



Forest Stewardship Council®



## **Public consultation summary report**

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

FSC-GUI-30-003 V2.0 draft V2.0

August, 2020

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## Overview

### Summary Top Topics in Public Consultation Results

The list below is summary of top topics from the public consultation forum on Draft 2.0 of the FSC IC FPIC Guideline. The list is not prioritized, nor is it attributed to sub chambers.

### Distribution of Responses by Sub-chamber

Sub-Chamber	Responses	%
Economic North	8	21
Economic South	8	21
Environment North	1	3
Environment South	0	
Social North	4	11
Social South	4	11
Non-Members	9	24
None provided	4	11
<b>Total Responses</b>	<b>38</b>	

### Distribution of Responses by Country

Sub-region	Country	Responses	
North	Canada	1	13
	<b>Sweden</b>	<b>3</b>	
	Switzerland	1	
	United States	1	
	<b>Finland</b>	<b>2</b>	
	<b>United Kingdom</b>	<b>2</b>	
	Portugal	1	
	Russia	1	
	Germany	1	
South	<b>Brazil</b>	<b>6</b>	25
	<b>Chile</b>	<b>9</b>	
	Peru	1	
	Sri Lanka	1	
	South Africa	1	
	Guatemala	1	
	Argentina	1	
	Ecuador	1	
	Cameroon	1	
	Nicaragua	1	
	Malaysia	1	
Indonesia	1		

Table 1: Summary of Top Topics identified in Public Consultation Comments and how they were addressed in draft V2.2 and proposals for draft V2.3

TOPIC	GENERAL SUMMARY OF COMMENTS <i>(To be edited before final version made public)</i>	WG RESPONSE	CHANGES MADE TO DRAFT V2.0
<b>Capacity Support</b>	<ul style="list-style-type: none"> <li>Clarify differences and intentions associated with providing support for capacity and benefit sharing agreements, and practices that might be viewed as coercive, manipulative etc. (i.e. violate the 'free' element of FPIC)</li> </ul>	<ul style="list-style-type: none"> <li>To be discussed.</li> </ul>	<ul style="list-style-type: none"> <li>Section 3.1 and 5.1 of D2.2</li> <li>Also addressed in the suggested contents of a Process Agreement (P. 31)</li> </ul>
<b>Certainty of Consent Decision (Lack of)</b>	<ul style="list-style-type: none"> <li>With changing leadership may come changes to FPIC process or agreement, regardless of past negotiations</li> <li>Concern that operations will not be certifiable because rights holders lack interest, capacity or they do not engage for other reasons that are beyond the control of the Organization</li> <li>What is 'reasonable' effort?</li> <li>Stress that withdrawal of a consent decision cannot be arbitrary</li> <li>Seek clarification on when consent is actually needed (scope of rights) as per the articles in UNDRIP and ILO; only when there is relocation or when proposals would result in significant loss/degradation of lands, resources and territories of affected rights holders</li> </ul>	<ul style="list-style-type: none"> <li>There is a very narrow view of FPIC proposed in the comments – i.e. relocation (UNDRIP Art 10); however according to UNDRIP, Art. 28 regarding the right to redress compensation may be necessary when “lands, territories and resources which they have traditionally owned or otherwise occupied or used and which have been confiscated, taken, occupied or used or damaged without FPIC.”</li> <li>The FPIC Process, and Principle 3 in general, is very much centered on identifying if, where and how management activities may have caused damage. If no damage, no FPIC required.</li> </ul>	<ul style="list-style-type: none"> <li>No arbitrary withdrawal is mentioned 8 times in the Guideline: <ol style="list-style-type: none"> <li>Under “Consent” in the Four Elements section, P. 13</li> <li>New point added under the suggested contents of a Process Agreement (P. 28) – dealing with FPIC Process only</li> <li>Section 4.2 on P.37, dealing with FPIC Process only</li> <li>Section 5.2 on P.40, dealing with negotiation processes</li> <li>Section 6.2 on P.44, formalizing the FPIC Agreement</li> <li>Section 7.1 on P.46 in Actions for Consideration</li> <li>Binding Agreement on P.47</li> <li>Iterative Proposals and Decision Making on P.51</li> </ol> </li> <li>'reasonable' is mentioned 3 times: Benefit sharing (P.49), Dispute Resolution (P.51) and Past Grievances (P. 54)</li> </ul>

TOPIC	GENERAL SUMMARY OF COMMENTS <i>(To be edited before final version made public)</i>	WG RESPONSE	CHANGES MADE TO DRAFT V2.0
<b>Conflict Resolution</b>	<ul style="list-style-type: none"> <li>The Organization is not a proxy for the state, yet the Guideline expects the Organization to assume responsibility for conflict resolution</li> <li>Role of the Organization when there are overlapping or conflicting goals for rights holders that share the same territory (parallel rights); suggestion to mention the use of customary laws to govern the settlement of overlapping rights</li> </ul>	<ul style="list-style-type: none"> <li>There should be no text that promotes the CH resolving a conflict, the text should focus on ‘do no more harm’ so the conflict resolution mechanism in a process agreement or the FPIC agreement would deal specifically with disputes arising between the parties, when its possible and within the sphere of influence of CH, they can also support resolution strategies</li> </ul>	<ul style="list-style-type: none"> <li>See customary law section on P.56 – this example can be brought forward and inserted in an earlier section on disputes. There is no formal description of the kinds of disputes that may exist – but unsure if this would add value.</li> </ul>
<b>Engagement</b>	<ul style="list-style-type: none"> <li>Unclear how the Organization is to ensure all members of a community with collectively held rights have participated or had a chance to participate in the internal decision-making process</li> <li>Differentiate between the right to FPIC and the right to participate in a public process</li> <li>Should be emphasized as a flexible process to suit the local circumstances and protocols</li> <li>CH should <i>not</i> be responsible for impacts from other sectors, i.e. cumulative impacts</li> </ul>	<ul style="list-style-type: none"> <li>To confirm that it is the responsibility of the Organization to ensure all segments of a community are engaged, not the Organization; commentators suggest that it is impossible to have The Organization carry out this responsibility</li> <li>To discuss the inclusion of cumulative impacts in final Guideline</li> </ul>	<ul style="list-style-type: none"> <li>Addressed to some extent under “Informed” on P.13</li> <li>Cumulative impacts addressed in section 3.2 on Participatory Mapping</li> </ul>
<b>FPIC Process (7-Step)</b>	<ul style="list-style-type: none"> <li>Too burdensome and too prescriptive</li> <li>Clarify the difference between an FPIC Process and an FPIC Agreement</li> <li>The responsibility of the certificate holder to uphold state legislated</li> </ul>	<ul style="list-style-type: none"> <li>If government timelines hinder the implementation of FPIC because, is it expected that the government timeline prevails? Is it possible that a government</li> </ul>	<ul style="list-style-type: none"> <li>Working on a simple diagram to relate the proposed Process Agreement, FPIC Process and FPIC Agreement – will be ready for DRAFT V2.3</li> </ul>

TOPIC	GENERAL SUMMARY OF COMMENTS <i>(To be edited before final version made public)</i>	WG RESPONSE	CHANGES MADE TO DRAFT V2.0
	<p>requirements in terms of timelines should also be recognized</p>	<p>timeline could make a MU uncertifiable?</p> <ul style="list-style-type: none"> <li>• This seems to be an example of ‘conflict with national laws’ and therefore treated as such. Gov’t timelines are not a justifiable reason for rushing or coercing a process.</li> <li>• Suggestions for this scenario may help in draft V2.3</li> </ul>	
<p><b>Local Communities (Principle 4)</b></p>	<ul style="list-style-type: none"> <li>• Definition of local community is too broad</li> <li>• Clarify that for local communities, only referring to legal and customary rights within MU</li> </ul>		<ul style="list-style-type: none"> <li>• Removed any paragraphs that attempted to distinguish P3 and P4 rights; only references to local communities are in references to the normative framework</li> </ul>
<p><b>Plantations</b></p>	<ul style="list-style-type: none"> <li>• Assumption that all plantations have negative impacts, bias towards very large plantation</li> <li>• Guideline equates plantation with conversion</li> <li>• What does ‘prior’ mean in the plantation context?</li> </ul>	<ul style="list-style-type: none"> <li>• To review the section on “prior” and confirm that it is suitable for guiding forest management activities on plantations</li> <li>• To consider and discuss the implications of the following language from the first draft of V2.0 “For Organizations that have been implementing forest management activities for a period of time before deciding to pursue FSC certification, or for Organizations that manage a MU that is already FSC certified but have yet to obtain a negotiate, binding consent</li> </ul>	<ul style="list-style-type: none"> <li>• The plantation section was significantly reduced to remove redundancies</li> <li>• Suggesting that if more information is needed to guide FM in a plantation context, a specific information note that can later be added as an Annex to the Guideline be developed that inclusive and representative of all types, sizes and ecological contexts.</li> </ul>

TOPIC	GENERAL SUMMARY OF COMMENTS <i>(To be edited before final version made public)</i>	WG RESPONSE	CHANGES MADE TO DRAFT V2.0
		agreement, the basic rule states that consent needs to be obtained ‘from now on’.” This would be added to the ‘Prior’ section on P.12	
Rights holders	<ul style="list-style-type: none"> <li>• Encourage national/regional guideline development for identifying FPIC rights holders, particularly in regions where the state does not support self-identification as ‘indigenous’</li> <li>• Participatory mapping is critical to identify who is a rights holder and where the rights exist on the landscape</li> <li>• Clarify differences between rights of ownership (legal) and customary rights</li> <li>• Suggestion to treat all rights holders as if they have full ownership rights, regardless of state recognition</li> <li>• Guidance on tribal and traditional peoples needed.</li> </ul>	<ul style="list-style-type: none"> <li>• To discuss Clarification Box (pg. 7) – implies that prior rights supersede existing rights without suggesting that a mechanism be used to resolve any conflicting rights]</li> <li>• To clarify that P4 rights are limited to only those within the MU – apparently there is contradictory normative evidence in IGIs (See Section 1.5, P.25 of D2.2)</li> </ul>	<ul style="list-style-type: none"> <li>• Addressed issue of consistency when using term ‘Rights holder’ or ‘affected rights holder’ and ‘community’ – all references to community removed with one exception – when directly referring to the normative framework (e.g. P4).</li> <li>• “Clarification Box” box removed as per WG instructions on August 27, 2020</li> <li>• Clarify the right to FPIC vs general rights of engagement/consultation</li> <li>• Tables 1 and 2 removed as per WG instructions on August 27, 2020</li> </ul>
Rights, Property	<ul style="list-style-type: none"> <li>• Guideline lacks an analysis of property/ownership rights</li> <li>• The section on private land is too simple</li> </ul>	<ul style="list-style-type: none"> <li>• To discuss suggestion that DRAFT V2.3 include a few sentences that explain that the reason FPIC exists is because the rights of IP and local communities to own land have been violated, often to the benefit of forest concession holders</li> </ul>	<ul style="list-style-type: none"> <li>• Rewrite of Private Land section, P. 19 acknowledges the ownership rights, but continues to assert that these rights have to be reconciled with legal and customary rights to effectively; <i>not sure ‘reconciled’ is the proper term – but trying to convey that CHs must acknowledge that IF they’ve identified rights holders in or near the MU, that at some point in the recent past, those lands, territories and resources were</i></li> </ul>



TOPIC	GENERAL SUMMARY OF COMMENTS <i>(To be edited before final version made public)</i>	WG RESPONSE	CHANGES MADE TO DRAFT V2.0
			<i>under their control and in many cases those rights were violated to the benefit of forest concession holders</i>
<b>Scope of Rights</b>	<ul style="list-style-type: none"> <li>• Guideline should address international baseline, but encourage national/regional approaches that can better address scope based on context</li> <li>• Section useful, but further clarification needed</li> <li>• Suggested that limit to FPIC is ‘relocation’ as per UNDRIP</li> </ul>	<ul style="list-style-type: none"> <li>• See Certainty of Consent above for reference to limited view of FPIC to relocation scenario</li> </ul>	<ul style="list-style-type: none"> <li>• New section on Rights added to Part III – Key Concepts, P.53</li> <li>• See revised Scope of Rights section on P.18</li> </ul>
<b>SLIMF and S.I.R. (Lack of guidance)</b>	<ul style="list-style-type: none"> <li>• Noted lack of content on these topics</li> <li>• Impacts on participatory mapping and monitoring not addressed</li> </ul>	<ul style="list-style-type: none"> <li>• To discuss proposals made in DRAFT V2.3</li> </ul>	<ul style="list-style-type: none"> <li>• No changes made</li> </ul>
<b>General</b>	<ul style="list-style-type: none"> <li>• FSC FPIC Framework is misleading</li> <li>• Guideline should focus on high level or global aspects of FPIC – the ‘baseline’ requirements, but the specifics should be handled at the national level (particularly who has the right to FPIC)</li> <li>• Spanish translation issues need to be corrected</li> <li>• Need a shorter, simplified version of this Guideline</li> <li>• “Management activities” should be explained</li> <li>• Missing references to tribal and traditional peoples</li> </ul>	<ul style="list-style-type: none"> <li>• To check if Guideline contradicts C2.2</li> <li>• To provide a list of sections that were identified as ‘badly translated’ so that additional efforts to clarify concepts before printing can be made – this will involve a joint review of the Guideline between the translator and the technical drafter.</li> <li>• To review structure for each sub-step: objective, possible outputs, instruction for practitioners, instruction for FSC national bodies etc. before submitting DRAFT V2.3</li> </ul>	<ul style="list-style-type: none"> <li>• Added description of ‘management activities’ P.11 and included in Section 1.4 for emphasis on scope of activities to be considered</li> <li>• To bring the language more in line with ILO, added reference to tribal peoples and new section on “Understanding the Terms Indigenous, Tribal and Traditional Peoples” on P.14</li> </ul>

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

### #1 Are the differences between the application of FPIC in Principle 3 and Principle 4 clearly stated?

Responses = 34

Sub-chamber	Yes	No	Summary of Responses
Economic North	6	1	<ul style="list-style-type: none"> <li>• More clarity around the application of FPIC to local communities needed – e.g. where legal and customary rights exist on the FMU only.</li> </ul>
Economic South	2	3	<ul style="list-style-type: none"> <li>• Definition of local communities [P4] is too broad</li> <li>• More emphasis on the identification of rights subject to FPIC needed</li> <li>• The attributes that differentiate Indigenous Peoples from local communities are not clear; the IP definition is detailed, but this does not make the local community definition any clearer</li> </ul>
Environment North	1		
Social North	1	2	<ul style="list-style-type: none"> <li>• Confusing</li> <li>• Basic reading of international human rights with selective citation of texts</li> </ul>
Social South	2	2	<ul style="list-style-type: none"> <li>• Indigenous Peoples may be at a disadvantage without knowledge of national laws</li> <li>• Suggests Table 1 causes more confusion than clarity</li> <li>• Self-identification is the paramount criteria of who is Indigenous</li> </ul>
Non-members	5	4	<ul style="list-style-type: none"> <li>• Characteristics indicated in Paragraph 33 should define who has the right to FPIC, not the label of IP or LC</li> <li>• Clarify who has the right to grant FPIC and who has the right to be engaged</li> <li>• Whether a group is considered a local community, or an Indigenous Peoples should not matter – if people have rights why should different processes be followed?</li> </ul>
No affiliation stated	3	2	
	20	14	

## #2 Scenarios

Scenarios provided by respondents on the Public Consultation Platform have been provided to the FPIC working group for review and testing against the content of the Guideline.

## #3 Additional Comments

Responses = 15

Sub-chamber	Summary of Responses
<b>Economic North</b>	<ul style="list-style-type: none"> <li>• Reasonable time for a decision should be established with rights holders to avoid holding up a process</li> <li>• Clarify that P4 designed for legal and customary rights holders within the MU that do not identify as indigenous</li> <li>• Good faith engagement does not mean the certificate holder resolves conflicts between communities; resolution happens on a case by case basis</li> <li>• The guidance does not address overlapping rights of indigenous peoples with different or contradicting expectations from the FPIC agreement</li> </ul>
<b>Economic South</b>	<ul style="list-style-type: none"> <li>• Table 1 is confusing</li> <li>• Parallel rights section is confusing because it seems to contradict itself with statements that the CH is not a proxy, but then it is also responsible for supporting land tenure claims [paragraph 43-45]</li> <li>• Non-indigenous rights holders outside FMU may be impacted by transportation activities</li> </ul>
<b>Social North</b>	<ul style="list-style-type: none"> <li>• Table 1 may be exclusionary to those people not able to self-identify as 'indigenous peoples'</li> </ul>
<b>Social South</b>	<ul style="list-style-type: none"> <li>• The FSC FPIC framework is not accurate as it is a collective right and nothing else</li> </ul>
<b>Non-members</b>	<ul style="list-style-type: none"> <li>• The clarification of who has the right to FPIC box is confusing; while it is clear that the Guideline can be used for P3, it seems like it should also be used for P4 since any collective rights holders with legal and customary rights would have a right to FPIC according to the normative indicators – whether the group is IP or not is secondary. The only difference is the geographic scope of application [see comments from Econ South on this point]</li> </ul>

## #4 How should the Guideline address the presence of multiple Indigenous rights holders on and adjacent to the management unit?

Responses = 29

Sub-chamber	Summary of Responses
<b>Economic North</b>	<ul style="list-style-type: none"> <li>• The responsibility of the certificate holder to uphold state legislated requirements in terms of timelines should also be recognized</li> </ul>

	<ul style="list-style-type: none"> <li>• Many indigenous peoples will be managing many different relationships there FSC should recognize the importance of a flexible engagement process</li> <li>• Recognition that each community will have its own protocols and expectations will differ</li> <li>• Conflicting values and priorities will take time to address and there may never be a conclusion</li> <li>• This is a relevant question for non-indigenous rights holders as well</li> <li>• A certificate holder cannot resolve conflict between communities</li> <li>• The more pertinent question is how to address situations where multiple rights holders have conflicting expectations or an FPIC agreement (e.g. a community withdraws consent if another community enters into an FPIC process with the same certificate holder)</li> <li>• Certificate holders should ask those rights holders with commonly held impacted rights to enter into a joint process</li> </ul>
<b>Economic South</b>	<ul style="list-style-type: none"> <li>• Changing leadership at the community level makes it difficult to implement already agreed upon processes</li> <li>• A survey of community to establish historical location and permanence of territories [social assessment]; establish smaller working groups with mediators to implement dispute resolution mechanisms</li> <li>• Each group engaged autonomously</li> </ul>
<b>Social South</b>	<ul style="list-style-type: none"> <li>• In person meetings with representative groups (i.e. women, youth, elders etc.) of the community members is important</li> </ul>
<b>Non-members</b>	<ul style="list-style-type: none"> <li>• The most challenging scenario are conflicts between indigenous rights holders, not so much between CH and rights holders; the FSC FPIC process will have little impact on resolving community-to-community conflicts/claims/disputes</li> <li>• Regional or national Indigenous organizations may support dispute resolution or impact assessment processes</li> <li>• Clarify tenure system through object historical tracing into facts [social assessment]</li> <li>• Participatory mapping should reveal who has rights and where on the landscape</li> <li>• Utilize customary law that governs overlapping rights to settle differences</li> </ul>

### #5 Is it clear how different contexts may affect the implementation of an FPIC process, i.e. change the scope of rights included in an FPIC process?

Responses = 32

Sub-chamber	Yes	No	Brief Summary of Responses
<b>Economic North</b>	2	6	<ul style="list-style-type: none"> <li>• The range of non-SLIMF forests within the FSC system is significant; need to clarify the applicability of the Guideline using SIR approach</li> <li>• The simple categorization of ownership to private and public lands is illogical and unfair</li> </ul>

Sub-chamber	Yes	No	Brief Summary of Responses
			<ul style="list-style-type: none"> <li>Guideline does not address inherent conflict between rights of ownership and customary rights</li> <li>Consider using another word for 'reconcile' as it is not in the P&amp;C or the Glossary</li> </ul>
<b>Economic South</b>	1	5	<ul style="list-style-type: none"> <li>Bias approach towards plantation assuming all plantations produce negative impacts; negative impacts not a result of a plantation, but because of the operation is irresponsible</li> <li>What are considered 'irreversible impacts' of plantations?</li> <li>Bias towards northern countries</li> <li>Property rights not discussed</li> </ul>
<b>Environment North</b>	1		
<b>Social North</b>	2	1	<ul style="list-style-type: none"> <li>Text does not cover concessions allocated by the state in favour of the Organization that may have already violated Indigenous rights to land and FPIC; treat rights holders as if they had full ownership rights to the land even if the state does not recognize it</li> </ul>
<b>Social South</b>	3	1	<ul style="list-style-type: none"> <li>Clarify 'parallel rights' section</li> <li>Clarify the problems related to tenure and legal ownership of the land has to be resolved in P1</li> <li>Check SLIMF box for reference to 'financing decision' – may be a translation issue</li> </ul>
<b>Non-members</b>	3	3	<ul style="list-style-type: none"> <li>Bias approach towards plantation assuming all plantations produce negative impacts; negative impacts not a result of a plantation, but because of the operation is irresponsible</li> <li>What are considered 'irreversible impacts' of plantations?</li> <li>Recommend that guidance be given to provide regional contexts for private lands</li> <li>On plantations, it should be mentioned the scope of rights to be considered, i.e. what is the timeframe of consideration by rights holders? There should be no retroactive demands for management activities already completed</li> <li>Higher risk of large scale plantations that displace(d) communities from their lands</li> </ul>
<b>No affiliation stated</b>	3	1	
	15	17	

## #6 Is the international scope and justification for the implementation of FPIC clear and relevant to the development and implementation of national forest stewardship standards?

Sub-chamber	Brief Summary of Responses
Economic North	<ul style="list-style-type: none"> <li>• International scope and justification should be less prescriptive; circumstances are widely diverse</li> <li>• National offices should develop FPIC guidelines to fit their contexts</li> <li>• Clearly differentiate between a baseline for FPIC and national circumstances</li> </ul>
Economic South	<ul style="list-style-type: none"> <li>• Scope of rights not yet clear, no hierarchy of rights criteria</li> <li>• FPIC should apply only when certain rights are threatened</li> <li>• Guideline contradicts C2.2</li> </ul>
Social North	<ul style="list-style-type: none"> <li>• National offices should do a gap analysis of international human rights and P&amp;C to determine where extra guidance is needed</li> </ul>
Social South	<ul style="list-style-type: none"> <li>• Management activities should be explained</li> </ul>
Non-members	<ul style="list-style-type: none"> <li>• Term private land is too broad</li> <li>• National offices should determine what is considered customary law and which communities can claim it</li> </ul>
No affiliation stated	<ul style="list-style-type: none"> <li>• Need to clarify the nature of the impact of plantation before the FPIC process starts</li> <li>• More encouragement for national offices/regions to develop guidelines needed since an global scope may cause imbalances and confusion</li> </ul>

## #7 General comments on Part I: Fundamentals of FPIC

Sub-chamber	Brief Summary of Responses
Economic North	<ul style="list-style-type: none"> <li>• Many improvements made from previous version; however, the paper gives the impression that FPIC amount to a veto right which does not fall in line with the international instruments cited; consent is only required when relocation is proposed</li> <li>• IP cannot unreasonably withhold consent if the consultation process is carried out in good faith and is meaningful</li> <li>• Guideline lacks discussion on ownership rights</li> <li>• The scope of development activities that CH are responsible for should be emphasized – i.e. FPIC can only pertain to forest management activities and not other sector development</li> <li>• Community rights and IP rights seem to be used interchangeably throughout document when not all communities have the same rights as IP</li> </ul>

Sub-chamber	Brief Summary of Responses
<b>Economic South</b>	<ul style="list-style-type: none"> <li>• What happens if the rights holders break a consent agreement? [the consequences are outlined in the protocol and agreement to which both parties are bound, hence a binding agreement]</li> <li>• Guideline equates plantation with conversion – an unfair assertion</li> <li>• Where agreements exist, no FPIC process should be needed [if the agreement is based on the principles of free, prior and informed consent]</li> <li>• ‘Prior’ in the plantation context could mean 1) prior to setting up the plantation for the first time, and 2) prior to a new forest cycle</li> <li>• Need guidance on ‘traditional communities’</li> <li>• Include a provision in the ‘binding agreement’ section that elaborates beyond the enforceable by law criteria in the Glossary</li> <li>• If the parties are in a litigation process, engagement may be absent – how should [could] certification proceed under such circumstances?</li> </ul>
<b>Environment North</b>	<ul style="list-style-type: none"> <li>• More guidance on ‘traditional peoples’ needed</li> </ul>
<b>Social North</b>	<ul style="list-style-type: none"> <li>• The Guidelines are unduly restrictive in explaining who should be considered Indigenous under P3 and who should have right to FPIC under P4; anticipate disputes arising between Orgs and rights holders as a result</li> </ul>
<b>Social South</b>	<ul style="list-style-type: none"> <li>• Timelines for agreement making processes should be addressed</li> </ul>
<b>Non-members</b>	<ul style="list-style-type: none"> <li>• SLIMF guidance is weak</li> </ul>
<b>No affiliation stated</b>	<ul style="list-style-type: none"> <li>• Withdrawal of consent cannot be arbitrary, e.g. consent agreement withdrawn simply because there is a change in community</li> </ul>

## PART II: 7-Step FPIC Process

Overview of responses to Part II

### Step 1: Identify Rights Holders

- 7-Step process is burdensome as presented and may even prevent FPIC from ever happening
- Gaps in national legislation may exist, as well as conflicts with FSCs normative framework
- Is the responsibility of the CH to determine if the state has obtained FPIC? What if it was done based on a broader set of economic activities beyond forestry?
- Provide a description of what is meant by “proposed management activities” such as “general forest planning/methods/policies or single operations; the scope of activities should be shared and described to rights holders
- Recommended Actions may not be compatible with national circumstances and/or culturally appropriate; suggest revising to “Actions to be considered”
- Include a description of how recommended steps should be documented
- In recommended actions (77) how and who verifies that consent has been obtained when doing an analysis of state laws and regulations related to FPIC?

### Step 2: Prepare for Further Engagement and Agree on Scope of Rights

- Lacking guidance on what to do if a rights holder refuses all good faith attempts at engagement - CM – Then ‘Best efforts’ provision is met, and certification can be granted.
- Recommended actions at 99 are too specific [To simplify “to design process with affected rights holders taking into consideration the language, meeting location, and format of information to be shared”]
- [To pick alternative language to “communications plan” as it suggests a heavily bureaucratic environment for the engagement process]  
→ [See Section 2.3 and WG to propose alternative](#)
- Section 2.4 on Process Agreement is too prescriptive with not enough emphasis put on building a trust relationship
- To discuss the merits of using the term “Protocol” instead of or in addition to “Process Agreement” to assist in clarifying the intention in both the English and Spanish versions of the Guideline  
→ [Section 2.4 on P. 28, Added as an alternative term to be used instead of Process Agreement](#)
- Sections 2.4 and 2.5 considered redundant if Step 1 is fully implemented [To suggest replacing “further engagement” with “Prepare for Meaningful Engagement” to distinguish this section from the potential cursory nature of engagement in Step 1; or Move 2.4 and 2.5 to Step 1]



- [To write short segment on the value of using established decision making processes of the rights holders as the foundation for the FPIC Process Agreement rather than trying to develop a new, or CH-centric approach that is onerous and unfamiliar for the rights holders]

### Step 3: Participatory Mapping and Assessments

- Include emphasis that relationship building is the foundation of effective participatory mapping and assessment
- To discuss the strong disagreement with the suggestion to assess impacts from other sectors – see Paragraph 118 on cumulative impacts; suggested limiting scope of assessment to forestry activities in the negotiation of the Process Agreement – Step 1.4
- To suggest a short paragraph explaining the value of cumulative impact assessments with additional resources
- To discuss clarifying language in 3.3 regarding the role of the CH to support conflict resolution

### Step 4: Inform Affected Rights Holders

- Editorial suggestions made to clarify actions
- [To include references to FSC Principles in list of information to be shared (paragraph 135) as most commentors disagreed with the breadth of info suggested here. They are not realizing that this info should be shared as part of the implementation of other Principles]

### Step 5: Deliberate and Decide on FPIC Agreement

- [Technical writer suggests renaming this Step to “Prepare for Rights Holders’ Deliberations on FPIC Agreement”]
- Too prescriptive or complex for an international guideline
- Further clarify conditions for withdrawing consent to avoid “shady interests” of rights holders or an abuse of a “veto power”
- Where capacity support for affected rights holders is suggested 1) limit the expectation to the technical aspects of the proposal, and 2) indicate in the Guideline that resources may be available in the region to support rights holders
- [To discuss when should past management activities of the Organization now seeking FSC certification be compensated – see list after paragraph 146]
- [To discuss the tone and clarity of 5.5 because commentors have drawn the conclusion that 1) 5.5. introduces veto, or 2) good faith negotiations are unlikely on the part of rights holders [the latter point is well taken as it is not the rights holder that seeks certification and the incentive to support the certification is minimal if the CH only views FPIC as a tick box with little to no other benefit for designing sustainable forest practices; perspective and buy in on the topic is critical]

### Step 6: Verify and Formalize the FPIC Agreement -

- Verification increases costs of FSC certification
- Will FSC maintain a verified list of experts on FPIC?

## Step 7: Implement and Monitor the FPIC Agreement

- Continued concern expressed over the suggestion that rights holders are able to withdraw a consent decision, particularly in areas where there are overlapping IP territories that an CH has to negotiate an FPIC process; viewed as giving IP veto authority over CH
- FPIC processes cannot be on-going [To create a simple chart that identifies the “FPIC Process” as implementing the relationship building actions and the “FPIC Agreement” as the formal recognition of a decision at a particular time for specific activities that affect rights]
- Clarify who establishes monitoring team – i.e. not a unilateral decision of CH
- [To add that through the ongoing FPIC process, IP agree to keep the Organization informed of results of their monitoring activity that do not conform to the Agreement (feedback mechanism)]  
→ [Already stated at the end of 7.1](#)

## PART III: Key Concepts

### Culturally appropriate engagement

- How does a CH reach out to the broader community if the leadership prevents it or does not endorse the practice based on cultural norms?
- Reference national/local circumstances

### Dispute Resolution

- Consider including guidance for circumstances or disputes that are outside the influence of the CH, e.g. disputes between rights holders that share territory, where the dispute affects the FPIC Process regardless of good faith efforts on the part of the CH
- Reference to the 3-step FSC process may exacerbate simple disputes that should be resolved between the CH and rights holders
- Address disputes that cannot be resolved by FSC or CH and the impact on the FPIC Agreement or Process

### Benefit Sharing

- A mutual agreement of what constitutes “benefits” should be established, but at the same time is not used to manipulate or coerce a decision
- Text implies that negative impact is acceptable should benefits be provided [interesting comment considering the entire document is based on the negative impact to rights...perhaps this is a caution to make sure we are not advocating coercion or bribing in this section]
- Suggest limiting benefit sharing to cases where TEK is used for commercial purposes [as per C3.6]
- [To check Spanish translation for paragraph 188 for reference to ‘equality of conditions’]

## Binding Agreement

- Address circumstances when agreements are reached without documentation and then new leadership does not honour agreements
- [To ensure consistency between binding agreement definition in text and Glossary]  
→ [Addressed in V2.2 under Binding Agreement on P.47, will show on screen](#)
- [To discuss use of the language “withdrawing consent should always be justified”; however, but it is unclear what justification we are expecting from rights holders, especially considering some interpretations that FPIC is limited to only the most significant impacts on rights, e.g. relocation]

## Iterative proposals and decision making

- The terms and conditions which constitute “bad faith” or “arbitrary” should be clearly defined and explicit in the Agreement [Add to Binding Agreement section]

## Participatory monitoring

- Consider the S.I.R of the operation and potential limited resources for both legal and customary rights holders and certificate holders
- Indicate different expectations between monitoring an FPIC process vs. what is in an FPIC Agreement
- See point above:[Some comments indicate that there is a lack of understanding that the FPIC Process is an ongoing engagement process whereas the FPIC Agreement is a formal recognition of the terms and conditions of the consent decision at a specific point in time]

## Past Grievances

- Editorial recommendations made to indicate the role of the Organization to prioritize addressing its own actions that have resulted in disputes and/or damages to lands, resources and territories without the free, prior and informed consent of legal and customary rights holders

## Additional concepts that should be described in the Guideline

- Define or clarify in the Glossary or Key Concepts, the following concepts: 1) Traditional Law. 2) Adjacency (it is not clear if it is close, downstream, in influence, or other ... the concept is ambiguous and can generate interpretation problems)
- The question of compensation is complex, and rights holders may need the advice of independent third parties to ensure the compensation offer is fair and proportionate to the damage previously caused [compensation for past practice]
- **Spanish translation issues:** Glossary: 218. English translation not applicable 223. Note: Check; this is part of the motion on IFL and must be considered or replaced by another term meaning the same. This should be the prerogative of IPs and not of standards development groups. 227. Include definition of traditional local communities 228. This concept should be reviewed and in Spanish it should refer to national norms or legislation, which could be more appropriate to refer to all the normative instruments of a country. 230. do not include the examples as it causes confusion, especially the last reference. 239. I do not agree, neither with the name nor with the definition.

## GENERAL COMMENTS

### Recommended Improvements

- The Guideline is too long and complex and goes against the FSC vision of simplifying documentation
- Definition of customary law and who may have these rights is needed
- The process should be presented in a way that reflects the reality that relationship building is not linear
- Review structure: difficult to understand and interpret when paragraphs refer to the same relevant topic in two or more sections of the document
- Give examples of 'third party organizations' that might provide advice – e.g. academics, NGOs etc.
- Try revise all steps again with a target to withdraw some low important points and make the process easier for understanding, less expensive and less time consuming
- Indicate that there will be periodic revision of the Guideline
- [It appears that the intent of the small text boxes is unclear to some readers, likely because some boxes highlight existing text while others introduce new text. Check the Spanish translation for clarity on this as all comments came from Spanish version]

### Comments

- The Guideline should be more high level and specific, prescriptive guidance should be left to national/regional level FPIC Guidelines
- Box on Page 8 that mentions the potential for the Guideline to be normative should be removed as this is a non-normative document; just referencing this document in an NFSS should not make it normative – the Guideline should always remain non-normative
- If an agreement can be easily reached between an CH and rights holders, then the 7-step process should not be necessary as described
- Not all rights are equally important – the Guideline should address only those rights where impacts would generate significant consequences
- There is a clash between property right and use rights
- As described, it is a long process that will involve outside personnel therefore difficult for small and medium business owners to achieve
- While an improvement, the document is too wordy and intimidating and likely most useful to SDGs; recommend a shorter user-friendly version
- This process requires active participation of IP
- Consider moving key concepts to the beginning of document
- The Guideline is ambiguous as to when the process begins and where it ends
- More information needed on 'process agreement' – might it be considered a protocol?
- Check the Spanish version for translation issues, noting that there are also different paragraph numbers.