






Forest Stewardship Council®



**FSC Guidelines for the
Implementation of the Right to
Free, Prior, and
Informed Consent (FPIC)**

FSC-GUI-30-003 V2.0 – EN

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Acronyms

CB	Certification Body
FPIC	Free, prior and informed consent
FSC	Forest Stewardship Council
FSS	Forest Stewardship Standard
GIS	Geographic Information System
HCV	High Conservation Value
ICL	Indigenous Cultural Landscape
IFL	Intact Forest Landscape
IGI	International Generic Indicator
ILO	International Labour Organization
INS	Interim National Standard
MU	Management unit
NGO	Nongovernmental organization
NFSS	National Forest Stewardship Standard
P&C	Principles and Criteria for Forest Management (FSC-STD-01-001 V5-0 D5-0)
PIPC	Permanent Indigenous Peoples Committee
PSU	Performance and Standards Unit
SIR	Scale, intensity and risk
SDG	Standard development group
SLIMF	Small and Low-Intensity Managed Forest
TWG	Technical working group
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
WG	Working group

A. Preamble

A.1 Context and Objectives

FSC Principles and Criteria (FSC P&C) offer safeguards to protect legal and/or customary rights of ownership, use and management of land, territories and resources affected by management activities. This is accomplished with the following requirements:

- Recognition of customary rights (Principles 1, 3 and 4)
- Uphold the right to **free, prior and informed consent (FPIC)** of Indigenous Peoples when they are identified as an affected rights holder due to their legal and/or customary rights being affected by management activities as per Principle 3, Criterion 3.2:

C3.2 The Organization shall* recognize and uphold* the legal* and customary rights* of Indigenous Peoples* to maintain control over management activities within or related to the Management Unit* to the extent necessary to protect their rights, resources and lands and territories*. Delegation by Indigenous Peoples of control over management activities to third parties requires Free, Prior and Informed Consent*.*

- Apply the standard of FPIC to local communities when their legal and/or customary rights are affected as per Principle 4, Criteria 4.2:

C4.2 The Organization shall* recognize and uphold* the legal* and customary rights* of local communities* to maintain control over management activities within or related to the Management Unit* to the extent necessary to protect their rights, resources, lands and territories*. Delegation by local communities* of control over management activities to third parties requires Free, Prior and Informed Consent*.*

- Culturally appropriate engagement with an affected rights holder when assessing impacts on environmental values such as landscape and high conservation values (HCVs) that include cultural and spiritual values (Principles 6 and 9)
- Engagement with an affected stakeholder, which include affected rights holders, in the design and implementation of monitoring plans (Principle 8)

Relevant FSC Standards and Policy

The requirements related to FPIC shall conform to nationally developed forest management standards based on **FSC-STD-60-004 V2-0** International Generic Indicators (IGIs) and be consistent with other developments in the FSC systems such as:

- **FSC-STD-01-001 V5-0 D5-0**, FSC Principles and Criteria for Forest Stewardship, Supplemented by Explanatory Notes and Rationales
- **FSC-STD-01-002**, FSC Glossary of Terms
- **FSC-PRO-60-007 V1-2**, Structure, Content and Development of Interim National Standards
- **FSC-STD-20-006 V3-0**, Stakeholder Consultation for Forest Evaluations
- **FSC-GUI-60-004 V1-0**, Guidance for Standard Developers to Develop a National Threshold for the Core Area of Intact Forest Landscapes (IFL) within the Management Unit
- **FSC-GUI-30-010 V1-0**, Intact Forest Landscapes Guidance for Forest Managers

- **FSC-GUI-60-009 V1-0**, Guidance for Standard Development Groups: Developing National High Conservation Value Frameworks

A.2 Scope of the Guideline

This Guideline is written primarily for forest managers of Organizations seeking FSC certification. It aims to clarify the specific requirements of culturally appropriate engagement processes with the following objectives:

- Gather information and build an understanding of legal and/or customary rights affected by proposed management activities;
- Build relationships and capacity to effectively implement national forest management standards; and
- Make binding agreements and monitor progress.

As a non-normative document, this Guideline does not replace any portion of any National or Interim Forest Stewardship Standard or supporting normative documents. The Guideline presents a general framework for an FPIC process. Relevant National Forest Stewardship Standards (NFSS) and Interim National Standards (INS) remain the definitive subject of compliance in an audit process.

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The engagement strategies suggested in this Guideline are also relevant to other certification standards within the FSC system, such as the Requirements for Sourcing FSC Controlled Wood Standard (FSC-STD-40-005 V3-1), SLIMF Eligibility Criteria Standard (FSC-STD-01-003 V1-0), and the Forest Management Groups Standard (FSC-STD-30-005 V1-1). However, it is important to note that this Guideline was not developed to meet the specific requirements, conditions and needs of these standards, and thus does not apply to them. Additional guidance may be needed to support The Organizations holding these types of certificates.

A.3 Application of the Guideline

FSC certificate holders (referred to as The Organization) may have already invested in engagement processes and negotiated agreements with affected rights holders to meet the requirements of FSC forest management standards. This Guideline does not recommend the renegotiation of existing agreements (contracts) or engagement processes. The Organization is encouraged to conduct a comparison between existing processes and agreements and this Guideline to ensure the right to FPIC is adequately recognized and supported by The Organization.

This Guideline does not suggest The Organization is a proxy for the state. The state remains the primary duty bearer of responsibility for the implementation of human rights standards, including ILO 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). However, as a voluntary certification system, The Organization must still uphold the requirements of the relevant NFSS or INS.

Continuous Improvement of the Guideline

The information contained in the Guideline reflects FSC's commitment to international human rights standards. It represents the current understanding of international law, conventions and FSC policy and standards as applied to the forest management context.

However, it is expected that there will be an evolution of the legal and principled concepts that guide the application of FPIC. This Guideline will evolve through a continuous improvement process as FSC monitors the implementation of NFSS requirements for FPIC and new policy is going through the General Assembly motions process.

Key Terms Used in this Guideline

A definition of key terms used in this Guideline is provided in Appendix A (original source: FSC-STD-01-002 - FSC Glossary of Terms). To highlight their use and context with respect to this Guideline, they are formatted in **bold** font only when they are first mentioned in the Guideline. Further explanations of key terms are provided in the side bar of the Guideline when additional context or cross-referencing with other sections of the Guideline adds clarity to their use.

Guidance for FSC and FSC National Offices

This Guideline may be useful in the development and implementation of new FSC policies and procedures that affect rights holders, such as dispute resolution, conversion, sustainable intensification, Intact Forest Landscapes (IFLs), Indigenous cultural landscapes (ICLs), climate change, etc.

B. Introduction

Part I of this Guideline provides a summary of fundamental principles and culturally appropriate practices related to the implementation of engagement carried out with the intent to obtain credible decisions from those affected by the management activities.

Part II illustrates the concepts introduced in Part I into action using a 7-Step FPIC process with recommended considerations and actions. As an internationally focused Guideline, there are necessary limits to the level of detail and specific examples offered. Specific guidance has been provided to FSC National Offices and Standard Development Groups on topics that are significantly influenced by the national/regional context.

Key concepts introduced in Part I are expanded upon in Part III to explain how the concept might be applied in an FPIC process. In some cases, the concepts presented are described or defined in the FSC Glossary of Terms (FSC-STD-01-002) and provided in Annex A of this Guideline for the convenience of the reader.

The intent of the Guideline is to support respectful relationship building.

To support early discussions within The Organization as well as between The Organization and a rights holder, a principle-based overview of an FPIC process has been provided. The aim is to expose users of this Guideline to the intent of an FPIC process before the practical application is outlined in detail. In practice, an FPIC process will be developed based on the unique context of the **management unit** (MU) and the affected rights holder.

In practice, all FPIC processes will be developed based on the unique context of the management unit and affected rights holder.

B.1 Preparing for Success

Organizations are responsible for ensuring compliance with the FSC NFSS, which includes obtaining the **free, prior and informed consent (FPIC)** from the **affected rights holder** that may or may not have a vested interest in FSC certification. This challenge is best addressed with preparation, patience, persistence and respect. The following activities support successful engagement:

- Build long-term relationships;
- Be aware of power imbalances;
- Strive for mutual agreement;
- Design a continuous and flexible process;
- Build agreement on scope of rights; and
- Verify and document the process.

Build long-term relationships

FPIC involves building good and mutually beneficial relationships with a legal and/or customary rights holder affected by forest operations (management activities) conducted by an Organization seeking FSC forest management certification. This requires a long-term approach to engagement. A successful FPIC process involves building and maintaining trust, which includes asking the communities what FPIC means to them and allowing them to develop their capacities. It is important to recognize and respect the protocols and values of the affected rights holder in the FPIC process. FPIC is a two-way dialogue and learning process that requires an investment of time, resources and continuous improvement.

Be aware of power imbalances

In most cases there are imbalances of power, knowledge, and resources between the affected rights holder and The Organization. Although the right to grant, withhold or withdraw consent empowers the affected rights holder, there are systemic inequalities and cultural barriers that may prevent their effective participation. In many cases, support will be needed to build the capacities and/or provide access to technical and/or legal advice pertaining specifically to the practice and activities of forest management. However, as FPIC is dependent on a two-way dialogue, the rights holder is acknowledged as an expert on their own environment, culture, processes and institutions.

Strive for mutual agreement

Although there is a certain logic in the sequence of the seven steps presented in Part II of this Guideline, it is important to note that an FPIC process is developed in partnership with an affected rights holder from the outset, and that engaging with them may lead to other choices regarding the way in which the FPIC process is designed and implemented. The process may also need to involve several groups of affected rights holders. The steps and actions for consideration presented are meant as guidance only, to be adapted to the specific circumstances of the MU.

Design a continuous and flexible process

There is value in a step-by-step approach to support planning a way forward and a tool to measure improvements in a relationship with an affected rights holder. However, a flexible approach that is relevant and appropriate to the cultural and legal context of the management unit is the key to success.

Most importantly, an FPIC process is not a one-off decision, but an iterative and continuing process that reflects the multiple phases and decisions required in forest management planning. The quality of this relationship is the key to successfully upholding the right to FPIC. Informed engagement with the affected rights holder is an element that runs throughout the FPIC process in a continuous action cycle.

Additional support, such as capacity building, may become part of the FPIC process. For example, when the rights holder is involved in mapping, they become better informed through gathering the information themselves. Similarly, mapping and impact assessments do not have to be separate activities; dialogue on measures to mitigate negative impacts or increase positive impacts can be interwoven with participatory impact assessments.

Build agreement on the scope of the FPIC process

Because an FPIC process may take a considerable amount of time and can be complicated, flexibility is needed when setting benchmarks and timescales to define the scope of the process. It may be possible to reach an agreement with the affected rights holder on an FPIC process for a smaller scope of rights, while simultaneously negotiating a roadmap towards consent on a wider scope of rights. This could be helpful in defining and agreeing on the scope of customary rights when considerable research and dialogue are required. When The Organization can demonstrate that it is engaged in a mutually agreed FPIC process with the affected rights holder that is advancing, in good faith and with which the affected rights holder is satisfied, the requirement for carrying out a process with the intent of obtaining FPIC may be met (see Policy Motion 40/2017 below).

Policy Motion 40/2017: New IGI to clarify that FPIC is to be achieved over time through a mutually agreed process.

The following small edits to IGIs related to Indigenous Peoples, and a new IGI allowing a mutually agreed FPIC process, advancing to the community's satisfaction, when the community finds it of higher value than being rushed to conclude an FPIC agreement in order for the certification applicant to comply with criterion 3.3 by the time of the next audit, [were approved in 2017], specifically:

A) 3.1.2: Deleted the word "issues". The wording for the IGI is as follows: 3.1.2 Through culturally appropriate* engagement* with the Indigenous Peoples* identified in 3.1.1, the following are documented and/or mapped.

B) 3.2.4.2 & 4.2.4.2: Deleted the words "over which they are considering delegation of control". The wording for the IGI is as follows: 3.2.4.2 & 4.2.4 Free, prior and informed consent* is granted by Indigenous Peoples*/local communities* prior to management activities that affect their identified rights through a process that includes:... 2) Informing the Indigenous Peoples*/local communities* of the value of the resource, in economic, social and environmental terms;

C) The wording of the new IGI is as follows:

3.2.5 Where the FPIC process has not yet resulted in an FPIC agreement, the Organisation and the affected Indigenous Peoples*/local communities are engaged in a mutually agreed FPIC process that is advancing, in good faith* and with which the community is satisfied.

*Good Faith is a term used in ILO Conventions and recognized as an auditable element: The principle of good faith implies that the parties make every effort to reach an agreement, conduct genuine and constructive negotiations, avoid delays in negotiations, respect agreements concluded and applied, and give sufficient time to discuss and settle disputes.

Verify the FPIC process

The certification body (CB) is responsible for verifying that consent has been given freely by the affected rights holder prior to any impacts of The Organization on their legal and/or customary rights, and with full information in appropriate formats and languages. Or, if an FPIC agreement has yet to be made, the CB will assess whether the agreed FPIC process is progressing meaningfully and to the satisfaction of the affected rights holder. Involving an independent verifier in the FPIC process can be very useful in a pre-assessment to help identify evidence needed by the certification body to assess whether The Organization has fulfilled the requirements.

Document the FPIC Process

It is important for independent verification and general accountability to ensure the FPIC process and outcomes are well documented and made publicly available. Documentation provides evidence that the elements of the FPIC process (such as identification through engagement, information sharing, participatory mapping, impact assessments, capacity building, and negotiations) have been carried out. It is good practice for The Organization to document all meetings, telephone calls, and other actions, describing who was present and how decision making was conducted, as well as the information presented. The format can be in writing, audio, or video, depending on the literacy level of the affected rights holder and any cultural prohibitions.

C. PART I: Fundamentals of Free, Prior and Informed Consent (FPIC)

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.¹

Part I of this Guideline covers fundamental concepts that support the implementation of an engagement process that reflects the international standard of **free, prior and informed consent (FPIC)** in the context of FSC forest management certification. Three guiding questions structure the content:

- A.** Why does the FSC system include FPIC?
- B.** What is free, prior and informed consent?
- C.** What is the scope of an FPIC process?

C.1 Why does the FSC system include FPIC?

International Human Rights

All Peoples have the right to self-determination. It is a fundamental principle in international law. The standard [of], Free, Prior and Informed Consent (FPIC), as well as Indigenous Peoples' rights to lands, territories and natural resources are embedded within the universal right to self-determination.²

The FSC forest management normative framework (FSC P&C and IGIs) supports the implementation of international human rights standards, including the right to free, prior and informed consent (FPIC). The International Labour Organization Convention 169 (ILO 169) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) recognize indigenous and tribal peoples' right to self-determination within a nation-state. FPIC serves a critical role in supporting the exercise of this right and is therefore considered a specific right of Indigenous Peoples (Principle 3).

FPIC is based on the collective right of self-determination. It also establishes a framework for participation in decision making on management activities that affect rights holders with the aim to uphold their legal and/or customary rights.

¹ UN 2011. Guiding Principles on Business and Human Rights. Office of the High Commissioner. Pg. 13 https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf&action=default&DefaultItemOpen=1

² FAO 2016. Free Prior and Informed Consent Manual. Pg. 12. Available at: <http://www.fao.org/3/a-i6190e.pdf>

The Organization is also responsible for engaging groups that do not self-identify as “Indigenous Peoples” but can demonstrate they are an “affected rights holder”. The standard of engagement for these groups is established in Principle 4 as that of free, prior and informed consent when management activities affect their legal and/or customary rights.

Table 1 is a categorization of rights included in UNDRIP and ILO 169. It is not an exhaustive list but includes those relevant to management activities as per the relevant articles identified by FSC in FSC-STD-01-001 V5-0 D5-0 EN.

Table 1: Summary of human rights included in UNDRIP and ILO 169 relevant to FSC forest management certification

	General Description of Rights	UNDRIP	ILO
Human rights	Right to collective and individual enjoyment of all human rights	Article 1	Article 3 (1)
Non-discrimination	Right to be free from discrimination and equal to all others	Article 2	Article 20
Self-determination	Right to autonomy or self-government	Articles 3 and 4	Article 1 (2)
	Right to maintain, and strengthen distinct institutions	Article 5	Article 1 (1(b))
Life and security	Right to life, freedom, peace, and security	Article 7	Article 3 (2)
	Right to exist as distinct people and belong to an indigenous community or nation, following the traditions and customs of the community or nation concerned	Article 9	Article 1 (1(a))
	No relocation shall take place without the Free, Prior and Informed Consent of the rights holder and after agreement on just and fair compensation	Article 10	Article 16
Culture and language	The right to practice and revitalize cultural traditions and customs and maintain, protect and develop past, present, and future manifestations of culture	Article 11	Articles 4, 5, 8, and 23
	Right to maintain, protect and have access in privacy to cultural sites	Article 12	
Consultation and participatory decision making	Right to participate in decision making on matters that affect their rights	Articles 18 and 19	Articles 7 and 15
Economic and social rights	Right to maintain and develop their political, economic, and social systems or institutions, through representation chosen by themselves	Articles 20-24	Article 7
	Right to determine and develop priorities and strategies for exercising their right to development	Article 23	

	General Description of Rights	UNDRIP	ILO
Lands, territories, and resources	Right to own and control the lands they possess	Article 25	Article 14 and 17
	Right to redress (compensation) for the taking of their lands	Article 28	Article 16 (4, 5)
Environmental Health	Right to protect their traditional knowledge	Articles 29-31	Article 4
	Right to conserve and protect their environment and restore their health	Article 24	
Development	Right to develop their territories or use their lands or territories and other resources	Article 32	Article 23
Dispute Resolution	Right to dispute resolution mechanisms to address infringements on their rights	Article 40	Article 5 (c)

Guidance for National Offices and Standard Development Groups

The following international instruments on the protection of human rights are considered pertinent to the current understanding and implementation of measures to protect human rights:

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1969
- American Convention on Human Rights, 1969
- International Covenant on Civil and Political Rights (ICCPR), 1976
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1976
- African Charter on Human and Peoples' Rights (ACHPR), 1986
- Convention on Biological Diversity (CBD), 1992

FSC Forest Management Certification and FPIC

The requirement to obtain the free, prior and informed consent of an affected rights holder is not new to the FSC forest management normative framework. This form of consent has been part of the FSC system since the P&C were originally published in 1994. The engagement or process mechanism used to achieve consent, however, was introduced in 2012 as non-normative guidance (Version 1.0 of this Guideline) and then formalized in 2015 in the form of International Generic Indicators (IGIs) (FSC-STD-60-004 V2-0). The substantive content of this Guideline relates to the implementation of such a process, herein referred to as an **FPIC process**.

According to the FSC Glossary of Terms (FSC-STD-01-002) FPIC has been obtained when The Organization can demonstrate that a legal and/or customary rights holder affected by management activities “have given consent to an action prior to its commencement, based upon a clear appreciation and understanding of the facts, implications and future consequences of that action, and the possession of all relevant facts at the time when consent is given. Free, prior and informed consent includes the right to grant, modify, withhold or withdraw approval”.

An “affected rights holder” is directly or indirectly impacted by the management activities. Additional guidance on the identification of ‘rights holder’ is included in the relevant NFSS.

What is meant by ‘**management activity**’ in the context of the FSC forest management normative framework? While it is not defined in the FSC Glossary of Terms, its use throughout the FSC P&C suggests a broad definition may be implied. With that in mind, it is used in this Guideline to describe processes or procedures associated with managing a forest which could impact legal and/or customary rights, including but not limited to planning (including conservation measures), consultation, harvesting, access construction and maintenance, silvicultural activities (planting, site preparation, tending), monitoring, assessment and reporting.

Guidance for National Offices and SDGs

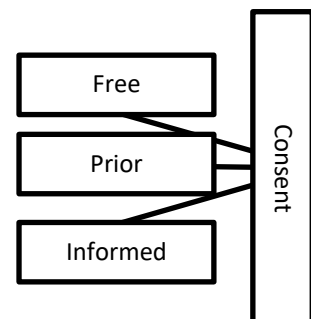
Documentation by National Offices and/or Standard Development Groups of regionally recognized and internationally accepted approaches to the recognition and protection of human rights, including Indigenous Peoples’ rights, also supports the implementation of Principles 1, 5, 7, 8 and 9. This information would also support the development of nationally relevant guidance on obtaining free, prior and informed consent from affected Indigenous rights holders. The 2019 report [FSC Support to Respect for Human Rights](#) explains the role FSC has adopted in assisting the forest sector to respect and apply human rights legal standards and principles.

For consideration: The FSC Permanent Indigenous Peoples Committee (PIPC), FSC Indigenous Foundation, and national human rights institutions have important roles to play in the review of national laws and policies impacting Indigenous Peoples’ rights.

C.2 What is free, prior and informed consent?

The Four Elements of FPIC: Free, Prior and Informed Consent

The four elements of FPIC are interdependent, meaning that a decision by an FPIC rights holder to grant, withhold or withdraw consent to a management activity that affects their legal and/or customary rights is arrived at under the conditions of ‘free’, ‘prior’, and ‘informed’. Each element is explained in greater detail below.



Free

‘Free’ refers to a decision-making process that is voluntary and self-directed by the affected rights holder. It is a decision unencumbered by coercion, manipulation, or externally imposed timelines that limit or hinder self-government processes. The rights holder is free to use their preferred methods of engagement (i.e., institutions and representative structures) to indicate their agreement with the proposed engagement and decision-making process. The affected rights holder is also made aware of their right to grant, withhold or withdraw their consent to proposed management activities that affect their legal and/or customary rights. The Organization clearly expresses its commitment to obtain consent before undertaking any management activity where FPIC is required.

While the FPIC process is iterative and thus ‘open-ended’, the parties can agree on a schedule for the FPIC process (see Step 2.4 Process Agreement).

Prior

An important time-based aspect of decision making is introduced by the element 'prior'. It means that a decision is sought far enough in advance of any authorization or commencement of management activities, at the early stages of management planning. 'Prior' implies that time is provided for the rights holder to understand, access, and analyse information on proposed management activities before any decisions are taken.

The Organization seeking consent may not be the same authority that initially granted the land tenure or forest concession. In some regions, the historical use of the lands, territories, and resources may be in dispute (see Principle 1), or there may be ongoing negotiations between the state and rights holders. In these cases, The Organization endeavours to design and implement an engagement process that enables the affected rights holder to protect their rights under proposed management activities.

Existing certificate holders transitioning to new NFSS may interpret 'prior' in relation to the phase of development of their ongoing FSC certified management activities.

Informed

To be 'informed' refers to the type and format of information provided by The Organization to support the decision-making processes of the affected rights holder. With a clear and transparent objective to seek consent, it is vital that The Organization confirm that the information provided is in a form that can be shared and distributed widely among members of the affected group, including those in remote areas, men and women, the young and elderly, and marginalized groups, according to their internal processes. Access to and communication with a rights holder always happens through their legitimate institutions.

Information provided by The Organization to the affected rights holder may include: 1) information about FSC certification and the FSC system; 2) a description of proposed management activities; 3) potential positive and negative social, economic, cultural, environmental, and human rights impacts of management activities; and 4) an indication of The Organization's understanding of upholding the collectively held right to grant, modify, withhold or withdraw consent affected by management activities.

The affected rights holder is made aware of the specific management activities to which they are being asked to grant

Direct communication (e.g., face-to-face meetings and other innovative, interactive methods) where there are low levels of literacy is useful for delivering relevant and accessible information at locations chosen by the rights holder. All information is delivered in languages and formats that are acceptable to the legitimate institutions of the affected rights holder. If necessary, The Organization may provide support for the affected rights holder to access independent legal or technical advice relevant to the proposed management activities. New information regarding proposed management activities or the position of the affected rights holder on such activities, is shared among the parties as soon as it becomes available and to their mutual satisfaction.

Consent

The final and distinguishing element of FPIC is the decision to exercise the right to grant, withhold, or withdraw consent to proposed management activities that affect legal and/or customary rights. Consent is not a one-off decision that gives an everlasting social license to the Organization, but part of an iterative process that requires continual monitoring, maintenance, and reaffirmation.

A decision reached through a self-determined process of dialogue and decision making that fulfils the elements of 'free', 'prior' and 'informed' implies that the affected rights holder is aware of the option to apply conditions to their decision. These conditions are considered in the context of the entire relevant NFSS and are recorded in a **culturally appropriate manner** according to mutually agreed information-sharing protocols.

Once consent is granted and recorded in a consent agreement (**binding agreement**) that demonstrates **good faith**, and a culturally appropriate engagement process was adopted to obtain the decision, it cannot be withdrawn arbitrarily. However, if changes are proposed to management activities already subject to an agreement, or if new information becomes available, the affected rights holder may reconsider their decision to grant or withhold consent.

If the decision to withdraw or withhold consent is based on factors outside the influence of the FSC system, the parties are encouraged to maintain their agreements and address external factors together. Ideally, early discussions include the development of a dispute resolution process (or protocol) that identifies events or circumstances that trigger the use of a dispute resolution mechanism, as well as procedures for withdrawing consent. Otherwise, if the conditions of the original consent decision are met, ongoing consent is implied.

Consent is not the same as engagement or consultation, although these are necessary precursors to achieving consent. It is the expression of rights (e.g., to self-determination, lands, resources, territories, and culture) and may be given or withheld in phases, over specific periods of time, and for distinct phases of management activities. Therefore, it is possible that consent may be withdrawn for a specific management activity, but not for the entire agreement.

While the FPIC Process described in Part II of this Guideline does not guarantee a consent decision, it is a recommended approach for The Organization and the rights holder to demonstrate 'good faith' and 'best efforts' to reach an FPIC agreement.

A consent decision requires regular review and confirmation through an ongoing FPIC process, but particularly when new information emerges, or conditions change.

Refer to section on Iterative Proposals and Decision Making in Forest Management on page 22.

C.3 Fundamental concepts for implementing FPIC

Rights, Legal and/or Customary

Throughout the FSC normative framework, and more specifically in Principles 3 and 4, there is a reference to "legal and customary rights". These terms are defined in the FSC Glossary of Terms (FSC-STD-01-002) and replicated in this Guideline in Annex A. The FSC P&C Supplemented by Explanatory Notes and Rationales (FSC-STD-01-001 V5-0) provides the following additional information on the application of customary rights and laws relevant to upholding legal and/or customary rights.

Customary Rights

Customary rights are defined as “rights which result from a long series of habitual or customary actions, constantly repeated, which have by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit.” They can be understood as a traditional behaviour sanctioned by the community through years of socially approved practice. These rights may be unwritten, subject to variations in interpretation, and they often evolve. The application and interpretation of customary rights may be situation-specific, including community-specific and therefore these rights may stand alone and be unique.

Interrelated sets of customary rights may be recognized as customary law. In some national contexts, customary law is equivalent to statutory law, within its defined area of competence and may replace the statutory law for defined ethnic or other social groups. Customary law may also complement statutory law and is applied in specified circumstances.

Principles 3 and 4 address customary law and rights *not* organized into a system of law. In states where customary law is recognized by the government to have parallel legal status alongside statutory and common law, or civil law, such customary laws have the same status as statutory law in the FSC P&C for Principle 1, in their areas of legal competence. For example, customary law may be used to settle territorial disputes between Indigenous Peoples, or to settle arguments over resource rights between Indigenous and non-indigenous land users.

Legal Rights

FSC defines legal rights as those rights that exist under the rules of national or local laws or subsidiary regulations, decrees, orders, etc. ‘Legal’ also includes rule-based decisions made by legally competent agencies where such decisions flow directly and logically from the laws and regulations. Decisions made by legally competent agencies may not be legal if they do not flow directly and logically from the laws and regulations and if they are not rule-based but use administrative discretion (FSC-STD-01-001 V5-2).

An affected rights holder may not legally own the land (i.e., possess legal title or ownership), a requirement of FSC certification. However, a rights holder may have maintained access to these lands and associated resources through use and local recognition of customary practice. This establishes a *de facto* relationship with land and resources. The Organization is required to “uphold” these rights and, in doing so, they neither “diminish the *de facto* rights exercised ... nor their claim to legal rights” (FSC-STD-01-001 V5-2, pg. 45).

The right to FPIC is not a stand-alone right, but one that is considered essential to the recognition and protection of other legal and/or customary rights. It also establishes a framework for the participation of rights holders in decision making on management activities that affect their rights.

Good Faith and Good Faith Negotiations

Good faith is defined in the FSC Glossary of Terms (FSC-STD-60-004 V2-0 EN) as “a process of engagement where the parties make every effort to reach an agreement, conduct genuine and constructive negotiations, avoid delays in negotiations, respect

agreements concluded and under development, and give sufficient time to discuss and settle disputes.”

FPIC begins, at a minimum, with good faith and informed engagement processes with all affected persons, including women and those particularly vulnerable, with full respect for human rights. This is based on:

- the right to meaningful participation in environmental decision making;
- the right to control access to their lands and resources;
- contemporary standards of public participation as a hallmark of legitimate governance; and
- basic principles of equity and justice

Iterative Proposals and Decision Making in Forest Management

The FPIC process supports iterative proposal development by The Organization based on the full participation and decisions of the affected rights holder. Within the context of an MU, management activities, annual audits and five-year certificate renewal processes, it is likely that a change to the negotiated conditions of an agreement may be required. Anticipating the potential for change (e.g., new information becomes available, new conditions arise or The Organization alters its plans) is an important part of the FPIC process while also ensuring that the risk of disruption to management activities be minimized.

It is the right of Indigenous Peoples to grant, withhold or withdraw consent for management activities affecting their legal and/or customary rights at any stage of an FPIC process. However, withdrawing consent that is formally or informally documented in a binding agreement cannot be done arbitrarily or in bad faith. It is recommended that the events or circumstances that trigger a dispute resolution process be outlined in a Process Agreement or FPIC Agreement and in a culturally appropriate manner.

The benefit of iterative proposal development and subsequent decision making is the ability to continue dialogue and negotiations while there is disagreement among parties. When information is incomplete, resources are lacking, or an event disrupts the negotiation process, the parties may revisit previous activities in the process and evaluate the outcomes achieved. Alternative approaches may be tested, and parties may move forward again with lessons learned. Participatory monitoring plays a significant role in supporting decision making.

Navigating Multiphase Management Activities

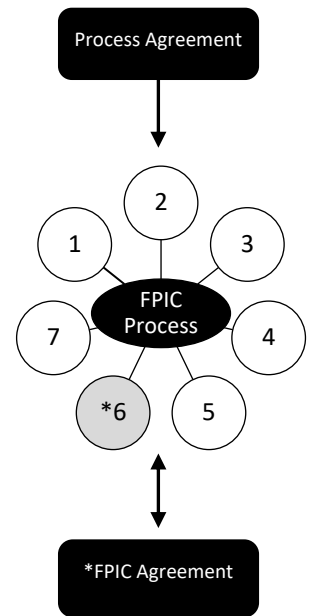
An interim agreement, or protocol, is a tool used to navigate multiphase management activities. This agreement is established early in the relationship between the affected rights holder and The Organization. In this Guideline, the recommended interim agreement (or protocol) is referred to as a **Process Agreement**. It is an effective mechanism for communicating and recording a good faith process that demonstrates the following mutually agreed terms of an engagement process with the objective of seeking consent:

- Understanding of the management activities and phases of implementation to be addressed during the period of the FSC certificate;

- Services to be provided by The Organization to ensure critical information is available and understood by the affected rights holder prior to their decision on a consent agreement;
- Process for altering the conditions of the agreement, including what would constitute a breach of the agreement; and
- Dispute resolution mechanisms, including a description of events or circumstances that trigger the dispute resolution process.

This approach is particularly effective when The Organization is first (re)establishing relationships with the affected rights holder and/or the timeframe needed to design and implement an FPIC process that extends beyond the audit cycle of The Organization.

The same rationale applies to an **FPIC Agreement**. Whether an agreement is formally or informally documented, The Organization ensures the affected rights holder understands that at any time in the relationship, they may change their decision about management activities, therefore triggering a dispute resolution process.



Guidance for National Offices and Standard Developers

State governments are responsible for the implementation of international instruments such as UNDRIP and ILO 169 within their national contexts. The Organization is not a proxy for the state; however, as the proponent of a volunteer certification standard, The Organization is expected to adhere to the FSC P&C, regardless of state recognition of Indigenous Peoples' rights and the rights of local communities.

FSC National Offices might consider identifying appropriate resources such as 1) participatory mapping requirements to reflect legal requirements and 2) a list, or registry, of relevant national and sub-national laws, regulations, and agreements related to rights holders likely to be affected by management activities (similar to information prepared to meet the requirements of IGI 1.3.1.).

C.4 What is the scope of an FPIC process?

This Guideline is structured to promote relationship building through culturally appropriate engagement in all aspects of the FSC forest management normative framework. The first two criteria of Principles 3 and 4 describe the following general sequence of events to be followed by The Organization to demonstrate obtaining consent based on the requirements of the relevant NFSS: identification of rights and the rights holder, engagement, and agreement on outcomes.

There are two critical questions influencing the scope of an FPIC process: 1) Who are the holders of legal and/or customary rights in and around the MU? and 2) What rights are affected by the proposed management activity?

1) Who holds legal and/or customary rights in and around the MU?

After developing an understanding of the elements of FPIC, the next critical step is the identification of the collectively held legal and/or

FPIC is required when management activities affect collectively held legal and/or customary rights.

customary rights affected by management activities and the holders of such rights. The Organization seeks to obtain consent from a rights holder prior to the commencement of management activities, to the extent necessary to protect their rights, resources, lands, and territories.

The process requirement (or FPIC process) for obtaining consent from an affected rights holder is identical in Principles 3 and 4 (see 3.2.4 and 4.2.4 in IGIs, FSC-STD-60-004 V2-0). However, the scope of the rights that may be subject to an FPIC process differs based on whether the holder of affected legal and/or customary rights is an Indigenous Peoples (Principle 3) or a local community (Principle 4).

Principle 3 includes requirements related to upholding the rights of Indigenous Peoples as described in ILO 169 and UNDRIP (Criterion 3.4). Articles that describe Indigenous Peoples' rights that might exist in a forest management context are summarized in Table 1 and listed as they appear in these international instruments in Annex B.

To support the identification of Indigenous Peoples and their rights, FSC follows the example set by the United Nations system and presents the following list of characteristics useful in identifying Indigenous Peoples rather than defining who is 'indigenous' or not (FSC-STD-01-001 V5-2):

- The key characteristic or criterion is self-identification as Indigenous Peoples at the individual level and acceptance by the community as their member
- Historical continuity with pre-colonial and/or pre-settler societies
- Strong link to territories and surrounding natural resources
- Distinct social, economic, or political systems
- Distinct language, culture, and beliefs
- Form non-dominant groups of society
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

"Indigenous Peoples" is a collective term used to describe a wide variety of peoples who possess the characteristics above. These groups may self-identify as a distinct cultural group using a name unique to their language and culture. States may have specific domestic laws and policies to identify Indigenous Peoples according to their national context and legal procedures to amend such regulations. However, the application of the FSC P&C is based on internationally recognized human rights principles, including the right to self-identify as an Indigenous Peoples.

If a rights holder is identified as a **traditional people** or **tribal people** (see Glossary of Terms), they may possess the same rights as Indigenous Peoples and the requirements of Principle 3 apply. Otherwise, as holders of collective legal rights, they are treated as local communities under Principle 4.

Guidance for National Offices and Standard Developers

As per the Instructions for Standard Developers for Criterion 3.4, Standard Developers *shall* ensure that UNDRIP and ILO 169 requirements are included in National Forest Stewardship Standards and Interim National Standards (FSC-STD-60-004 V2-0 EN).

The Instructions also indicate a limitation on the application of ILO 169 and UNDRIP: Criterion 3.4 refers to those articles that cover the rights, customs, culture, and spiritual relationship between Indigenous Peoples and the MU explicitly (FSC-STD-60-004 V2-0 EN). FSC has evaluated ILO 169 and UNDRIP and pre-determined the relevant articles related to management activities and the Management Unit. These are available in [Annex B](#) of this Guideline.

The application of this Guideline in the context of Principle 4 will be greatly improved and made more relevant at the national/regional level if National Offices and SDGs include a definition of 'local communities', and where possible the collectively held legal and/or customary rights.

Furthermore, it is important to make known at regional levels that the CB shall evaluate any disputes between laws/regulations and certification requirements of the applicable Forest Stewardship Standard, on a case-by-case basis, and in an arrangement with involved or affected parties as per FSC STD-20-007 Forest Management Evaluations, paragraph 8.20.

2) What are the rights affected by management activities?

In addition to the identification of legal and/or customary rights, a critical scoping factor for an FPIC process is the effect of management activities on identified rights. The next actions in the sequence of requirements involve a more thorough engagement process (see IGI 3.2.4 and 4.2.4). Other requirements within the relevant NFSS, such as social and environmental assessments of management activities, are practical examples of tools that support the FPIC process, as well those found in other FSC P&C, specifically Principles 6 and 9. See Table 2 below for a list of FSC P&C that may be addressed through a comprehensive FPIC process.

Step 3 in Part II of this Guideline suggests methods for conducting assessments. The mapping and assessment processes are expected to enable dialogue between The Organization and an affected rights holder and support the building of long-term relationships. The co-development of impact indicators to be documented and assessed over the term of the FSC certificate would support monitoring and capacity building. However, there are challenges related to impact assessments that warrant early discussion in the FPIC process. For example, there is no agreed definition and set of indicators of cultural impact; quantitative data has limitations, especially in explaining causality; the assessment process can be expensive; effective assessors require strong cultural competencies/sensitivities; and timescales are inadequate for reasonably tracking impacts.³

Initial dialogue between The Organization and an affected rights holder may reveal a broad scope of rights that are considered important. Through continuous engagement and information sharing on the intention and limits of FSC certification, The Organization and affected rights holder will narrow the scope of rights to those connected to land, territories, and resources impacted by proposed management activities (Figure 1). The

³ Dunphy, K. and Partal, A. 2016. Cultural impact assessment: a systematic literature review of current methods and practice around the world. *Impact Assessment and Project Appraisal*, 33(5). <http://dx.doi.org/10.1080/14615517.2015.1077600>

scope of the FPIC process is then focused on the management activities of The Organization that can be addressed through negotiations.

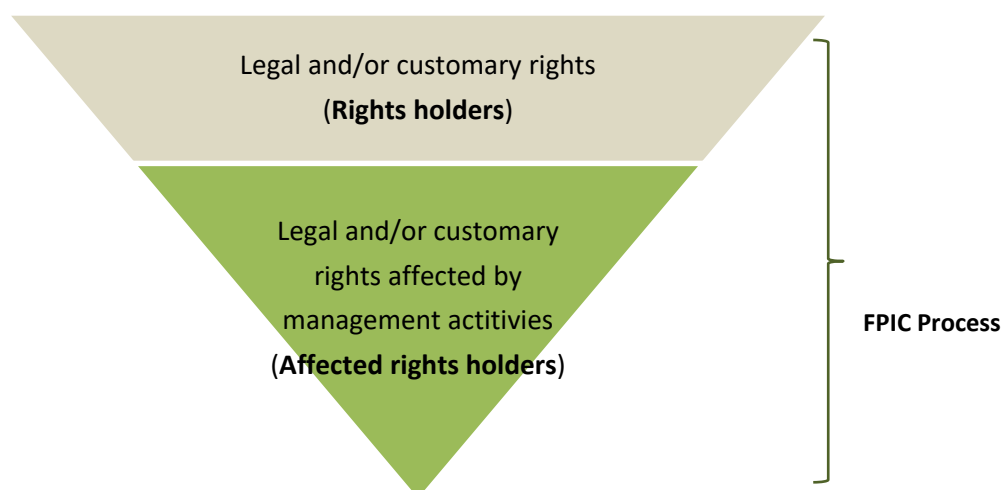


Figure 1: Progressive focus through engagement regarding the legal and/or customary rights affected by proposed management activities

Guidance for National Offices

National offices might consider providing guidance on carrying out an FPIC process to meet multiple objectives such as those listed for management planning (Principle 7), monitoring (Principle 8), and HCVs (Principle 9). This would allow for the customization of the FPIC process to the context of the region and rights holders.

C.5 FPIC in the context of FSC Principles & Criteria

The FPIC process is not isolated from other FSC forest management requirements. While an FPIC process aims to achieve a consent decision through a negotiated FPIC agreement, The Organization could also be working towards several other FSC requirements, such as conservation areas networks (Principle 6), forest management plans (Principle 7), monitoring and assessment (Principle 8) and HCV forest assessments (Principle 9). Table 2 shows several other criteria with requirements that may be addressed through an FPIC process.

Table 2: FSC Criteria that may be addressed in an FPIC process

Criterion	Description
1.2 Legal status of the MU	Legal status of the MU is confirmed
1.6 Resolving disputes out of court	The Organization resolves legal issues out of court as far as possible
5.3 Externalities	The positive and negative externalities of management activities are included in the management plan.

Criterion	Description
6.1 Assessment of environmental values 6.2 Environmental impact assessment	The Organization engages experts, including Indigenous Peoples and local communities, to identify and assess environmental values, including landscape values such as cultural and spiritual values.
7.2 Management planning	The Organization has and implements a management plan that is consistent with the policies and objectives required by Criterion 7.1 and FSC requirements, covering forest and social management planning.
7.5 Publication of management plan	The Organization publicises a summary of the management plan. Excluding legally defined confidential information, other components of the management plan are made available to affected stakeholders if relevant to them.
7.6 Engagement in management planning	Affected stakeholders are proactively and transparently engaged in management planning and monitoring. Interested stakeholders are engaged upon request.
8.1 Management plan monitoring	The Organization monitors the implementation of the management plan, its policies and objectives as well as its progress with planned activities and achievement of its targets.
8.2 Monitoring and evaluation of social and environmental impacts	The Organization monitors and evaluates the environmental and social impacts of its management activities and changes in environmental conditions.
8.3 Analysis of monitoring and evaluation	The results of monitoring and evaluation are analysed and fed back into the planning process.
9.1 Assessment of High Conservation Values	The Organization through engagement with stakeholders has assessed and recorded the presence of HCVs in the MU.
9.2 Monitoring	Periodic monitoring for assessing changes in the status of HCVs is carried out. When needed, The Organization adapts its management strategies to ensure the effective protection of the HCVs.

An FPIC process and/or agreement is not needed if there are no rights holders affected by the proposed management activities, or if The Organization decides not to execute management activities that might affect a rights holder. However, without the implementation of proper engagement activities by The Organization, this will be difficult to determine.

FPIC and Private Lands

This Guideline does not overrule or take away (abrogate or derogate) the right to ownership, nor does it set out a specific FPIC process for forest management certification on private lands. The scope of this Guideline requires a global perspective on ownership rights and, in doing so, these rights can only be considered alongside the legal and/or customary rights of all parties affected by management activities.

Generally, holders of private property are entitled to rights of possession, control, exclusion, enjoyment, and disposition of the property. The implementation of an FPIC process with the explicit objective of obtaining FPIC will involve an examination of ownership rights as they are defined under national laws (a requirement of Principle 1) as well as under **customary laws** that may or may not be formally recognized.

If there is an assertion of legal and/or customary rights to privately owned lands, good faith attempts are made by The Organization to 1) engage with the claimants to discuss the nature and scope of the rights claim and the impacts of proposed management activities on those claimed rights, and 2) demonstrate the requirements of Principle 1 have been met with respect to the lands within the MU.

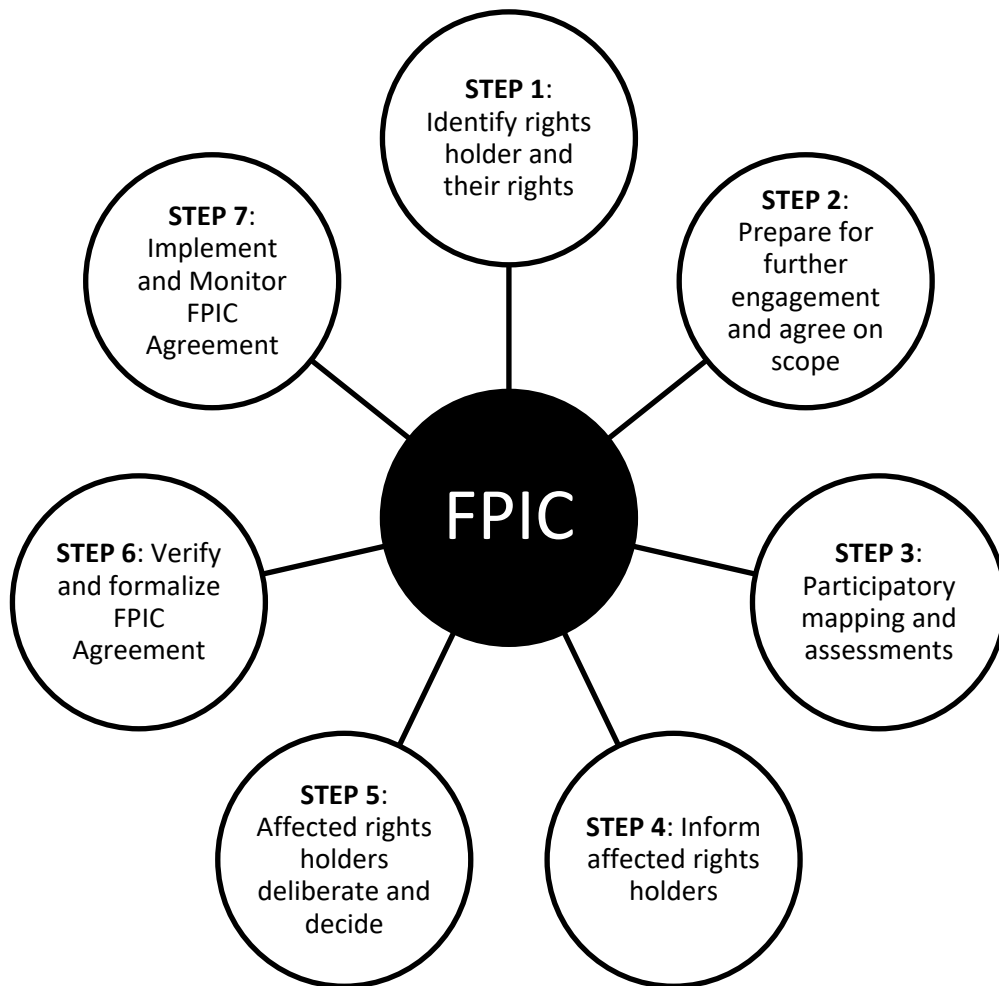
The FSC P&C and associated engagement requirements establish a clear intention to improve the relationship between the affected rights holder and The Organization, including those operating on private lands. The FPIC process recommended in this Guideline is relevant for all types of land tenure systems as it is the management activity on a specific area of land that this being certified to FSC standards, not the land tenure system itself. Laws and legal mechanisms that establish ownership and use rights of lands under FSC certification are identified through requirements in Principle 1. However, existing laws are not enough to justify the violation of internationally recognized legal and/or customary rights of vulnerable groups. A thorough review of historical and recent land settlement practices in the region is useful for meeting the requirements of Principle 1, but also for understanding the origin of any claims to private property that may emerge through engagement.

FSC certification recognizes the existence of parallel rights and supports the development of a common understanding of the legal and/or customary rights, values and interests affected by management activities. An FPIC process enables private landowners seeking FSC certification to 1) negotiate a process and a binding agreement to uphold identified affected rights, customs, and cultures and 2) reconcile the impact of their management activities on such identified affected rights. Practically, an FPIC process that relates to rights claims to private lands may take more time, and depending on the national context, state or other third-party agents, such as community organizations and advocacy groups, may be involved. It is worth restating that as a voluntary system, the P&C of FSC may differ from national laws, but they are nonetheless the standard to which The Organization is audited.

C.6 Limitations of FPIC in FSC

As a voluntary tool and framework for positive change towards more socially and environmentally responsible management, the FSC P&C offer a transparent platform for ongoing dialogue and scrutiny of management activities by the affected rights holder. As a market-based system, FSC creates incentives to pull companies into the system, exposing them to the concept of FPIC. It is important for proponents of FSC certification to also convey the limitations of what FSC can accomplish in the context of lands, territories and resource claims and ongoing disputes between state governments and an affected rights holder. This is an important topic for discussion in the early stages of engagement. Without it, unrealistic expectations may arise early that later lead to disputes and/or withdrawal from an FPIC process. A Process Agreement, or protocol, is an ideal mechanism to use for recording shared understandings and expectations of The Organization and the FSC system, including those that go beyond the scope of FSC certification.

D. PART II: 7-Step FPIC Process



STEP 1: Identify the Rights Holder and their Rights through Culturally Appropriate Engagement

Elements of Step 1

- 1.1 Explore regulatory approaches to FPIC
- 1.2 Identify rights holder and their rights
- 1.3 Identify representatives and governance structures
- 1.4 Inform rights holder of proposed management activities
- 1.5 Identify claims of legal and/or customary rights
- 1.6 Determine willingness to participate in future negotiations on proposed management activities

1.1 Explore Regulatory Approaches to FPIC

The normative forest management framework may go beyond national laws; therefore an essential part of the pre-evaluation or transition planning process is the exploration of legal and regulatory approaches to recognizing and implementing the right to FPIC. Keep in mind that existing national laws may acknowledge the right to FPIC, but the state may lack regulatory mechanisms to enforce them. The CB will evaluate any disputes between laws, regulations and certification requirements of the applicable NFSS on a case-by-case basis, in arrangement with involved or affected parties.

If the state claims to have obtained consent before issuing a forest concession, The Organization makes best efforts to confirm that the consent decision was made freely, prior and through an informed, culturally appropriate participatory process. Early engagement with the affected rights holder, local experts and state departments may be necessary to determine whether a legitimate representative of legal and/or customary rights holder rendered the decision to grant, withhold or withdraw FPIC (see Step 1.2).

National laws that stipulate how The Organization should consult or seek consent from the affected rights holder are critical guideposts for an FPIC process. However, there may be a gap in national laws to implement FPIC effectively, or there may be a direct dispute with the FSC forest management normative framework. If The Organization discovers a policy gap or dispute between the FSC P&C and national laws, a separate FSC procedure may apply (FSC-STD-20-007 V3-0 EN Forest Management Evaluations).

According to the FSC P&C, when it is not possible to comply with the FSC P&C and a national law at the same time, The Organization a) reports the dispute to the certification body who will evaluate it in an arrangement with affected parties, and b) notifies National Offices of the dispute.

ACTIONS FOR CONSIDERATION:

- Using the Best Available Information, determine whether the applicable laws and regulations of the host state require FPIC, lack support for the recognition of Indigenous Peoples' rights or are in dispute with FSC requirements.
- Consult with the FSC National Office, SDG, interim national standards and CBs to find out if they have already evaluated national laws relevant to upholding the right to FPIC.
- Consider consulting with national level Indigenous peoples' organizations or non-governmental organizations (NGOs) involved in protecting human rights.
- If there are legal mechanisms in place that support FPIC or related consultation and accommodation processes, check whether they fulfil the FPIC requirements of the NFSS (gap analysis).
- There may be an opportunity to collaborate with organizations within a region or state to conduct a regional gap analysis.

1.2 Identify Rights Holder and their Rights

Identify all rights holders that live, and assert their legal or customary rights, *within* and *near* the management unit. The focus of these efforts begins with the identification and engagement of legitimate representatives of the rights holder.

Local experts (interpreters/facilitators/consultants) that are recognized as such by legitimate representative of the rights holder may facilitate engagement processes and provide critical background information. Specifically, local experts may:

- Provide guidance on cultural norms and protocols of the rights holder;
- Facilitate engagement;
- Assist with negotiations; and
- Act as facilitators and interpreters throughout the FPIC process.

Experts are individuals recognized for their specialized knowledge or skill on a subject matter. In the context of FSC, experts are usually associated with the requirement for The Organization to use the Best Available Information (see Principles 5, 6 and 9).

ACTIONS FOR CONSIDERATION:

- Consider engaging local experts, regional organizations and secondary information sources (e.g., census data research and grey literature) and the FSC National Office, ensuring the experts are made aware of the use of the information in the FPIC process.
- Prepare a preliminary overview of all rights holders within the MU or those that may be affected by management activities.
 - Consult Criterion 7.2, on having and implementing a management plan, of the applicable NFSS for requirements related to social impact assessments.

1.3 Identify Representatives and Governance Structures

Organizations are required to adopt a culturally appropriate approach to engagement, one that is in harmony with the customs, values, sensitivities and ways of life of the affected rights holder. This is particularly important when identifying representatives and decision-making institutions.

In the case of Indigenous Peoples, representative and decision-making institutions in current use may differ from customary law because of state-imposed structures. Some institutions may also have been established by Indigenous Peoples to deal specifically with non-Indigenous organizations, businesses and stakeholders. The Organization respects the choice of Indigenous Peoples on how and who represents their rights and interests in negotiations of an FPIC process, including the decision to be represented by more than one institution (UNDRIP).

***UNDRIP Article 18:
Indigenous Peoples have the right to participate in decision making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.***

ACTIONS FOR CONSIDERATION:

- Identify and document decision-making institutions of all rights holders.
- Document the type of governance system used, e.g., traditional/customary, state-legislated/imposed, or other).
- Document the role of women, youth and elders, keeping in mind UNDRIP (Articles 21 and 22) and ILO 169

1.4 Inform Rights Holders of Proposed Management Activities

The Organization informs all identified rights holders about the main features of the FSC system and their proposed management activities. This information is presented in a format that is accessible by the rights holder and includes information sufficient for representatives to identify whether management activities violate their legal and/or customary rights.

If the information on proposed management activities is complex, and there is a risk of misunderstanding, The Organization might consider offering the rights holder access to technical support.

ACTIONS FOR CONSIDERATION:

Provide information on the FSC system, including:

- Status as a voluntary system that in most cases goes beyond legislation for forest management and stakeholder engagement,
- Inclusion of customary rights as legitimate rights claims.
- Provide information that is a fair reflection of what can be expected from the proposed management activity; do not exaggerate the potential benefits or hide the risks.
- Provide information in a language and format that is clear and appropriate to the context and provide resources for expert assistance, if required.
- Verify that the information was understood.

1.5 Identify Claims of Legal and/or customary Rights

In addition to legal rights, the FSC forest management normative framework recognizes that a rights holder may also possess customary rights flowing from long-established use or the practice of customary laws. These rights may or may not be officially recognized in state-legislated institutions. The FSC definitions of customary law and customary rights are therefore important in this context (see Annex A).

The traditions and customs that give rise to collective legal and/or customary rights included within the scope of an FPIC process will be unique to each rights holder. A transparent, preliminary assessment of claims to legal and/or customary rights that is based on the Best Available Information will support The Organization and the rights holder identify claims that are fair and legitimate.

There are limits to the scope of an FPIC process based on the requirements of Principles 3 and 4 (see Part I -C).

ACTIONS FOR CONSIDERATION:

- Document all claims of existing rights identified through research and engagement with the rights holder, whether they are affirmed by the rights holder or not.
- Be inclusive and respectful of cultural protocols and decision making when identifying customary rights.

1.6 Determine Willingness to Participate in Future Negotiations on Proposed Management Activities

Time is needed for the rights holder to conduct internal and independent reviews of information to decide if they are willing to enter an FPIC process. Expect questions regarding the potential direct and indirect impacts of management activities on their legal and/or customary rights, including livelihoods, knowledge, social cohesion, governance and culture. These questions require consideration by both The Organization and the rights holder. If both parties are prepared to continue building a relationship, preparations for further engagement and negotiations may begin.

If the rights holder agrees to participate in a more detailed process to identify further their rights and interests, The Organization may proceed with the development of a Process Agreement (may also be referred to as a protocol) established in good faith and with the explicit intent to obtain free, prior and informed consent (Step 2.4). However, even at this early stage, the rights holder may decide to decline the negotiation of an FPIC Agreement. For example, the rights holder may assert that their legal and/or customary rights have been violated by The Organization and redress is required, or they may indicate a lack of resources necessary to participate effectively.

Another reason a rights holder may decline to negotiate further is a real or perceived belief that engagement is not being conducted in good faith. If this is identified, the parties may pause and attempt to clarify their intent and revise their approach. Regardless, The

Good faith is a process of engagement where the parties make every effort to reach an agreement, conduct genuine and constructive negotiations, avoid delays in negotiations, respect agreements concluded and under development, and give sufficient time to discuss and settle disputes.

Organization continues to uphold all legal and/or customary rights to lands, territories and resources affected by management activities.

ACTIONS FOR CONSIDERATION:

- Communicate an understanding of the decision to continue engagement, or not, in a full FPIC process.
- Alternative engagement processes may be discussed.
- Continue to make available all management activity information requested by the rights holder, to the extent necessary to protect their rights.
 - Note: The Organization is not required to make available information that is required by the law to be treated as confidential.
- If the rights holder has not taken a decision, indicate whether the process is ongoing.
- Demonstrate that the ongoing process is satisfactory to the rights holder.
- Consider the use of a facilitator (interpreter) that is respected by the rights holder to gain a better understanding of the context and expectations, including the role of CBs.

STEP 2: Prepare for Further Engagement and Agree on Scope of the FPIC Process Agreement

Elements of Step 2

- 2.1 Involvement of others in the engagement process
- 2.2 Establish a structure with trained personnel and resources
- 2.3 Develop appropriate communication and information strategies
- 2.4 Engage with affected rights holder and develop a Process Agreement
- 2.5 Further define management activities likely to affect rights holder

2.1 Involvement of Others in the Engagement Process

While the rights holder themselves, and their delegated representatives, are the primary parties to the engagement process, other mutually agreed experts and stakeholders might be asked for support. They include government institutions, NGOs, Indigenous Peoples' organizations, and scientific institutions that may have a critical role in the implementation of the FPIC process and the FPIC Agreement.

An FPIC process carried out with an affected rights holder is not the same as a public engagement process with general interest groups or stakeholders. However, depending on the local context, it may be a challenge to hold separate processes. In this case, if all parties agree, a multistakeholder process may be the best approach for gathering initial information useful in identifying affected rights holders and their rights. But, be aware of power relations, including different capacities in attending such gatherings. Also, a multistakeholder process cannot be assumed to replace an existing FPIC process between The Organization and affected rights holder.

An important longer-term goal of expanding involvement is to generate broader support for the design and implementation of the FPIC process, including outcomes, among various stakeholders (e.g., states) and promote better relationships among all local stakeholders.

2.2 Establish a Structure with Trained Personnel and Resources

Depending on scale, intensity and risk (SIR), The Organization might consider establishing a team with trained personnel and dedicated resources. At a minimum, The Organization strives to provide appropriate staff and support with suitable capacities to undertake the tasks associated with the negotiation of an FPIC process. A team that is familiar with the management context and includes women and members of ethnic groups represented in the local population (including Indigenous Peoples) will likely be more successful in designing a culturally appropriate engagement process.

ACTIONS FOR CONSIDERATION:

- Appropriate to SIR, establish an internal structure to deal explicitly with the rights holders' engagement processes.
- Receive comprehensive orientation on the culture of the rights holder.
- Be trained in recognizing and respecting the protocols and values of the rights holder.
- Be trained in effective communication and translation of complex legal issues.
- Be encouraged to seek additional expertise when needed.
- Ensure the certification team can intervene directly in the decision-making bodies of the organization with strong internal communication (e.g., board, management, council).
- Ensure the team has dedicated materials and equipment.

2.3 Develop Appropriate Communication and Information Strategies

Communication is an essential aspect of relationship building. It is also the tool used to facilitate the 'informed' element of FPIC. The required mode, content, and intensity of the communication depends on local circumstances. The fundamental objective of all communication is to establish a relationship that will facilitate dialogue and capacity building among all parties. This can be achieved through iterative discussions and dialogue that result in an exchange of information and views on an ongoing basis.

It is preferable that communication with all rights holders be in the language they speak, using a medium they understand. It is essential to limit the use of highly technical language or jargon that can otherwise be explained in clear, simple language.

ACTIONS FOR CONSIDERATION:

- Consider prioritizing direct communication (face-to-face) as the default method, unless high levels of literacy are apparent, or circumstances dictate otherwise.
- Consider developing a formal plan specific to the FPIC process to ensure that all aspects are communicated to the rights holder and CB.
- Ensure culturally appropriate methods for sharing information.
- Present complete information as early as possible.

2.4 Engage with Affected Rights Holder and Develop a Process Agreement

To achieve a climate of confidence and mutual respect, the FPIC process itself can be a product of an earlier agreement. This kind of arrangement is referred to in this Guideline as a Process Agreement; however, it may also be called a protocol. If established early, a Process Agreement will help facilitate the multiple stages of decision making involved in an FPIC process.

The Process Agreement is *not* an FPIC Agreement. It is a formal mechanism negotiated between The Organization and the affected rights holder early in the FPIC process. It is used to guide early engagement expectations such as cultural protocols, appropriate means of validating an agreement (e.g., oral testimony or ceremony), and the design of an FPIC process.

A Process Agreement serves to establish a climate of confidence and mutual respect by establishing an early shared understanding of the FPIC process objectives and limitations in the context of FSC.

An effective Process Agreement is often based on the established decision-making structures and procedures of the affected rights holder. For example, the rights holder may already gather at certain locations and at times of year to make critical governance decisions. A Process Agreement may formalize the same meeting schedule for an FPIC process.

The Process Agreement plays a critical role in establishing the scope of an FPIC process. In practice, management activities may take place over complex ecological, social and cultural landscapes. Any interim process that offers clarity of expectations will support the longer-term efforts of the FPIC process. It also serves as an early indicator to all parties of the level of effort needed to negotiate an FPIC process.

A Process Agreement may include overarching principles such as respecting governance protocols of the rights holder and striving for mutual understanding and good faith engagement that is transparent. Practically, these principles may translate into terms of an agreement such as:

- An agreed scope of the FPIC process;
- Protocols for negotiations and decision making at all stages of the FPIC process;
- Timelines for implementation, noting that new applicants to FSC certification and current FSC certificate holders will likely differ;
- Representation in the FPIC process;
- Date of signing and expiry date, if applicable;
- Clear phasing of the FPIC process, in line with continuous and iterative decision making;
- Terms of verification and observation of the FPIC process (Step 6);
- Terms of withdrawal from the FPIC process;
- Financial commitments of FPIC process;
- Acceptable use of advisors, facilitators, and observers;
- Capacity-building needs, if necessary;
- Agreement on the scope of mapping and impact assessments;
- Mechanism for monitoring the FPIC process;
- Mechanism to formalize the FPIC agreement (Step 6);
- Types of documents to be shared, such as results of impact assessments (Step 3 (3.4));

- Information-sharing processes;
- Treatment of intellectual property, such as mapping products (Step 3 (3.2));
- Mechanisms for dispute resolution, and
- Record of actions taken in the process.

If the rights holder withholds their consent to negotiating a Process Agreement, or the negotiations do not result in an agreement, the parties may choose to enter a dispute resolution process where the priority is to gain an understanding of the concerns, impacts and development desires of the affected rights holder. Meanwhile, The Organization upholds the right to withhold consent to management activities that affect their legal and/or customary rights.

It is important to distinguish between issues that can be dealt with and those that cannot through an FSC dispute resolution process.

ACTIONS FOR CONSIDERATION:

- Establish a mutual understanding and agreement on the need for a Process Agreement, or protocol, to support the FPIC process.
- Consider hiring a community facilitator/interpreter.
- At this early stage consider the involvement of an independent verifier or observer to the FPIC process and discuss with the affected rights holder.
- Describe each of the steps that require engagement, and, potentially, a decision from representatives.
- Identify representatives chosen by the rights holder to participate in various steps of the FPIC process.
- Confirm the internal decision-making process to address FSC FPIC requirements and identify indicators of its successful implementation.

2.5 Further Define Management Activities Likely to Affect Rights Holder

At this stage, The Organization and the rights holder can define more precisely the management activities that are likely to affect their rights, thereby establishing the initial scope of the FPIC process. Effective participatory mapping and assessments will be needed in which the affected rights holder is fully engaged (Step 3). Mapping and assessments will provide further information and help The Organization further define and amend the management activities before entering into negotiations.

Developing a deeper understanding of the defining characteristics and concerns of the rights holder in the context of the MU is key (see Part 1). Triangulate information sources such as the rights holder themselves, local communities, regional confederations, Councils and organizations, academic institutions, community-based organizations and official government databases (i.e., census), if available.

Information on proposed management activities is shared, including:

- The purpose, scope, reversibility, size, nature, and duration of the forest operation;
- The areas that will be affected; and
- The costs and benefits resulting from the management activities for all parties, including potential effects on livelihoods, local economy, culture and legal and/or customary rights.

ACTIONS FOR CONSIDERATION:

- When possible, confirm that external advisors to the process are known, respected and trusted by the affected rights holder.
- Provide full content of the proposed management activities to the affected rights holder.
- Describe the resources proposed for harvesting (e.g., species, estimated volume, etc.) and the type of potential benefits as a result of The Organization's management role (e.g., management costs and value-added opportunities).
- Determine the need for participatory mapping and impact assessment in cooperation with the affected rights holder.

STEP 3: Participatory Mapping and Assessments

Elements of Step 3

- 3.1 Ensure sufficient community capacity for mapping and assessments
- 3.2 Participatory mapping
- 3.3 Disputes between affected rights holders
- 3.4 Engage in participatory impact assessments

3.1 Ensure Sufficient Community Capacity for Mapping and Assessments

An earlier step (Step 2) addressed the capacity-building requirements for The Organization. This step reinforces the need to support the capacity-building efforts of the affected rights holder.

Prior to the commencement of management activities, a capacity needs assessment, in general, and, more specifically, for mapping and impact assessments is recommended. The Organization may make clear their intentions to assist the affected rights holder in identifying financial resources, local experts and institutions to support capacity building efforts proportionate to their needs. However, The Organization avoids real or perceived coercive or manipulative activities that affect the ability of the affected rights holder to make independent decisions.

To ensure that rights and values are captured and respected in the mapping process, the parties 1) acknowledge from the outset that different bodies of knowledge exist within different groups (i.e., different ways of knowing and understanding the world), and 2) agree on who owns and administers the outcomes of the mapping process. Mapping methods respect the local and traditional knowledge of the affected rights holder.

ACTIONS FOR CONSIDERATION:

- Review the Process Agreement for expectations on mapping and assessments, including:
 - Required/requested scale of maps for mapping and assessment purposes.
- Support the building of community readiness, including:

- Encouraging the rights holder to identify individuals to carry out the mapping/assessments; and
- Making resources available where they do not already exist.
- Recognize community mapping is an iterative and living process that will evolve.

3.2 Participatory Mapping

Participatory mapping is the creation of maps by local resource users (i.e., ‘affected rights holder’), often with the support of external partners, for decision making. The maps provide a visual representation of the rights holder’s lands, territories, resources, and other significant features. Since claims based on customary laws are often not formally recognized in law, mapping provides a record of customary rights.

The overview of legal and/or customary rights identified in Step 1 (1.5) gives a good indication of mapping needs. If the affected rights holder already has maps identifying the location of their interests and values associated with their legal and/or customary rights to lands, resources and territories, these maps can serve as a starting point for the participatory mapping process.

Initial maps created through a participatory mapping exercise will establish a shared understanding of ecological, social, and cultural conditions of the lands, territories, and resources affected by management activities. This will allow for the monitoring of management activity impacts over time. Participatory mapping may also be integrated with impact assessments.

A co-designed participatory mapping and impact assessment is an effective way to combine informing rights holders while also building a relationship based on trust.

Cumulative impacts may be the determining factor in the affected rights holder’s decision to grant consent. Documenting concerns about resource development outside the scope of management activities is critical should the affected rights holder take a cumulative effects approach to assess the impact of FSC management activities on their legal and/or customary rights. For this reason, mapping and impact assessment often happen at the same time (see Step 3 (3.4)).

In many circumstances, the Best Available Information on the local ecological, social, and cultural conditions of an area will be held by Indigenous Peoples and local communities in or adjacent to the MU. However, the affected rights holder may also wish to keep some areas of high cultural significance confidential. In addition to explaining the benefits of identifying such areas, it may also be necessary to formally develop information sharing and protection protocols. These can be established early in a Process Agreement.

Approaches to information sharing and protection of intellectual property should be mutually agreed early in the FPIC process and included in a Process Agreement if one is negotiated.

Table 3 lists relevant IGIs where rights and interests can be taken into consideration during mapping and assessments. Consult the relevant NFSS for specific requirements.

Table 3: Rights holder information to be mapped through a participatory process

Example of Information to be Mapped	Relevant IGIs
Legal and/or customary rights of tenure	3.1.2, 3.4.1, 4.1.2
Legal and/or customary access to, and use rights of, the forest resources and ecosystem services	1.3.1, 3.1.2, 3.4.1, 4.1.2
Areas where rights are contested	1.6.1, 3.1.2, 4.1.2
Sites where Indigenous Peoples claim their rights are being violated	3.2.2, 3.2.3, 3.4.1
Large landscape features (areas of protection from all development, Indigenous cultural landscapes – or ICLs)	3.1.2, 3.4.1
HCVs: Rare and endangered species and habitats upon which the rights holder relies Ecosystem services (e.g., water sources, critical shade trees) Culturally significant sites and landscapes	3.4.1, 3.5.1, 4.7.1, 6.4.1, 9.1.1
Hunting, fishing, trapping, collecting, and settlement sites	1.4.1, 3.4.1
Harvesting permits	Principle 1, Annex A
Nationally and regionally protected sites with Indigenous Peoples' agreement	Principle 1, Annex A
Environmental values outside the Management Unit	6.1.1
Identification of native ecosystems	6.5.1
Elements of the management plan	Principle 7, Annex E
Areas of natural hazards (e.g., landslides, flooding)	Principle 8, Annex G
Invasive species	Principle 8, Annex G
Right holders' priority uses of core areas in Intact Forest Landscapes (IFLs)	Principle 9, Annex H

Note: Specific guidance for forest managers on IFLs and HCVs are available at the [FSC Document Centre](#).

ACTIONS FOR CONSIDERATION:

- Consider using 'works in progress' on mapping and assessments (for other sectors of development or governance purposes) on lands and territories proposed for development in the FSC process.
- Make available a mechanism to enable the inclusion of all new information in maps and assessment reports as it becomes available.
 - Respect the choice of the affected rights holder to share (or not), under specified conditions, information related to traditional knowledge, land, and territorial uses.

- Prepare a map or alternative overview showing all claims and land usage, all HCVs relevant to the affected rights holder, and the rights of the identified communities.
- Acknowledge cumulative development impacts on the rights holder, their lands, resources, and territories.

3.3. Disputes between Affected Rights Holders

Creating maps and images, including sketch maps, GIS maps overlaid on topographic maps, satellite images, and aerial photographs can spark latent disputes or reopen boundary discussions. Boundaries between an affected rights holder and other settlement groups are often vague, overlapping, or otherwise disputed.

In some regions, mapping resources to implement an FPIC process may give forests, particularly remote forests, a greater value that can escalate disputes between neighbouring groups. Planning in advance to establish mechanisms for dispute resolution in the FPIC process is particularly useful in the following scenarios:

- Boundary and governance disputes between neighbouring communities or within communities;
- Disagreement on the claimed rights of communities;
- Difficulties identifying rights for mapping; or
- Multiple and parallel claims to the same land and resources by different rights holders.

The Organization may be able to avoid disputed areas of an MU or reduce the impact on an affected rights holder through negotiations. There may also be circumstances where The Organization provides support to the affected rights holder to carry out an independent investigation and dispute resolution process. The Organization is responsible for discussing the potential impacts of management activities with *all* affected rights holders.

Early discussions about the consequences of a stop-work request or removal of harvest area from an MU are encouraged, as are options for management alternatives where possible. If a discussion is not possible, The Organization may choose to withdraw from the disputed area until an agreed dispute resolution process is in place.

Respect the autonomy of all affected rights holders by discussing land-based information with each community separately. The Organization cannot be expected to create or moderate relationships between affected rights holders and should avoid assuming this role unless they are specifically asked to do so.

ACTIONS FOR CONSIDERATION:

- Develop an understanding of the land stewardship responsibilities of the affected rights holder.
- Consider making dispute resolution support available for the affected rights holder.
 - Review dispute resolution mechanisms agreed to in the Process Agreement.
 - Acknowledge the ability of rights holders to seek resolutions independently.
- Consider mapping 'use zones', 'shared use areas', 'common areas', etc. rather than boundaries in the context of property rights.
- Observe and record boundary discrepancies for audits.
- Refer to claims identified in Step 1 (1.5) as a preliminary baseline and refine when new information becomes available.
- Document informed objections to the FPIC process and planned forest activity.
 - Investigate the nature and scope of the dispute and the role of forest activities in the dispute.

3.4 Engage in Participatory Impact Assessments

In practice, this step may be integrated with the participatory mapping process described in Section 3.2 above. However, if revisions and participatory impact assessments are done separately, be prepared to revise the proposed management activity based on the participatory mapping outcomes before implementing a participatory impact assessment.

Meaningful participation builds trust and agreement on the outcomes of the impact assessment. Assessments and baseline studies that ensure participation will reflect differences in resource use among affected rights holders. Note that participatory impact assessments are also required to ensure that management activities do not negatively affect HCVs (Principle 9).

The use of culturally appropriate methods to explain how the outcomes of the participatory mapping influenced any revisions to proposed management activities is critical, particularly in areas where vulnerable or marginalized segments of the rights holder community were involved in mapping. This information then becomes the basis for the impact assessments.

An assessment of direct, indirect, and cumulative impacts of resource development activities, with full respect for traditional, cultural, and social aspects, is key. Impact assessments that are part of an FPIC process are participatory to facilitate early warning signs of potential impacts and to increase the likelihood that the assessments will include the affected rights holders' issues of concern.

ACTIONS FOR CONSIDERATION:

- Determine whether the affected rights holder has protocols, laws and policies that address forest management.
- Respecting the legal boundaries of confidentiality, discuss the economic, social and environmental values of the forest resources extracted through management activities.
- Consider requirements for HCVs in Principle 9.

STEP 4: Inform Affected Rights Holders

Elements of Step 4

- 4.1 Proposed management activities are revised, and the affected rights holder is informed
- 4.2 The affected rights holder decides on further negotiations

4.1 Proposed Management Activities are Revised and the Affected Rights Holder is Informed

By this stage, The Organization is engaged in an iterative and inclusive information-sharing processes with established representatives of the affected rights holder according to the Process Agreement. A desired outcome of an iterative process is to increase the knowledge of both the affected rights holder and The Organization to build an understanding of the impacts of management activities. The sharing of technical information and outcomes of the impact assessments, while challenging, is critical to upholding the 'informed' element of FPIC.

The Organization may need to revise the proposed management activities to mitigate impacts based on the outcomes from the FPIC process thus far (see Step 3.4). If the affected rights holder asks for specific additional information, this is provided as soon as possible. It can be helpful to present comprehensive reports of consultations with legitimate representatives of the affected rights holder, reflecting all opinions of the process.

It is crucial that The Organization and the affected rights holder develop and maintain a practice of ongoing information sharing. Minimizing the reliance on third parties for engagement on behalf of The Organization helps to build trust. The Process Agreement (Step 2.4) provides an early avenue for addressing expectations for communicating information.

In practice, participatory mapping (Step 3.2), impact assessment (Step 3.4), and the revision of management activities may be integrated processes.

Information to be shared may include, but is not limited to:

- The outcomes of the participatory assessments, such as mapping, social impact and HCV assessments;
- Safeguards and measures to identify, assess, analyse, prevent, avoid, mitigate, and remedy actual and potential negative social, human rights, economic, environmental, and heritage impacts, and a strategy to optimize positive impacts, including the sharing of benefits;
- Programmes and activities regarding workers' rights, occupational health and safety, gender equality, Indigenous Peoples and local community relations, local economic and social development, land acquisition (if applicable), stakeholder engagement, and resolution of grievances, in line with The organization's policies and objectives for socially beneficial management;
- The existing regulatory framework (i.e., forestry laws), the rights of the community, and how these rights are affected by the planned forestry operation, such as surrendering of land rights;

- The different kinds of benefits and payments foreseen for the community;
- How the activities will be managed, who will make which decisions;
- The personnel likely to be involved in the execution of the proposed operation (including Indigenous Peoples, private sector staff, research institutions, government employees, and others); and
- Social monitoring systems and other procedures.

ACTIONS FOR CONSIDERATION:

- Revise management activities and adapt the draft management plan; in some cases, this may be integrated with participatory mapping and impact assessments (integrated processes) in Step 3.
- Consider how requirements under Principles 2 and 5 may fulfil some of the needs and concerns of the affected rights holder.

4.2 The Affected Rights Holder Decides on Further Negotiations

Revised management activities are presented to the affected rights holder for consideration in an internal decision-making process. Specifically, the affected rights holder decides whether they want to continue the FPIC process and negotiate an FPIC Agreement.

If the affected rights holder decides not to continue with negotiations, they have the right to withdraw from the FPIC process, using a mutually agreed withdrawal process established in a Process Agreement (or protocol). It is up to The Organization to make every effort to understand their reasons for withdrawal. While an attempt to revisit the consent question at a later stage is possible, The Organization continues to uphold the right of the affected rights holder to withhold consent to management activities that affect their rights.

FPIC is central to the successful implementation of Principles 3 and 4, and the FPIC process needs to consider other requirements in the relevant NFSS. An effective FPIC process may generate information that fulfils other criteria. Significant benefit is possible if The Organization continues to engage in, and allocate resources to, an FPIC process, regardless of the decision.

Other FSC P&C that require The Organization to mitigate impacts to Indigenous Peoples' and local community rights in Criteria 1.6, 3.4, 7.6, and 9.1 of the relevant NFSS.

ACTIONS FOR CONSIDERATION:

- Ensure all members of the certification team understand the benefit of culturally appropriate engagement with affected rights holders in all aspects of FSC P&C implementation.
 - Present draft final proposal for consideration and negotiation towards a final FPIC agreement.
 - Acknowledge and support the affected rights holder's decision-making process.
- If the affected rights holder decides not to engage in further negotiations, The Organization may attempt to:
 - Understand the risks of proceeding with proposed activities affecting their rights, resources, lands, or territories,
 - Modify or postpone activities to avoid any impacts on their rights, and/or
 - Continue engagement with the affected rights holder.

STEP 5: Prepare for Rights Holder Deliberations on the FPIC Agreement

Elements of Step 5

- 5.1 Determine the readiness of all parties to enter negotiations
- 5.2 Negotiate mitigation, compensation, restoration and benefit sharing
- 5.3 Establish arrangements for resolving disputes
- 5.4 Set up a participatory monitoring process
- 5.5 The affected rights holder adopts a decision regarding proposed management activities

5.1 Determine Readiness of All Parties to Enter Negotiations

The art of reaching an agreement is unique to every culture and, in some instances, strict protocols may exist on how decisions are made. The objective of the FPIC Agreement is to outline the actions to be undertaken to prevent, minimize, compensate and mitigate the conditions under which management activities may impact collective rights. These impacts may be permanent or temporary depending on the nature and scope of the management activity.

Capacity building for negotiations at this stage may include the following areas of competency depending on the mitigation measures proposed. They are also valuable assets over the entire FPIC process:

- Legal advice;
- Dispute resolution, negotiation and mediation skills, and advocacy techniques;
- Monitoring and reporting skills;
- Training in effective participation in forest management partnerships, if applicable;
- Training in transparent and accountable bookkeeping and financial management; and
- Negotiating mitigation, compensation, restoration, and benefit sharing.

ACTIONS FOR CONSIDERATION:

- Review all parties' obligations and targets established through the Process Agreement.
- Verify The Organization's understanding of the affected rights holder's decision-making process (i.e., who has authority to represent and conclude negotiations).
- Ensure negotiators are fully resourced to enter negotiations with the affected rights holder.
- Document the fulfilment of benchmarks of community capacity readiness.

5.2 Negotiate Mitigation, Compensation, Restoration and Benefit Sharing

Negotiations consist of a dialogue on proposals, interests, and concerns related to the management activities affecting the rights on identified lands, territories and resources. Periods of negotiation and interactive dialogue are likely to be integrated into the negotiations, with time allowed for representatives to freely discuss among themselves any concerns related to the proposed management activities.

Part III Sections on Benefit Sharing and Past Grievances should be reviewed along with this section.

The parties to the negotiation strive to ensure that the scope of negotiations is an accurate reflection of the impact of all management activities. Perceptions of impacts will differ *between*, and *within*, affected rights holder groups; therefore, each affected rights holder is treated as an independent, self-determined group. Consider early discussions on the following topics (some discussed in more detail in the following sections):

- Measures to mitigate the negative and optimize the positive impacts;
- Compensation for past, current, or future losses or damages associated with the management activities of The Organization;
- Benefit sharing (e.g., revenue, job opportunities, and co-management options);
- Dispute resolution process;
- Conditions that trigger a dispute resolution process; and
- Treatment of new ideas arising during negotiations.

The affected rights holder is provided access to the results of impact assessments (Step 3 (3.2)). Strategies that prevent and mitigate impacts are included in the negotiation process, along with an implementation plan that includes the monitoring of compliance and impact indicators (see 5.4 Participatory Monitoring Model).

The implementation plan for the FPIC Agreement is not dependent on the participation of third-party stakeholders, such as state governments, to be effective. If in Step 2 (2.1) such a stakeholder sought to participate as part of their legal or legislated duties, this is indicated as early as possible. All parties have the records, or access to the records, of all agreements with third parties.

Negotiations and the implementation of agreed measures are likely to happen on an ongoing basis and may not be a separate step as it appears here. As with all steps presented in this Guideline, the intent is to ensure that an activity that fulfils the same objectives of the steps outlined here happens at some point in the FPIC process.

Table 2 on page 26 of this Guideline provides examples of criteria that may be discussed and addressed as part of a comprehensive FPIC process.

It is worth reiterating that the FPIC process needs to take place in the context of the entire NFSS. Table 2 provides examples of Criteria that may be discussed and addressed as part of a comprehensive FPIC process.

ACTIONS FOR CONSIDERATION:

- Do not rush negotiations and ensure the Process Agreement is implemented.
 - Take the time needed to negotiate in good faith and to the satisfaction of those affected.

- Confirm the process by which representatives will conclude the negotiation process.
- Ensure there is a complete set of records for the negotiation process (e.g., meeting minutes); these documents may be co-developed.

5.3 Establish Arrangements for Resolving Disputes

It is recommended that The Organization and the affected rights holder be prepared for unforeseen developments and changes in circumstances. Despite good faith efforts, the parties involved may still raise grievances that, if not resolved, escalate into disputes. A dispute resolution process is a safeguard to maintain a good relationship and is critical for the resolution of grievances.

A dispute resolution process does not remove the right to withhold consent. It provides an opportunity to resolve grievances before they escalate to a dispute (or a dispute of substantial magnitude).

Where local or national laws for resolving disputes and addressing compensation exist, The Organization assesses how their implementation fulfils the requirements of the NFSS and whether the affected rights holder agree these mechanisms are appropriate.

ACTIONS FOR CONSIDERATION:

- Review established dispute resolution process included in the Process Agreement (Step 2.5).
- Provide the affected rights holder with a reliable contact who is available and able to communicate in their preferred language and format.
- Schedule regular meetings with the affected rights holder so that individuals or the community can raise their concerns.

5.4 Set up a Participatory Monitoring Process

This step focuses on the development of a longer-term participatory monitoring model for the implementation of the negotiated FPIC Agreement reached as a result of the FPIC process. Monitoring the implementation of the FPIC agreement allows the parties to make improvements over time and where necessary.

A more detailed explanation of participatory monitoring is provided in Part III of this Guideline.

ACTIONS FOR CONSIDERATION:

- Identify and communicate to the affected rights holder who within The Organization will be responsible for monitoring the FPIC agreement.
- Distinguish between monitoring established in the Process Agreement and monitoring the implementation of the FPIC Agreement.

5.5 The Affected Rights Holder Adopts a Decision Regarding the Proposed Management Activities

Decisions on proposed management activities made throughout the FPIC process are discussed by the affected rights holder. The Organization allows time for internal discussion by the affected rights holder on interim agreements as per the conditions of

the FPIC process and explicitly acknowledge that the affected rights holder has the right to grant, withhold or withdraw their consent to all or parts of the proposal.

If the decision of the affected rights holder is to withhold consent, with or without conditions, and an FPIC Agreement is not reached, The Organization continues to respect and uphold their decision. In some cases, when consent is withheld, the FPIC process itself may still be considered satisfactory and beneficial by the affected rights holder as per *FSC Policy Motion 40/2017*. If this is the case, The Organization confirms with the affected rights holder that management activities will not violate identified legal and/or customary rights.

The text of Policy Motion 40/2017 is included on Page 12.

ACTIONS FOR CONSIDERATION:

- Ensure that time and resources are available for the affected rights holder to decide according to their internal decision-making process (included in the Process Agreement).

STEP 6: Verify and Formalize the FPIC Agreement

Elements of Step 6

- 6.1 Consider using a third-party verification mechanism
- 6.2 Formalize the FPIC Agreement

6.1 Consider using a Third-Party Verification Expert

Ultimately, the CB has the responsibility to verify that the affected rights holder has made a decision under the conditions of FPIC. If consent has not been granted, then the CB assesses whether the FPIC process is progressing in a meaningful way and to the satisfaction of the rights holder, as per the requirements of the relevant NFSS.

However, involving an independent third-party verifier with specialized knowledge in the FSC FPIC process and national/regional contexts for human rights may contribute greatly to delivering the evidence needed by CBs to assess whether The Organization fulfils the requirements of the relevant NFSS.

Verification is a proactive measure to enable early detection of failed or inadequate process design, function, or resourcing. If voluntary verification identifies specific deficiencies in the process of obtaining consent, all parties can have an open dialogue and mitigate identified deficiencies.

ACTIONS FOR CONSIDERATION:

- Discuss the use of independent verification with the affected rights holder, particularly in complex operating environments.
 - Mutual agreement is an essential provision for the engagement of an independent observer.

- Document and share independent verification results with the affected rights holder as per the Process Agreement.
- Work to reach mutual agreement on the content and format of the FPIC Agreement.

6.2 Formalize the FPIC Agreement

Once an FPIC Agreement is reached, all parties are bound by it and consent cannot be arbitrarily withdrawn. As explained in the development of the Process Agreement (Step 2 (2.4)), a practical, forward-looking FPIC Agreement will include the conditions upon which consent is granted and a dispute resolution process is triggered (i.e., when the rights holder is considering withdrawing consent).

The monitoring mechanism established in Step 5 (5.4) will ensure the parties adhere to the agreed activities. If they do not, or if information becomes available that gives good reason to reconsider or renegotiate the FPIC Agreement, the parties can make use of established dispute resolution mechanisms (i.e., Process Agreement or FPIC Agreement).

An affected rights holder may not want to enter a legally binding agreement with The Organization, as it may be perceived to have repercussions for any legal position or negotiation status with the state. In these situations, parties may decide to utilize a different form of agreement (e.g., Memorandum of Understanding or Protocol Agreement) with explicitly stated objectives to respect the right to grant, withhold or withdraw FPIC. It is helpful to discuss this scenario early in the development of the Process Agreement (Step 2).

ACTIONS FOR CONSIDERATION:

- Maintain appropriate records of all agreements, including written accounts and audio or film records.
 - Make records available to the parties of the agreement in their preferred language and media formats.

STEP 7: Implement and Monitor the FPIC Agreement

Element of Step 7

7.1 Implement and jointly monitor the FPIC agreement

7.1 Implement and Jointly Monitor the FPIC Agreement

The relationship between The Organization and the affected rights holder does not end once an FPIC Agreement is negotiated. By honouring the FPIC Agreement and applying the tools and knowledge acquired during the FPIC process, all parties continue to invest in maintaining a good relationship.

Representatives of the involved parties respect each other and continue to be accessible, and willing and able to find solutions after the initial agreement is established. Any significant new information or changing circumstances, e.g., legal or regulatory context or changes in governance and representation of the affected rights holder, is shared transparently and discussed when the activities observed do not conform to the terms and conditions of the Agreement.

A joint monitoring plan between the parties to the FPIC Agreement will offer opportunities for continuous improvement. Just as with the Process Agreement, the parties may learn that there are different perceptions of success and therefore differing indicators and values will be expected and mutually agreed in the monitoring plan.

By this stage, The Organization and the affected rights holder have established a mutually agreed preliminary list of indicators to monitor the implementation of the FPIC Agreement. The parties remain accessible to each other and open to periodic reviews of the agreements, especially when new information is shared.

ACTIONS FOR CONSIDERATION:

- Ensure monitoring is participatory and focuses on whether the FPIC Agreement and the associated management plans are being implemented as agreed.
 - Monitor the FPIC Agreement and make records available to all parties to the Agreement.
- Maintain relationships in good faith, understanding that at any time an affected rights holder may give reason for withdrawing consent, thereby triggering the dispute resolution process.

E. Part III: Key Concepts

This section of the Guideline provides a brief introduction of key concepts found throughout the FSC P&C to connect them with the implementation of an FPIC process. This section also provides a starting point for the development of a Process Agreement.

Benefit Sharing

The Organization evaluates how planned management activities build long-lasting and mutually beneficial relationships, including reasonable benefits for the affected rights holder. Benefit sharing is part of the FPIC process negotiations and will be proportionate to the scale and/or intensity of impacts on the lands, territories and resources of the affected rights holder.

Benefits may be broadly defined, but they are generally discussed in reference to contributions to the social and economic development of the collective, or community; for example, joint ventures, profit-sharing, sharing of resource revenue harvested from the territory, provision of goods and services, e.g., roads, clinics, housing, and schools, preferential employment, training, and contributions to community development funds.

Binding Agreement

A 'binding agreement' is defined by FSC as "a deal or pact, written or not, which is compulsory to its signatories and enforceable by law. Parties involved in the agreement do so freely and accept it voluntarily." It describes any agreement that is ratified by the affected rights holder and documented in writing or another culturally appropriate format. The requirements of a binding agreement are found in IGI 3.3.1 and provided in the text box below (FSC-STD-60-004 V2-0, emphasis added).

A consent decision documented through an agreement and negotiated in good faith should not be withdrawn arbitrarily – it is 'binding' on all parties.

3.3.1 Where control over management activities has been granted through *Free Prior and Informed Consent** based on *culturally appropriate* engagement**, the *binding agreement** contains the **duration, provisions for renegotiation, renewal, termination, economic conditions and other terms and conditions.**

In the context of an ongoing FPIC process, any agreement reached serves its intended purpose as long as it is subject to a continuous process of dialogue and monitoring for compliance.

However, a consent decision cannot be expected to limit the affected rights holder to conditions in an agreement when evidence exists that those conditions have been breached or they are no longer valid in light of new information or conditions. Given that situations change, agreements will be strengthened with provisions for dispute resolution renewal, termination, economic conditions and other terms and conditions.

Once consent is given and documented through an agreement, the principle of good faith negotiation dictate that neither party withdraw their decision arbitrarily – it is 'binding' on both parties. Therefore, if the conditions upon which the original consent was based are

being met, and to the satisfaction of the affected rights holder, ongoing consent is implied. If the affected rights holder indicates they are considering withdrawing a consent decision, the parties to the agreement shall attempt a resolution of the issues before withdrawing consent using an agreed dispute resolution mechanism negotiated in a Process Agreement or FPIC Agreement. If there is new information or a change in conditions, The Organization uses their best effort to determine the reason and document it, noting the change of conditions to the agreement and plans to mitigate negative impacts on identified rights.

There are practical considerations that may impact the ability of The Organization to produce a binding agreement at the time of audit. For example, competing economic priorities, an unplanned community event, a governance issue or legal and judicial obstacles can arise when Indigenous Peoples' institutions lack legal standing in national law, or Indigenous Peoples are not recognized by or registered as citizens of the state. This reinforces the importance of respecting customary laws and honouring customary systems for maintaining agreements. Should a binding agreement be perceived as a threat to legal standing, a clause may be included in the agreement to allow the affected rights holder to accept the temporary activities of The Organization without prejudice to claims of legal or customary rights.

Culturally Appropriate Engagement

The phrase 'culturally appropriate' is defined in the FSC Glossary of Terms and used throughout the FSC P&C and IGIs concerning the design and implementation of dispute resolution and engagement processes with workers, stakeholders and rights holders. It is a concept closely aligned with all elements of the FPIC process.

Culturally appropriate processes consider cultural differences, such as:

- Preferences for direct or indirect negotiation;
- Attitudes towards competition, cooperation, and disputes;
- Desire to preserve relationships among complainants;
- Authority, social rank, and status;
- Ways of understanding and interpreting the world;
- Concepts of time and time management;
- local belief system and worldviews, e.g., ceremony and spirituality;
- attitudes towards third parties, and
- the broader social and institutional environment in which management activities occur.

The most informative guidance on the expectations of 'culturally appropriate engagement' can be found in Criterion 7.6 (FSC-STD-60-004 V2-0). Relevant Indicators are noted in the following text box.

Depending on the SIR of the management activities, The Organization may engage local experts as facilitators or interpreters to develop a corporate policy statement that communicates a commitment to respect customs, values, sensitivities, and ways of life of the people that may be affected by their management activities.

Indicators in Criterion 7.6 that describe the concept of culturally appropriate engagement

7.6.1 *Culturally appropriate* engagement** is used to ensure that *affected stakeholders** are proactively and transparently engaged in the following processes:

- 1) *Dispute** resolution processes (*Criterion** 1.6, *Criterion** 2.6, *Criterion** 4.6);
- 2) Definition of *Living wages** (*Criterion** 2.4);
- 3) Identification of rights (*Criterion** 3.1, *Criterion** 4.1), *Indigenous cultural landscapes** (*Criterion** 3.1) sites (*Criterion** 3.5, *Criterion** 4.7) and impacts (*Criterion** 4.5);
- 4) *Local communities** socio-economic development activities (*Criterion** 4.4); and
- 5) *High Conservation Value** assessment, management and monitoring (*Criterion** 9.1, *Criterion** 9.2, *Criterion** 9.4).

7.6.2 *Culturally appropriate* engagement** is used to:

- 1) Determine appropriate representatives and contact points (including where appropriate, local institutions, organizations and authorities);
- 2) Determine mutually agreed communication channels allowing for information to flow in both directions;
- 3) Ensure all actors (women, youth, elderly, minorities) are represented and engaged equitably;
- 4) Ensure all meetings, all points discussed, and all agreements reached are recorded;
- 5) Ensure the content of meeting records is approved; and
- 6) Ensure the results of all culturally appropriate* engagement* activities are shared with those involved.

7.6.3 *Affected rights holders** and *affected stakeholders** are provided with an opportunity for *culturally appropriate* engagement** in monitoring and planning processes of management activities that affect their interests.

Dispute Resolution

A dispute resolution process is a mutually agreed proactive measure to resolve differences under an existing agreement and/or prevent the breakdown of negotiations. Early in the FPIC process, it is recommended that The Organization and the affected rights holder establish a mutually agreed dispute resolution mechanism. It is also incumbent on The Organization to inform all affected rights holders of the three-step dispute resolution process within the FSC system, Processing Complaints (FSC-PRO-01-008 V2-0) and Processing Appeals (FSC-PRO-01-005 V3-0), starting with The Organization, then the certification body, and finally, Accreditation Services International (ASI). Depending on the circumstances of the dispute and the capacity of the affected rights holder, third-party assistance may be required to engage in the FSC system.

General guidance for a dispute resolution process:

- Co-develop a dispute resolution process that prioritizes the protocol of the affected rights holder;
- Keep it simple and accessible;
- Mutually agree to a process;
- Jointly select a neutral third party to facilitate the process if needed; and
- Provide local managers with the mandate to seek time-bound solutions.

The affected rights holder may request that past grievances be addressed before granting consent for future management activities that may affect their legal or customary

rights. Early discussions on the limits of FSC certification are critical for establishing reasonable expectations and strategies for redress.

However, if a dispute related to the proposed management activities persists, and there is an opportunity to support the development of a resolution, The Organization may consider strategic actions to facilitate an FPIC process despite an ongoing dispute. For example, The Organization may consider providing support to build community capacity or offer guidance in the development of clear land tenure claims when rights of ownership and use of lands, territories and resources are contested or in dispute.

Guidance for National Offices and Standard Development Groups

Standard Development Groups may want to suggest a regional framework for dispute resolution that can be shared with all affected rights holders.

FSC National Offices are encouraged to monitor disputes registered by CBs and ASI to understand circumstances and inform future guidance.

There are several FSC P&C and IGIs (FSC 2018) with requirements relevant to identifying and addressing grievances and disputes:

- C3.3, IGI 3.3.3;
- C7.6, IGI 7.6.1, 7.6.3;
- C8.2, IGI 8.2.1, C8.3, IGI 8.3.1, 8.3.2, Annex G to P8; and
- C9.4, IGI 9.4.1, 9.4.2, 9.4.3 and 9.4.4.

When a Dispute Cannot Be Resolved within the FSC System

When a dispute cannot be resolved within the limits of the FSC system, it would be helpful to utilize a dispute resolution mechanism to establish the nature and scope of the dispute impacting the FPIC process. If it becomes clear that the dispute is not with the proposed management activities of The Organization, but it involves specific areas (e.g., sacred sites or access areas) or resources (e.g., non-timber forest resource) under the proposal for FSC certification, the parties may consider negotiating conditions for continued management activities on the lands and territories not under direct dispute. It would be helpful to outline where, why, and how management activities will be conducted, based on the Best Available Information.

If a dispute exists with a party other than The Organization and, as a result, the affected rights holder declines an offer of engagement or withholds a decision on proposed management activities, The Organization is still responsible for upholding the rights of the affected rights holder as per the requirements of the applicable NFSS.

Disputes related to contested lands and forest concession allocations made without the free, prior and informed consent of affected rights holders are highly context dependent. The Organization would benefit from an early review of ILO 169 and UNDRIP as per Criteria 3.4 and the relevant national NFSS. Regardless of the state position on Indigenous rights, including the right to property and self-determination, these international instruments are the benchmark of FSC's Principle 3 to uphold Indigenous Peoples' rights.

Participatory Monitoring

Participatory monitoring in the context of the FPIC process is the systematic recording and analysis of indicators that has been chosen and recorded by the affected rights holder and The Organization to inform all parties on the progress (or lack of progress) on the FPIC process.

The purpose of participatory monitoring is to provide information during the life of the FSC certificate, so that modifications to management activities can be made if necessary. This is particularly important in an FPIC process that might have multiple agreements (e.g., Process Agreement and FPIC Agreement) with different goals and objectives.

The affected rights holder is involved in deciding who will do the data collection, and how, and when the periodic analysis will take place (i.e., after implementation, when the management activities have begun, the recording starts). Set periods of data gathering and analysis are established at a frequency appropriate to the activity (e.g., daily, weekly, monthly, seasonally, or annually).

Monitoring focuses on ensuring that the FPIC agreement and associated management and mitigation plans are implemented correctly during management activities. Participatory monitoring can be introduced at any stage of the FPIC process; however, it is best introduced early, before activities are implemented ('prior'). Ideally, the monitoring plan is discussed and documented in a Process Agreement, reflecting the SIR of the management activities.

Benefits of participatory monitoring include a record of the affected rights holders' satisfaction with the FPIC process (an important consideration for IGI 3.2.5), early identification of problems and solutions, maintenance of agreed standards of engagement, and effective use of resources in a system that requires multiple monitoring activities (e.g., Principle 7).

Past Grievances

The historical context of land tenure and concession allocation may have resulted in significant disputes between Indigenous Peoples, local communities, the state and proponents of resource development. Some affected rights holders identified through the FPIC process may wish to address past grievances as a condition for reaching consent on future management activities. This may be particularly true for affected Indigenous rights holders asserting their rights according to UNDRIP as per Criterion 3.4 (see ANNEX B: Relevant Article of ILO 16 and UNDRIP).

However, grievances over past decisions that have affected legal and/or customary rights may not be within the scope of The Organization's management activities. As general guidance, it is reasonable to assume that compensation for historical actions by the state remain the responsibility of the state. The Organization may be held responsible for its management actions that result in lands, territories, and resources of the affected rights holder being confiscated, taken, occupied, used, or damaged without their free, prior and informed consent.

Negotiations on existing and unresolved disputes can be undertaken with the understanding that The Organization may have limited influence on the outcome. Depending on the context of the management unit, redress or compensation for actions that resulted in negative impacts on legal and/or customary rights may include:

- Return land to the affected rights holder;
- Shared management authority;
- Rehabilitation of affected lands and forests;
- Compensation for the relinquishment of rights;
- Compensation for losses and damages; and
- Improved benefits through agreements, participatory forest management arrangements, employment and training opportunities for workers or other arrangements of mutual interest.

If any of these options are beyond the legal limits or economic viability of The Organization, it may adopt an advocacy role, having obtained the consent of the affected rights holder to do so, and encourage or facilitate dialogue between responsible state authorities and the affected rights holder aiming for redress and settlement of past grievances.

Note: The relevant approved NFSS Standards Development Group will have reviewed the IGIs in Criterion 3.4 and adopted, added, adapted modified or dropped IGIs consistent with their national context. National Offices will inform The Organizations and affected rights holders of the NFSS requirements.

F. ANNEX A: Glossary of Terms

Terms defined in FSC-STD-01-001 V5-12 EN (2015)

Affected stakeholder: Any person, group of persons or entity that is or is likely to be subject to the effects of the activities of a Management Unit. Examples include but are not restricted to (for example in the case of downstream landowners), persons, groups of persons or entities located in the neighbourhood of the Management Unit. The following are examples of affected stakeholders:

- Local communities
- Indigenous Peoples
- Workers
- Forest dwellers
- Neighbours
- Downstream landowners
- Local processors
- Local businesses
- Tenure and use rights holders, including landowners
- Organizations authorized or known to act on behalf of affected stakeholders, for example, social and environmental NGOs, labour unions, etc.

(Source: FSC-STD-01-001 V5-2).

Affected rights holder: Persons and groups, including Indigenous Peoples, traditional peoples and local communities with legal or customary rights whose free, prior and informed consent is required to determine management decisions (Source: FSC-STD-60-004 V2-0).

Best Available Information: Data, facts, documents, expert opinions, and results of field surveys or consultations with stakeholders that are most credible, accurate, complete, and/or pertinent and that can be obtained through reasonable effort and cost, subject to the scale and intensity of the management activities and the Precautionary Approach. (Source: FSC-STD-01-001 V5-2).

Binding Agreement: A deal or pact, written or not, which is compulsory to its signatories and enforceable by law. Parties involved in the agreement do so freely and accept it voluntarily. (Source: FSC-STD-60-004 V2-0).

Certificate: A document issued under the rules of a certification system, indicating that adequate confidence is provided that a duly identified product, process or service is in conformity with a specific standard or other normative document (ISO/IEC Guide 2:1991 paragraph 14.8 and ISO/CASCO 193 paragraph 4.5). (Source: FSC-STD-20-001 V4).

Conflicts between the Principles and Criteria and laws: Situations where it is not possible to comply with the Principles and Criteria and a law at the same time (Source: FSC-STD-01-001 V5-2)

Culturally appropriate [mechanisms]: Means/approaches for outreach to target groups that are in harmony with the customs, values, sensitivities, and ways of life of the target audience. (Source: FSC-STD-01-001 V5-2).

Customary law: Interrelated sets of customary rights may be recognized as customary law. In some jurisdictions, customary law is equivalent to statutory law, within its defined area of competence and may replace the statutory law for defined ethnic or other social groups. In

some jurisdictions customary law complements statutory law and is applied in specified circumstances (Source: FSC-STD-01-001 V5-2).

Customary rights: Rights which result from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit (Source: FSC-STD-01-001 V5-2).

Dispute: for the purpose of the IGI, this is an expression of dissatisfaction by any person or organization presented as a complaint to The Organization, relating to its management activities or its conformity with the FSC Principles and Criteria, where a response is expected (Source: FSC-STD-60-004 V2-0).

Dispute of substantial magnitude: For the purpose of the International Generic Indicators, a dispute of substantial magnitude is a dispute that involves one or more of the following:

- Affects the legal or customary rights of Indigenous Peoples and local communities;
- Where the negative impact of management activities is of such a scale that it cannot be reversed or mitigated;
- Physical violence;
- Destruction of property;
- Presence of military bodies;
- Acts of intimidation against forest workers and stakeholders

(Source: FSC-STD-60-004 V2-0).

Engaging or engagement: The process by which The Organization communicates, consults and/or provides for the participation of interested and/or affected stakeholders ensuring that their concerns, desires, expectations, needs, rights and opportunities are considered in the establishment, implementation and updating of the management plan (Source: FSC-STD-01-001 V5-2).

Free, Prior and Informed Consent (FPIC): A legal condition whereby a person or community can be said to have given consent to an action prior to its commencement, based upon a clear appreciation and understanding of the facts, implications and future consequences of that action, and the possession of all relevant facts at the time when consent is given. Free, prior and informed consent includes the right to grant, modify, withhold or withdraw approval (Source: FSC-STD-01-001 V5-2).

Good faith: A process of engagement where the parties make every effort to reach an agreement, conduct genuine and constructive negotiations, avoid delays in negotiations, respect agreements concluded and under development, and give sufficient time to discuss and settle disputes (adapted from Motion 40:2017) (Source: FSC-STD-60-004 V2-0).

Good Faith in negotiation: The Organization (employer) and workers' organizations make every effort to reach an agreement, conduct genuine and constructive negotiations, avoid unjustified delays in negotiations, respect agreements concluded and give sufficient time to discuss and settle collective disputes (Source: FSC-STD-60-004 V2-0).

Indigenous Peoples: People and groups of people that can be identified or characterized as follows:

- The key characteristic or Criterion is self-identification as Indigenous Peoples at the individual level and acceptance by the community as their member;
- Historical continuity with pre-colonial and/or pre-settler societies;
- Strong link to territories and surrounding natural resources;
- Distinct social, economic or political systems;
- Distinct language, culture and beliefs;
- Form non-dominant groups of society;
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

(Source: FSC-STD-01-001 V5-2).

Indigenous cultural landscapes: Indigenous cultural landscapes are living landscapes to which Indigenous Peoples attribute environmental, social, cultural and economic value because of their enduring relationship with the land, water, fauna, flora and spirits and their present and future importance to their cultural identity. An Indigenous cultural landscape is characterized by features that have been maintained through long-term interactions based on land-care knowledge and adaptive livelihood practices. They are landscapes over which Indigenous Peoples exercise responsibility for stewardship.

NOTE: The adoption of the term Indigenous cultural landscapes is voluntary by Standard Development Groups. Standard Development Groups may choose not to use it. Through Free Prior and Informed Consent, Indigenous Peoples may choose to use different terminology. (Source: FSC-STD-60-004 V2-0)

Intensity: A measure of the force, severity or strength of a management activity or other occurrence affecting the nature of the activity's impacts (Source: FSC-STD-01- 001 V5-2).

Interested stakeholder: Any person, group of persons, or entity that has shown an interest, or is known to have an interest, in the activities of a Management Unit. The following are examples of interested stakeholders.

- Conservation organizations, for example environmental NGOs; Labour (rights) organizations, for example labour unions;
 - Human rights organizations, for example social NGOs;
 - Local development projects;
 - Local governments;
 - National government departments functioning in the region;
 - FSC National Offices; and
 - Experts on specific issues, for example High Conservation Values.
- (Source: FSC-STD-01-001 V5-2).

Landscape values: Landscape values can be visualized as layers of human perceptions overlaid on the physical landscape. Some landscape values, like economic, recreation, subsistence value or visual quality, are closely related to physical landscape attributes. Other landscape values such as intrinsic or spiritual value are more symbolic in character and are influenced more by individual perception or social construction than physical landscape attributes (Source: FSC-STD-01-001 V5-2).

Legal: In accordance with primary legislation (national or local laws) or secondary legislation (subsidiary regulations, decrees, orders, etc.). 'Legal' also includes rule-based decisions made by legally competent agencies where such decisions flow directly and logically from

the laws and regulations. Decisions made by legally competent agencies may not be legal if they do not flow directly and logically from the laws and regulations and if they are not rule-based but use administrative discretion (Source: FSC-STD-01-001 V5-2).

Local communities: Communities of any size that are in or adjacent to the Management Unit, and also those that are close enough to have a significant impact on the economy or the environmental values of the Management Unit or to have their economies, rights or environments significantly affected by the management activities or the biophysical aspects of the Management Unit (Source: FSC-STD-01-001 V5-2)

National laws: The whole suite of primary and secondary laws (acts, ordinances, statutes, decrees), which is applicable to a national territory, as well as secondary regulations, and tertiary administrative procedures (rules/requirements) that derive their authority directly and explicitly from these primary and secondary laws (Source: FSC-STD-01-001 V5-2).

Organization, The: The person or entity holding or applying for certification and therefore responsible for demonstrating compliance with the requirements upon which FSC certification is based (Source: FSC-STD-01-001 V5-2).

Plantation: A forest area established by planting or sowing with using either alien or native species, often with one or few species, regular spacing and even ages, and which lacks most of the principal characteristics and key elements of natural forests. The description of plantations may be further defined in FSC Forest Stewardship Standards, with appropriate descriptions or examples, such as:

- Areas which would initially have complied with this definition of 'plantation' but which, after the passage of years, contain many or most of the principal characteristics and key elements of native ecosystems, may be classified as natural forests.
- Plantations managed to restore and enhance biological, and habitat diversity, structural complexity and ecosystem functionality may, after the passage of years, be classified as natural forests.
- Boreal and north temperate forests which are naturally composed of only one or few tree species, in which a combination of natural and artificial regeneration is used to regenerate forest of the same native species, with most of the principal characteristics and key elements of native ecosystems of that site, may be considered as natural forest, and this regeneration is not by itself considered as conversion to plantations.

(Source: FSC-STD-01-001 V5-2).

Precautionary approach: An approach requiring that when the available information indicates that management activities pose a threat of severe or irreversible damage to the environment or a threat to human welfare, The Organization will take explicit and effective measures to prevent the damage and avoid the risks to welfare, even when the scientific information is incomplete or inconclusive, and when the vulnerability and sensitivity of environmental values are uncertain (Source: FSC-STD-01-001 V5-2).

Risk: The probability of an unacceptable negative impact arising from any activity in the Management Unit combined with its seriousness in terms of consequences (Source: FSC-STD-01-001 V5-2).

Scale: A measure of the extent to which a management activity or event affects an environmental value or a management unit, in time or space. An activity with a small or low

spatial scale affects only a small proportion of the forest each year, an activity with a small or low temporal scale occurs only at long intervals (Source: FSC-STD- 01-001 V5-2).

Scale, intensity and risk (SIR): See individual definitions of the terms ‘scale’, ‘intensity’, and ‘risk’.

Traditional peoples: Traditional peoples are social groups or peoples who do not self-identify as indigenous and who affirm rights to their lands, forests and other resources based on long established custom or traditional occupation and use (Source: FSC-STD-01-001 V5-2).

Uphold: To acknowledge, respect, sustain and support (Source: FSC-STD-01-001 V5-2).

Additional Terms used in the Guideline

These terms are not defined within the FSC P&C normative framework. They are working definitions used by the Working Group to ensure a consistent interpretation during the development of this Guideline.

Best efforts: Persistent and sincere attempts by The Organization to address a requirement. Best efforts are not always met with success, but to address the Indicators’ requirements for best efforts, evidence must be presented that continuing efforts by various means have been attempted. (Source: FSC Canada Technical Expert Panel)

FPIC Agreement: A bond between The Organization and an affected rights holder that affirms a consent decision was reached based on all the necessary and accessible information on the potential impacts of management activities. The bond between the parties is documented in a culturally appropriate manner and is the result of a free, non-coercive dialogue between the parties prior to any management activity taking place that may affect the rights holder.

Management activities: Any or all operations, processes or procedures associated with managing a forest, including but not limited to planning, consultation, harvesting, access construction and maintenance, silvicultural activities (planting, site preparation, tending), monitoring, assessment and reporting. (Source: FSC Canada National Boreal Standard 2004)

Mediation: a procedure in which the parties discuss their dispute with the assistance of a trained impartial person who assists them in reaching a settlement/agreement. The mediator is a facilitator who has no power to render a resolution to the conflict.

Process Agreement: A bond between The Organization and an affected rights holder that affirms a mutually agreed to approach for negotiating the terms and conditions of an FPIC Agreement.

Tribal People: Tribal peoples are peoples who are “not indigenous to the region [they inhabit], but that share similar characteristics with indigenous peoples, such as having social, cultural and economic traditions different from other sections of the national community, identifying themselves with their ancestral territories, and regulating themselves,

at least partially, by their own norms, customs, and traditions”.⁴ This definition is in accordance with the provisions of Article 1.1.(a) of ILO Convention No. 169. (Source: http://cidh.org/countryrep/Indigenous-Lands09/Chap.III-IV.htm#_ftn12)

Without prejudice means that what follows in the document (or agreement in this case): (a) cannot be used as evidence in a court case; (b) cannot be taken as the signatory’s last word on the subject matter; and (c) cannot be used as a precedent.

⁴ I/A Court H.R., *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2007. Series C No. 172, par. 79

G. ANNEX B: Relevant Articles of ILO 16 and UNDRIP

Applicable articles of the United Nations Declaration on the Rights of Indigenous Peoples (2007)

Article 1: Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3: Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 7: (1) Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

(2) Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8: (1) Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

Article 9: Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10: Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the Free, Prior and Informed Consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11: (1) Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 12: (1) Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

Article 17 (1) Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

(3) Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18: Indigenous peoples have the right to participate in decision making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 20: (1) Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

(2) Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21: (1) Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

Article 22: (1) Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

(2) States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23: Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24: (1): Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26: (1): Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

(2): Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

Article 28: (1) Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their Free, Prior and Informed Consent.

(2): Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29: (1) Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

Article 31: (1) Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

Article 32: (1) Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

Article 34: Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 40: Indigenous peoples have the right to have access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Relevant articles of the ILO Convention 169 (1989):

Article 1: (1) This Convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

(2) Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

Article 3: (1) Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

(2) No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

Article 4: (1) Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

(2) Such special measures shall not be contrary to the freely expressed wishes of the peoples concerned.

Article 5: In applying the provisions of this Convention:

(a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) the integrity of the values, practices and institutions of these peoples shall be respected;

(c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

Article 7: (1) The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programs for national and regional development which may affect them directly.

Article 8: (1) In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

Article 14: (1) The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

Article 15: (1) The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

Article 16: (1) Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

(2) Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

(3) Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

(4) When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

(5) Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17: (1) Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

(2) The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

(3) Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 20: (2) ('Governments') shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

(a) admission to employment, including skilled employment, as well as measures for promotion and advancement;

(b) equal remuneration for work of equal value;

(c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

(d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organizations.

(3) The measures taken shall include measures to ensure:

(a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

(b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, through exposure to pesticides or other toxic substances;

(c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

(d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

Article 21: Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 23: (1) Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognized as important factors in the maintenance of their cultures and in their economic self-reliance and development.