights under the Landscape action type are valid for categorising a mill in “Commitment and starting actions” or “Delivering”. This requires a clear definition on what is a “verified landscape” and if participation in such an initiative can be a proxy for the other criteria listed these categories.

Independent verification of NDPE

The NDPE Implementation Framework is a tool for monitoring and reporting and is not an alternative to independent verification, but it can complement it by providing clarity about progress and remaining issues to help guide where further verification is needed. Therefore, it will be important to link the development of the Framework to the ongoing debate on independent verification.

Independent verification that responsible sourcing commitments are being met is very important in driving progress and providing credibility. There is a rapidly accelerating discussion underway about the most effective approaches to delivering independent verification for the different issues included within NDPE. The conventional approach is field audits by credible independent verifiers, and this is likely to remain a central element (and the basis for most certification), but there has also been a lot of progress over the last few years with other approaches e.g. new technologies for allowing workers and other affected stakeholders to submit information securely and anonymously online in real time is also showing promise.