



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

DRAFT 2.0



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Acronyms

CB	Certification Body
FPIC	Free, prior and informed consent
FSC	Forest Stewardship Council
GIS	Geographic Information System
HCV	High Conservation Value
ICL	Indigenous Cultural Landscape
IFL	Intact Forest Landscape
IGI	International Generic Indicator
ILO	International Labour Organization
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 EN)
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

Introduction to Draft 2.0 of the Guideline

Development of Draft 2.0 of the Guideline

1 This is a working version of the FSC Guideline on Implementing Free, Prior and Informed Consent (FPIC) -Version 2.0, herein referred to as 'the Guideline'. This draft is meant for public consultation and will be revised before being finalized and published in 2021. This version (Draft 2.0) has undergone significant revision based on public consultation feedback held in April and May 2019, FPIC working group discussions, and further research. Revisions include:

- The placement of the detailed 7-Step FPIC Process in the main body of the Guideline.
- Addressing duplication; where it remains, it is an intentional emphasis.
- The separation of fundamental concepts and better business practice ideas into sections before and after the main body of the Guideline.
- The addition of annexes to support quick reference checks.

Treatment of Public Consultation Platform Responses to Draft 1.0

2 A comprehensive Consultation Report on Draft 1.0 was released along with this draft of the Guideline. The report summarizes the main comments received and their treatment either by the FPIC working group, Performance and Standards Unit (PSU), or within the Guideline itself. Details on how substantive comments were treated in the revision process were provided in advance to the working group members for discussion. Decisions on treatment of some suggestions was taken during working group webinars while others have been postponed until further work on the subject can be completed.

Details on the progress of the FSC FPIC Guideline are available on the FSC Project website (<https://fsc.org/en/process-page/fsc-gui-30-003-v20-revision-of-fsc-guidance-for-the-implementation-of-the-right-to>)

Application of the Guideline

3 This Guideline has been developed to reflect the current FSC forest management normative framework. The FPIC working group is aware that Policy Motions are being proposed for the 2021 FSC General Assembly that may change the conditions of Principle 4. As a result, it may be necessary to revise this Guideline to align the applicability of FPIC with a revised Principle 4.

4 The scope of this Guideline is specific to the implementation of the FSC forest management normative framework and Interim National Standards. While the better practice engagement strategies suggested in the FPIC Process are also relevant for controlled wood, small and low intensity managed forests (SLIMFs), and group certificate holders, they were not developed to meet the specific conditions and needs of these certificates. Additional guidance will be developed as experience and field testing provide grounded results to support The Organizations holding these types of certificates.

5 As a non-normative document, this Guideline is not meant to 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 within the FSC forest management normative framework. The relevant national normative requirements remain the definitive subject of compliance in an audit process.

In circumstances where National Standards include references to part, or all this Guideline, it may be considered normative.

6 Current FSC certificate holders may have already invested in engagement processes and negotiated agreements with affected rights holders to meet the requirements of previous FSC forest management standards. This Guideline does not recommend that existing agreements be renegotiated, or processes restarted. Instead, The Organization is encouraged to conduct a comparison between existing processes and agreements to this Guideline to ensure the right to FPIC is properly recognized and supported by The Organization.

7 Finally, 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, if The Organization becomes aware that the state does not recognize Indigenous Peoples rights as described in UNDRIP and ILO 169, the Organization must still uphold the requirements of relevant National Forest Stewardship Standards (NFSS).

The Organization plays a critical role in bridging the gap between state recognition of Indigenous Peoples' right to FPIC and the actual enjoyment of that right by affected rights holders.

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 the rights of Indigenous Peoples and local communities, such as conflict resolution, conversion, sustainable intensification, Intact Forest Landscapes (IFLs), Indigenous cultural landscapes (ICLs), climate change etc.

Structure of the Guideline

8 The Guideline begins with a brief introduction to foundational elements of FPIC necessary to build a common ground understanding of the application of an FPIC Process in the context of FSC certification. The main body of this Guideline is a detailed description of a recommended approach to an FPIC Process that includes recommended action items for both The Organization and affected rights holders. The third section provides more detail on concepts and approaches identified in the FPIC Process such as a binding agreement, culturally appropriate engagement, and participatory monitoring. The last section is a collection of reference materials organized in annexes.

Q1: To better understand your viewpoints, please tell us which of the following stakeholder groups you belong to: (Forest Industry (large operation), Forest industry (small and medium sized operation), Academia, Certification Body/Auditing, Service provider, Indigenous Peoples/Traditional community, Others (please explain))

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 (UN 2011).

- 9 Part I of this Guideline covers fundamental concepts that support the application of free, prior and informed consent (FPIC) in the context of FSC forest management certification. Four guiding questions structure the content:
1. What is free, prior and informed consent?
 2. Who has the right to free, prior and informed consent?
 3. When is free, prior and informed consent required?
 4. What is the scope of an FPIC Process?

What is Free, Prior and Informed Consent?

An International Human Right of Indigenous Peoples

- 10 The 2007 [United Nations Declaration on Rights of Indigenous People \(UNDRIP\)](#) is one of the most comprehensive international instruments on the rights of Indigenous Peoples. It sets out minimum standards for the survival, dignity and well-being of Indigenous Peoples. It gives guidance on the application of existing human rights standards and fundamental freedoms to the specific situation of Indigenous Peoples. Free, prior and informed consent is included in the Declaration as a critical right and a mechanism intended to bring FPIC into effect.
- 11 FPIC is based on the collective right of Indigenous Peoples to self-determination. It is not a stand-alone right, but one that is considered essential to the recognition and protection of other Indigenous Peoples' rights. Whether FPIC is articulated as a right, a principle or a process, it establishes a framework for Indigenous Peoples' participation in decision making on activities that affect their rights. For the purposes of this Guideline, FPIC is defined according to the 2016 FSC Glossary of Terms ([FSC-STD-01-002](#)) as:

FPIC is a collective right. Therefore, reference to 'rights holders' in this Guideline is used in a collective, rather than an individual, sense.

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.

12 FSC policy, Principles & Criteria (P&Cs), International Generic Indicators (IGIs) and this Guidance are informed by these international instruments and can be referenced for more information on the protection of human rights and the application of FPIC. They include:

- [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](#)
- [International Labour Organization Convention on Indigenous and Tribal Peoples \(ILO 169\), 1989](#)
- [African Charter on Human and Peoples' Rights \(ACHPR\), 1986](#)
- [Convention on Biological Diversity \(CBD\), 1992](#)

13 According to FSC's policy for voluntary certification, The Organization is expected to comply with all ILO conventions that have an impact on forestry operations and practices, in all countries, including countries which are not ILO-members, and have not ratified the conventions. See FSC Policy on FSC certification and ILO Conventions for a comprehensive list ([FSC-POL-30-401](#)).

FSC and Human and Indigenous Peoples' Rights

14 The FSC certification scheme includes provisions to respect human rights at all levels of forest management practice. The relevant FSC P&C's for Forest Stewardship include: Principle 1, Compliance with Laws; Principle 2, Workers' Rights and Employment Conditions Principle 4, Community Relations; and Principle 9, High Conservation Values. Principle 3, Indigenous Peoples' Rights is specifically relevant to this Guideline. It states:

The Organization shall identify and uphold Indigenous Peoples' legal and customary rights of ownership, use and management of land, territories and resources affected by management activities.

15 In 2019 FSC released a [report](#) explaining its role in assisting the forest sector to respect and apply human rights legal standards and principles. The [United Nations Guiding Principles on Business and Human Rights](#) (UN 2011) was used as the standard of comparison, specifically Part II which is directed at economic actors rather than states.

Depending on the scale, intensity and risk (SIR) of proposed management activities, the FSC report is a potential starting point for the assessment of management activities against UNDRIP and ILO 169 as required in Criterion 3.4.

16 The requirement to obtain free and informed consent from affected Indigenous Peoples is not new to the FSC forest management normative framework. The process mechanism by which this might be achieved 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 this process mechanism, herein referred to as an **FPIC Process**.

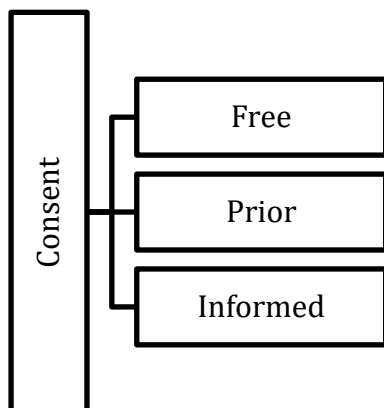
Guidance for National Offices and SDGs

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, supports the implementation of Principles 1, 2, 3 and 4. This information would also support the development of nationally relevant guidance on obtaining free, prior and informed consent from affected Indigenous rights holders.

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.

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

17 The four elements of FPIC are interdependent, with ‘free’, ‘prior’ and ‘informed’ setting the conditions for a ‘consent’ based decision-making process.



Free

18 ‘Free’ refers to a process that is voluntary and self-directed by the rights holders. It is unencumbered by coercion, manipulation, or externally imposed timelines. Rights holders agree with the process and decision-making structure and have been informed of their right to say ‘no’, be represented by institutions of their own choosing and agreed on conditions. The Organization clearly expresses its commitment to obtaining consent before undertaking any stage of management activity where FPIC is required.

- 19** Information is freely, transparently, and objectively made available by The Organization and at the request of the rights holders. Meetings and decisions take place at locations, times and in languages and formats agreed by the rights holders. All community members are encouraged to participate, regardless of gender, age, or standing.

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

- 20** An important temporal aspect of decision making is introduced by the element 'prior'. It means that consent 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 to rights holders to understand, access and analyse information on the proposed management activity before any decisions are taken.

- 21** In most cases, The Organization seeking consent is not the same authority that granted land tenure and/or forest concessions upon which management activities take place. In some regions, the historical use of the lands, territories and resources may be in dispute (Principle 1) or there may be ongoing negotiations between the state and rights holders. In these cases, The Organization should aim to design and implement an FPIC Process that, at a minimum, enables affected rights holders to protect their rights in proposed management activities.

Existing certificate holders transitioning to new National Forest Stewardship Management Standards may interpret 'prior' in relation to the phase of development of their ongoing FSC certified management activities.

Informed

- 22** The 'informed' element refers to the type and format of information provided by The Organization to support community decision-making processes. It is vital to ensure the community has a clear and confirmed understanding of the specific management activities for which they are being asked to grant consent.

Rights holders must be made aware of the specific management activities to which they are being asked to grant consent.

- 23** Information provided by The Organization includes, at a minimum: 1) information about FSC certification, 2) the proposed activities ([Step 1.4](#), [Step 2.5](#) and [Step 4.1](#)), 3) potential positive and negative impacts of those activities and 4) the right of the affected rights holder to grant, modify, withhold or withdraw consent ([Step 3](#) and [Step 4](#)).
- 24** Direct communication (face-to-face meetings and other innovative, interactive methods) where there are low levels of literacy in the community and to deliver the information at locations chosen by the community is good practice and necessary to build trust between The Organization and affected rights holders.
- 25** As collective rights holders, all segments of the affected community (referred to as 'affected rights holders'), including those in remote areas, men and women, the young and elderly, and marginalized groups, have access to the same information. The information covers a

spectrum of potential social, economic, cultural, environmental, and human rights impacts of the proposed management activities.

- 26 Information is delivered in language(s) and format(s) that are acceptable to the legitimate institutions of the rights holders and includes opportunities, and potentially support, to access independent legal or technical advice. Information is provided on an ongoing and continuous basis throughout the FPIC Process, before and after consent has been given.
- 27 New information regarding management activities and other resource development in the area is shared with affected rights holders as soon as it becomes available and the community indicates their satisfaction with the information.

Consent

- 28 The final and distinguishing element is the ‘consent’ decision. It refers to a decision made and reached through a self-determined process of dialogue, deliberation, and decision making that is mutually agreed to by the collective rights holders. The decision involves explicitly indicating ‘yes’, ‘yes with conditions’, ‘no’, or ‘not now’ to proposed management activities.

It is important to stress that a while an FPIC process does not guarantee a consent decision, it is the recommended approach for The Organization to demonstrate ‘best efforts’ to reach an FPIC agreement.

- 29 A decision that is free, prior and informed implies that the affected rights holders are aware of the option to apply conditions to their decision. These conditions are recorded in a culturally appropriate and auditable way. In the event of a change in the proposed activities, or the emergence of new information, including conditions outside the influence of The Organization or rights holders, the affected rights holder may reconsider their decision to grant or withhold consent.
- 30 However, once a consent decision is granted, it cannot be withdrawn arbitrarily. An auditable binding agreement that records the decision to grant, withhold or withdraw consent in a culturally appropriate manner includes conditions for managing changes to the agreement, including a [dispute resolution process](#).

Who has the right to FPIC in FSC Certification?

Clarification of Guidance on the right of local communities to FPIC as per the requirements of Principle 4

This Guideline is limited to explaining the main differences between principles 3 and 4. Table 1 below explains the major differences between Indigenous rights holders and local community rights holders.

FPIC for Indigenous Peoples (Principle 3) is an internationally established right, whereas it is a choice by FSC to require FPIC from local communities with legal or customary rights within the FMU (Principle 4). Therefore, in the case of overlapping claims on a land base under Principle 3 and Principle 4, Indigenous Peoples’ rights are prior rights that take precedence over the requirement of FPIC for local communities.

Where it is determined through a process of engagement that local communities (Principle 4) have legal or customary rights within an FMU, these Guidelines can be used to implement an FPIC Process. [Customary rights](#) are defined by FSC 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.” *Source: FSC-STD-01-001 V5-2*

Given that the customary rights of local communities within an FMU may be unclear in different national contexts, the FPIC WG has decided to not provide any further guidance on the application of Principle 4 but to leave this application to NFSS to address in consultation with local communities. The FPIC WG has recommended that FSC further clarify the definitions related to FPIC and local communities, given that PSU has identified several indicators within Principle 4 as problematic indicators.

- 31** The identification of Indigenous Peoples and/or local communities with legal and customary rights (hereafter referred to as ‘rightsholders’) in and around the management unit that may be affected by management activities is the first step in identifying *who* has the right to FPIC and therefore an FPIC process. The Organization must obtain FPIC from affected rights holders prior to the commencement of management activities, to the extent necessary to protect their rights, resources, lands, and territories (FSC, 2018).

Legal and Customary Rights Differences in Principles 3 and 4

- 32** The right of Indigenous Peoples to grant, withhold, or withdraw FPIC for activities that affect their lands, territories and resources within and near the FMU is based on international law and human rights instruments such as UNDRIP and ILO 169 (Principle 3). In Principle 4 FSC has granted FPIC rights to local communities for management activities affecting their lands, territories and resources within the FMU only.
- 33** To support the identification of Indigenous Peoples and their rights (Criterion 3.1), FSC has followed the example set by the United Nations and provides the following list of characteristics held by Indigenous Peoples rather than a specific definition ([FSC-STD-01-001 V5-2](#)). Indigenous Peoples are identified as 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: Adapted from United Nations Permanent Forum on Indigenous Issues, Factsheet ‘Who are Indigenous Peoples’ October 2007; United Nations Development Group,

'Guidelines on Indigenous Peoples' Issues' United Nations 2009, United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007).

34 FSC acknowledges that states may have specific domestic regulations to identify Indigenous Peoples according to local particularities and legal procedures to amend such regulations. However, the application of the FSC P&Cs is based on internationally recognized human rights principles, including the right to self-identify as an Indigenous Peoples. Therefore, it is recommended that a precautionary approach be followed by The Organization when implementing Principle 3 and ensure the FSC definition is used to identify Indigenous Peoples.

35 Table 1: key factors affecting the treatment of legal and customary rights holders in principles 3 and 4

	Principle 3 Indigenous Peoples	Principle 4 Local Communities
Indigenous Peoples (FSC-STD-01-001V5-2)	The communities self-identify as Indigenous Peoples and/or they fulfil the objective characteristics of Indigenous Peoples as defined by FSC and they agree to be identified as such for the purpose of applying FPIC under Principle 3.	A mixed community of state recognized Indigenous Peoples and non-Indigenous People occupy the same area within the FMU, and the Indigenous Peoples indicate their preference to be identified as local communities for the purpose of applying FPIC under Principle 4.
Traditional Peoples (FSC-STD-01-001 V5-0 D5-0)	Rights are acknowledged in state law to be the equivalent of those of Indigenous Peoples in the context of the Management Unit, and are treated as equal to Indigenous Peoples	Rights are <i>not</i> acknowledged in state law as equivalent to Indigenous Peoples; therefore, they are treated as local communities
Communities that do not self-identify as Indigenous Peoples	The communities involved fulfil the objective characteristics of Indigenous Peoples as defined by FSC and <i>agree to be identified</i> as such. They are treated as Indigenous Peoples.	The communities involved fulfil the objective characteristics of Indigenous Peoples as defined by FSC but <i>do not agree to be identified</i> as such. They are treated as local communities.

36 Table 2: Key factors affecting the scope of rights included in an FPIC process.

	Principle 3 Indigenous Peoples	Principle 4 Local Communities
Relative to Forest Management Unit (FMU) (FSC-STD-60-004 V2-0)	FPIC applies to Indigenous Peoples affected by management activities <i>within</i> the FMU, those <i>neighbouring</i> the management unit, and those that are <i>more distant</i>	FPIC applies to local communities with legal or customary rights <i>within</i> the FMU only
Rights to be considered in an FPIC Process	Indigenous Peoples' rights include those protected under ILO 169 and further defined in UNDRIP	Local community rights are limited to legal or customary rights based on a fair and legitimate claim of long-established use

Guidance for National Offices and Standard Developers

National offices might consider developing explicit guidance differentiating individual and collective rights as part of the human rights framework. If a member of an Indigenous Peoples' community asserts a right not supported by the local Indigenous People as a collective right, that member may engage with The Organization as an interested stakeholder. The Organization is not expected to engage the individual in a Principle 3 FPIC process with an explicit intent of obtaining a consent agreement.

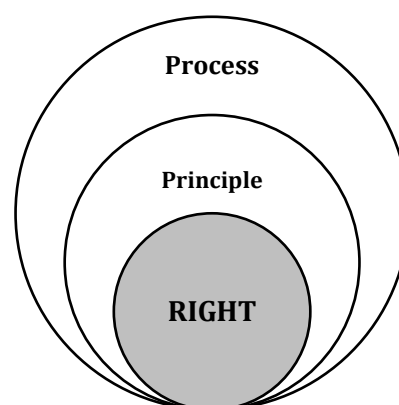
There are many opportunities for interested and affected 'stakeholders' to engage The Organization in the FSC IGIs: Criterion 1.4; 1.6, 7.5, 7.6, 8.4, 9.1, 9.2, and 9.4, (FSC 2018).

The FSC FPIC Framework

37 Free, prior and informed consent (FPIC) is widely accepted as a right of Indigenous Peoples, a principle of better business practice and governance and a process to be applied in relations between Indigenous Peoples and those with competing interests and rights to their lands and resources.

38 **FPIC is a RIGHT of Indigenous Peoples**

The right to grant, withhold and withdraw FPIC is a collective right of Indigenous Peoples acknowledged by FSC in Principle 3. FSC also requires FPIC from local communities that have demonstrated legal or customary rights within the FMU in Principle 4. FPIC is thus in the FSC standard and its



application is not dependent on an endorsement by national laws and legislation. Nevertheless, FSC acknowledges that given the voluntary nature of FSC certification, The Organization's actions to implement FPIC may directly conflict with national laws or fall within a policy gap. A separate FSC process has been established to address such circumstances (FSC STD-20-007 Forest Management Evaluations).

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 explicitly the rights, customs, culture and spiritual relationship between Indigenous Peoples and the Management Unit (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.

Furthermore, where Criterion 3.4 is thought to conflict with national laws, separate FSC procedures apply (FSC STD-20-007 Forest Management Evaluations).

FPIC is a Guiding PRINCIPLE

- 39 FPIC is a guiding principle directly reflected in the normative framework for National Forest Stewardship Standards (e.g. IGIs 3.2.4 and 3.2.5 and Motion 65 on IFLs) directly affecting FSC governance and the evolution of the normative framework. As a principle, FPIC serves to ensure that engagement happens in good faith and using culturally appropriate negotiation methods to reach mutual agreement on proposed management activities.

FPIC is an Engagement PROCESS

- 40 This operational view of FPIC as a process is the primary focus of this Guideline. As a 'process' the elements 'free', 'prior' and 'informed' provide appropriate guideposts for engagement that recognizes the right to grant, withhold and withdraw consent, and the process offers better practice engagement tools throughout the stages of forest management planning.

FSC Forest Stewardship Standards and FPIC

- 41 FSC has adopted all three expressions of FPIC—a right, a principle and a process—into its normative framework for forest management. The approval of the FSC International Generic Indicators (IGIs) in 2018 (FSC-STD-60-004 V2-0) demonstrates a commitment to building awareness, understanding and recognition of Indigenous Peoples' and local community rights through the following normative requirements:
- Recognition that engagement must be culturally appropriate to the context of the rights holders;

- Specific requirements for a process that leads to an informed decision by rights holders (IGI 3.2.4/4.2.4);
- Recognition that an FPIC process must be respectful of the circumstances of right holders (IGI 3.2.5); and
- Recognition and implementation of relevant articles of UNDRIP and ILO 169 (Criterion 3.4).

42 FSC certification may not remedy complex historical land-based conflicts. It is a voluntary tool or framework for forest companies wishing to make positive change towards more socially and environmentally responsible management. As such, it offers a transparent platform for ongoing dialogue and scrutiny of management activities. As a market-based system, FSC creates incentives to pull companies into the system, therefore exposing them to the concept of FPIC in the context of Principle 3, Indigenous Peoples' Rights and Principle 4, Community Relations, Community Relations.

Q2: This Guide distinguishes potential differences and challenges in the application of FPIC in Principle 3 and Principle 4 contexts. Are the differences clearly stated?

Q3: If not, what clarification or additional information is needed?

Q4: Can you provide an example scenario to illustrate challenges applying this distinction in your region?

Q5: Any other comments? Please outline here.

Good Faith and Good Faith Negotiations

43 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;
- basic principles of equity and justice, and
- the UN Declaration on the Right to Development.

44 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.”

45 When is Consent is Required?

When an FPIC process is needed, the level of effort required by an Organization will vary based on a number of factors, such as the scale and intensity of the operation, the number

of affected rights holders and their capacity to engage in forest management negotiations and The Organization's relationship with those rights holders.

- 46 An FPIC 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 rights holders. However, this will be difficult to determine without the implementation of proper engagement activities by The Organization.

Withholding or Withdrawing a Consent Decision

- 47 If affected rights holder indicate they are considering withdrawing a consent decision, the parties to the agreement are encouraged to attempt a resolution of the issues before withdrawing consent using an agreed conflict resolution mechanism negotiated in a [Process Agreement](#).

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

- 48 The FPIC process is not isolated from other FSC requirements. While a FPIC process aims to achieve a consent decision through a negotiated FPIC agreement, in doing so The Organization could also be working towards several other FSC requirements, such as stakeholder consultation, a social impact assessment and dispute resolution.

Guidance for National Offices and Standard Development Groups

IGI 3.2.1, 3.2.2 and 3.2.3 indicate the expectation of The Organization before, after or in absence of free, prior and informed consent by affected rights holders.

3.2.1 Through *culturally appropriate* engagement* Indigenous Peoples** are informed when, where and how they can comment on and request modification to management activities to the extent necessary to protect their rights, resources, *lands and territories**.

3.2.2 The *legal* and customary rights** of Indigenous Peoples* are not violated by The Organization*.

3.2.3 Where evidence exists that *legal* and customary rights** of *Indigenous Peoples** related to management activities have been violated the situation is corrected, if necessary, through *culturally appropriate* engagement** and/or through the *dispute** resolution process as required in *Criteria** 1.6 or 4.6.

National offices might consider providing guidance on the practical benefits of negotiating an interim Process Agreement, or something similar, to help support the development of an FPIC Agreement.

Finally, the FPIC Agreement and the process supporting its development is capable of meeting 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.

Parallel Rights and Private Land Ownership

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 should not be considered proxy to the state; however, as the proponent of a volunteer certification standard, the Organization is expected to adhere to the FSC P&Cs, regardless of state recognition of Indigenous Peoples' rights and the rights of local communities.

FSC National Offices should consider preparing a list, or registry, of relevant national and sub-national laws, regulations and agreements related to rights holders and local communities likely to be affected by management activities (similar to information prepared to meet the requirements of IGI 1.3.1.).

- 49 Historical use and occupation of forested lands has likely resulted in many forms of land tenure (i.e. private landowners, public lands, communal lands) and use rights over the same landscape. The identification of Indigenous Peoples and their rights are based, in part, on their pre-colonial/pre-settler use and occupation of lands, territories and resources.
- 50 Requiring FPIC represents both an international human rights-based and a principled approach to protecting the rights holders. The FPIC process supports the building and maintenance of respectful relationships between affected rights holders and The Organization responsible for upholding identified legal and customary rights.
- 51 FSC certification may not remedy complex historical land-based conflicts, but it does require that ownership, land use and tenure rights be clearly established (Principle 1) and the rights of tenure, access and use by rights holders be upheld (principles 3 and 4).
- 52 An effective FPIC process supports the establishment of a common ground understanding of legal and customary rights, values and interests. Therefore, Organizations with parallel rights, e.g. private landowners, must be willing to enter into a relationship with other affected rights holders to 1) negotiate a process and a binding agreement to uphold identified rights, customs, and cultures and 2) reconcile the impact of their forest management activities on identified rights.
- 53 Additional support and guidance in the development of clear land tenure claims may be necessary in situations where rights of ownership and use of lands, territories, and resources is contested or in conflict (i.e. area of conflicting rights).

Cases of conflict between the FSC requirements related to FPIC and national laws (Principle 1) should be brought to the attention of the certification body and FSC national offices to be evaluated on a case-by-case basis.

Q6: How should the Guidance address the requirement for FPIC when multiple Indigenous communities are present on and adjacent to a Forest Management Unit?

Private Lands

- 54 The FSC Forest Management normative framework does not distinguish between different forms of land tenure (e.g. public, private or communal land ownership) in the identification of affected rights holders or the implementation of an FPIC process. However, the FSC system offers alternative standards for different certification schemes, such as SLIMFs, that may take place on smaller privately-owned land. This Guideline is applicable to large, privately managed forests only.
- 55 Principles 3 and Principle 4 have a general requirement to uphold the rights, customs and culture of rights holders, “to the extent necessary to protect their rights, resources, lands and territories.” Therefore, The Organization seeking FSC certification is responsible for reconciling their rights of private land ownership with affected rights holders.
- 56 Indigenous Peoples located within and near the management unit may contest past and present allocations of land tenures without their free, prior and informed consent. The resolution of such grievances and conflicts are highly context dependent and may require the involvement of state representatives. However, if state involvement does not address the issue, The Organization still has the responsibility to uphold the rights of affected rights holders as per the requirements of the applicable NFSS.

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.

FPIC and Plantations

- 57 Plantations may cover large areas of land, often under private land ownership, and are managed intensively (an FSC definition of ‘plantation’ can be found in [Annex A](#)). They require significant financial investment and the impact of the operation is not reversible in the short term. Therefore, some aspects of implementing the right to FPIC need special attention in the case of plantations.
- 58 *The Nature of the Impact:* When holders of rights to land, territories, and resources are affected by the establishment of a plantation, there is usually an immediate and irreversible impact on their rights, at least in the short and medium term. It is therefore important to conclude the FPIC agreement before commencing plantation management activities allowed under the FSC system.
- 59 *The Financing Decision:* The Organization can minimize the risk of not obtaining consent after an investment in planning of operations by engaging at a very early stage with potentially affected rights holders to find out their interest in the plantation area. Plantations require significant investments in concessions or property, and it is important to check whether additional rights holders are involved before making any decisions on plantation layout, species composition, road layout, labour requirements, rotation periods, etc. Because

it is important that rights holders take a decision prior to the commencement of management activities, The Organization should provide enough information to allow for their review and informed decision.

- 60** *The Consent Agreement.* If The Organization does not fulfil its part of a consent agreement or if new information becomes available, the consent decision may be withdrawn as per the terms established through a [Process Agreement](#) and the parties shall apply the conflict resolution mechanism agreed to in the negotiated agreement. If a new agreement cannot be negotiated, the operation, or the part of the operation that is affecting the rights holders, must be stopped. The involved parties must continue to engage affected rights holders through an FPIC process to ensure the consent agreement is valid for the long term. Regular monitoring of the agreement should identify issues as they arise.
- 61** *Relocation – forced and voluntary.* In cases where rights holders have been moved out of the area to facilitate the sale of their traditional lands to the private sector, or the customary landowners left the area voluntarily, it may be challenging to identify and distinguish Indigenous Peoples from local communities. Because of the irreversible nature of a plantation, The Organization demonstrates [best efforts](#) to identify rights holders, even if they are not physically present in the area at the time of developing the plantation.
- 62** *Ongoing FSC-certified plantations:* An analysis of the FPIC process by Organizations with ongoing FSC-certified plantations that have yet to obtain the free, prior and informed consent of affected rights holders is useful for identifying requirements specific to their applicable NFSS. The Organization should ensure they are engaged with the affected rights holders in a mutually agreed FPIC process (with a Process Agreement) with a clear (transparent) intent to obtain consent on the proposed management activities. The process should be meaningful and advancing to the satisfaction of the affected rights holders.
- 63** When the above conditions are met, opportunities for non-conformance with FPIC requirements are minimized. It is important to note that affected rights holders may request that past grievances be addressed before obtaining consent for future forest management activities affecting their legal or customary rights (see section on [Past Grievances](#)). Early engagement on the limits of FSC certification are critical for establishing reasonable strategies for redress.

SLIMF Operations

64 FSC certification of SLIMF operations is a top priority for FSC International, and additional guidance will be developed by the Performance and Standards Unit (PSU) to support engagement with affected rights holders in FPIC processes. In cases where proposed management activities affect rights holders, the right to FPIC will apply. When the potential environmental and social impacts of SLIMF operations are low, a risk-based approach may be used to streamline the FPIC process.

- 65** Documenting reasons and/or conditions for withholding or withdrawing a consent decision, if not freely given, is advisable when seeking to build and improve relationships. Otherwise, if

the conditions upon which the original consent was based are being met, ongoing consent is implied.

What is the Scope of Rights considered in an FPIC Process?

- 66** *The scope of legal and customary rights:* Rights held by Indigenous Peoples and local communities will likely extend beyond the limits of influence and objectives of FSC forest certification. This means that some rights claims will not be within the scope of the FSC FPIC process. This does not detract from the significance of the rights, nor does it indicate a lack of support by The Organization and FSC. The FPIC Process should reflect the ability of The Organization to influence activities impacting rights.

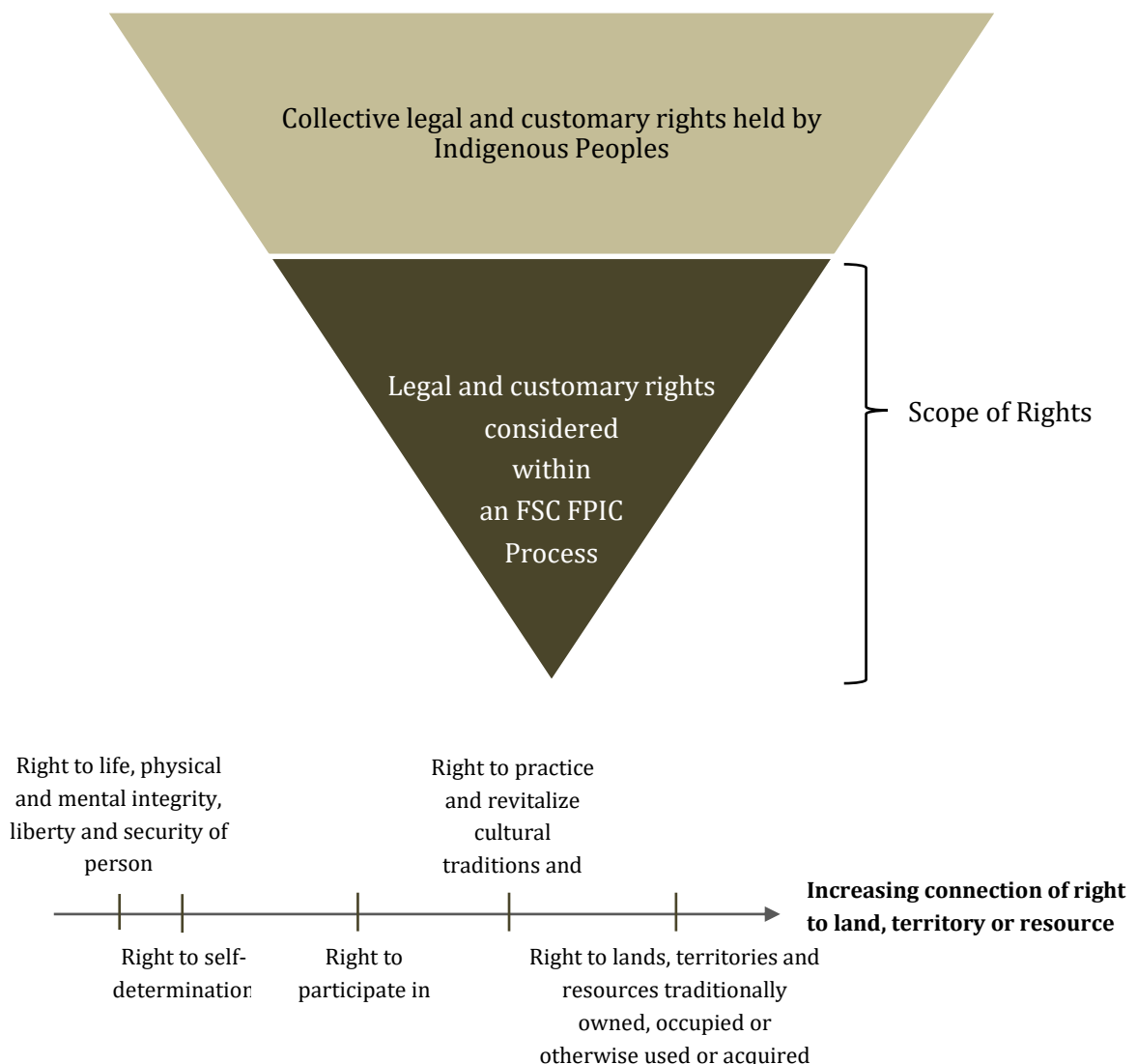


Figure 1: An example of a spectrum of rights depending on connection to land, territory or resources

- 67** *The scope of legal and customary rights to be considered in an FPIC process:* The FSC P&C and this Guideline are structured to lead The Organization and rights holders through a

series of steps that progressively narrow an initial broad scope of rights to those rights that are connected to land, territories and resource impacted by proposed management activities (Figure 1). In doing so, the scope of the FPIC process is focused on the impact management activities (and actions) within the control of The Organization that can be mitigated through negotiations.

- 68** The purpose of identifying an appropriate scope of rights, and therefore FPIC process, is to ensure all legitimate and fair claims are appropriately matched with management activities within the influence of The Organization so they can be appropriately respected, accommodated and ultimately enjoyed by the rights holders in question. With an understanding of what the scope of rights might be, it is now possible to build an FPIC process. Seven steps in the FPIC Process are outlined in the next section.

Q7: 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?

Q8: If not, what additional information is needed?

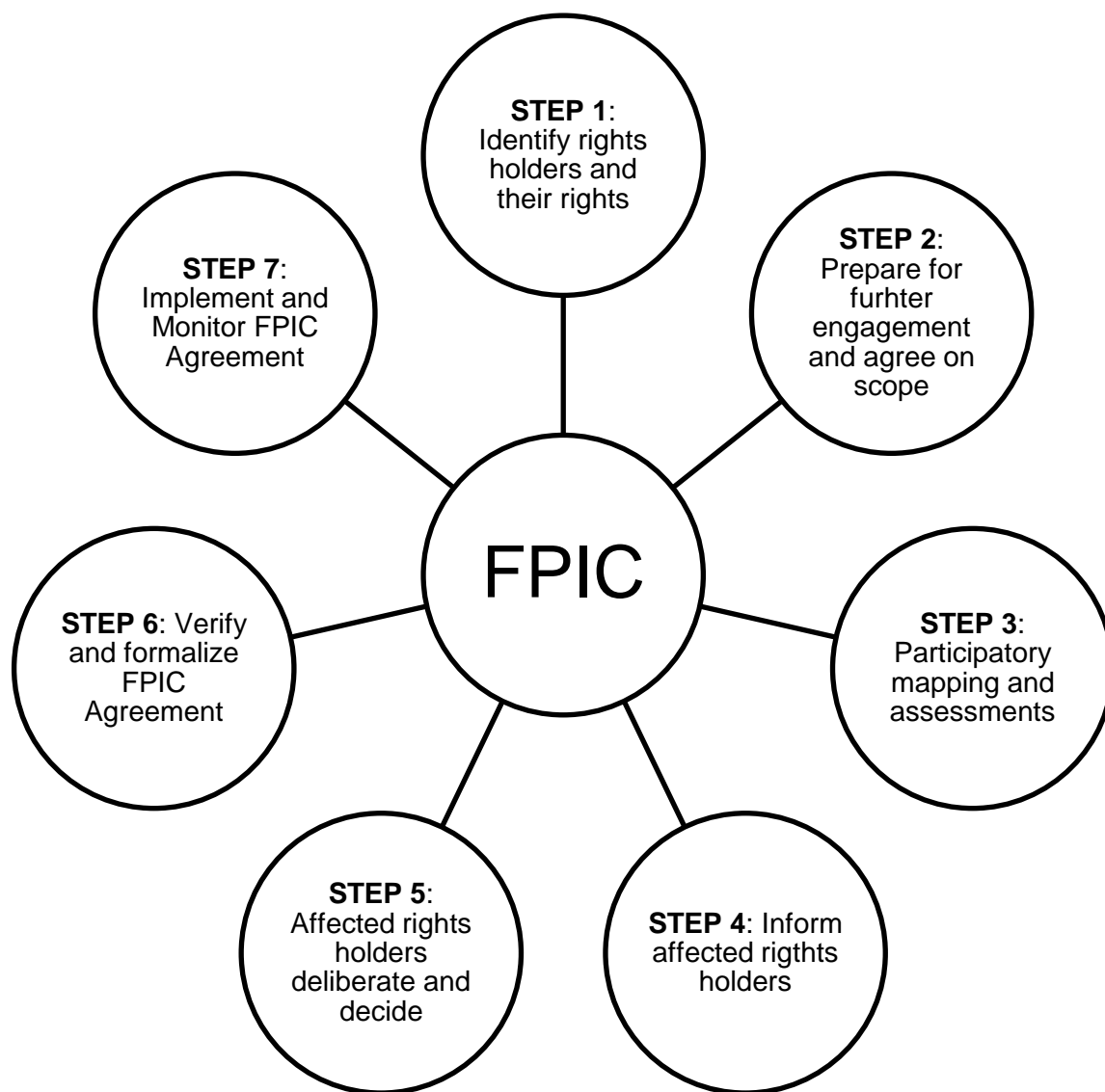
Q9: Can you provide an example scenario from your region to illustrate your response in Q8?

Q10: Is the international scope and justification for the implementation of FPIC clear and relevant to the development and implementation of national forest stewardship standards (NFSS)?

Q11: In case not, please provide comments how to improve.

Q12: General comments. Please provide your thoughts on the overall clarity of terms and concepts introduced in this section.

PART II: 7-Step FPIC Process



STEP 1: Identify Rights Holders and their Rights through Culturally Appropriate Engagement

Elements of Step 1
1.1 Explore regulatory approaches to FPIC
1.2 Identify rights holders and their rights
1.3 Identify representatives and governance structures
1.4 Inform rights holders of proposed management activities
1.5 Identify claims of legal and customary rights
1.6 Determine willingness to participate in future negotiations on proposed management activities

1.1 Explore Regulatory Approaches to FPIC

- 69** Even though FSC can go beyond legal requirements, as part of a pre-evaluation process, or transition planning process from the previous version of a Forest Stewardship Standard, The Organization should explore regulatory approaches to recognizing and implementing the right to FPIC; to/and existing laws or policies may acknowledge FPIC but perhaps lack regulations to enforce them.
- 70** If the state claims to have obtained consent for issuing a forest concession, The Organization 1) confirms that the consent decision was obtained freely, prior and through an informed, participatory process with legitimate representatives of legal and customary rights holders, and 2) verify's that consent was obtained from all rights holders potentially affected by the proposed management activities (See [Step 1.2](#)).
- 71** National laws that stipulate how The Organization should consult or seek consent from affected rights holders are critical guideposts for an FPIC process. However, national laws may conflict with FSC standards. If The Organization discovers a conflict between the FSC P&C and national laws, a separate FSC procedure applies – [FSC-STD-20-007 V3-0 EN](#) Forest Management Evaluations. This type of conflict is described by FSC as 'situations where it is not possible to comply with the P&C and a law at the same time" ([FSC-STD-01-001 V5-2](#)). The Organization should: a) report this conflict to the certifying body who will evaluate it in an arrangement with affected parties, and b) notify national offices of the conflict.

Check with the FSC National Office and SDG to find out if they have already evaluated a suite of laws pertinent to principles 3 and 4. Guidance on this matter was provided to National Offices in Part I of this Guideline.

72 RECOMMENDED ACTIONS:

The Organization	Rights Holders
<p>Using the Best Available Information, determine whether the laws and policies of the host state require FPIC or conflict with the FSC FPIC requirement.</p> <ul style="list-style-type: none"> • If there are processes in place that support FPIC or related consultation and accommodation processes, check whether they fulfil the FPIC requirements of the FSC P&C (gap analysis) 	
<p>Collaboration opportunity: Organizations within a region or state may collaborate to conduct a regional gap analysis</p> <ul style="list-style-type: none"> • Consider consulting with national level Indigenous organizations or NGOs involved in protecting human rights 	<p>Communities may conduct a regional gap analysis comparing the approach of state governments with the FSC system</p> <ul style="list-style-type: none"> • The FSC Indigenous Foundation may provide support for this analysis <p>Consider a coordinated approach between communities, rather than an individual, approach</p>

1.2 Identify Rights Holders and their Rights

73 Identify rights holders that live, and assert their rights, *within* and *near* the management unit. The focus of these efforts should begin with the identification and engagement of legitimate representatives of rights holders.

74 Local experts (interpreters/facilitators/consultants) that are recognized as such by legitimate representatives of by Indigenous Peoples may facilitate engagement processes and provide critical background information. Specifically, local experts may:

- provide guidance on cultural norms and protocols of the Indigenous Peoples;
- facilitate engagement;
- assist with negotiations; and
- act as a facilitator and interpreter throughout the FPIC process.

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

The Organization should consult the applicable NFSS (Criterion 7.2) for requirements related to social impact assessments.

76 RECOMMENDED ACTIONS:

The Organization	Rights Holders
Engage 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	Consider opportunities to invite local forest manager(s) and authorities to visit your community to learn about community history, culture, rights and interests.
Prepare a preliminary overview of the rights holders within the MU or those that may be affected by management activities	

1.3 Identify Representatives and Governance Structures

77 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 affected rights holders. This is particularly important when identifying representative and decision-making institutions.

78 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 or people. It is important that The Organization respect 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.*

79 RECOMMENDED ACTIONS:

The Organization	Rights Holders
Identify and document decision-making institutions of rights holders <ul style="list-style-type: none"> • Document the type of governance system used, i.e. traditional/customary, state-legislated/imposed, or other) • Document the role of women, youth and elders, keeping in mind UNDRIP (Articles 21, 22) and ILO 169 	Prepare an internally agreed decision-making process/protocol and share with The Organization. Make known to The Organization: <ul style="list-style-type: none"> • the legal and customary rights of access, use, tenure and obligations that apply • the role of women, youth and elders in decision making

The Organization	Rights Holders
Describe each of the steps that require engagement, and, potentially, a decision from representatives	Consider the knowledge and resources needed to participate in the negotiation process Discuss the costs (financial and human resources) and benefits of the current and future engagement processes
Identify representatives chosen by the rights holders to participate in various steps of the FPIC process	Identify representative decision-makers (if appropriate) <ul style="list-style-type: none"> Consider a cultural facilitator or liaison to work with The Organization to navigate culturally appropriate protocols
Confirm the internal decision-making process to address FSC FPIC requirements and identify indicators of its successful implementation	Identify important indicators of community satisfaction with an engagement process

1.4 Inform Rights Holders of Proposed Management Activities

- 80** The Organization should inform all identified rights holders about the main features of the FSC system and their proposed management activities. The information should be in a format that is accessible by rights holders and include information sufficient for representatives to identify whether their legal and customary rights *may* be violated by management activities.
- 81** If the information on proposed management activities is complex and there is a risk of misunderstanding, The Organization might consider offering rights holders access to technical support.

RECOMMENDED ACTIONS:

The Organization	Rights Holders
Provide information on the FSC system, including: <ul style="list-style-type: none"> Status as a voluntary system that in most cases goes beyond legislation for forest management and stakeholder engagement, and 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	Communicate to The Organization appropriate ways of sharing information within communities

The Organization	Rights Holders
Provide information in a language and format that is clear and appropriate to the context and/or provide resources for expert assistance, if required.	Request support for technical assistance from The Organization, if needed
Verify that the information was understood	Check that people hired staff and representatives understand what is being proposed by The Organization
	Identify potential impacts of the proposed forest management activities on rights

1.5 Identify Claims of Legal and Customary Rights

82 In addition to legal rights, the FSC Forest Management normative framework recognizes that Indigenous Peoples and local communities may also possess customary rights flowing from long established use or 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 Glossary section of this document).

83 The traditions and customs that give rise to collective legal and customary rights included within the scope of an FPIC process will be unique to each group of rights holders. A transparent, preliminary assessment of claims to legal and customary rights that is based on [Best Available Information](#) will support The Organization and rights holders to identify claims that are fair and legitimate. This will help to ensure the scope of the FPIC process is correct.

84 *Principle 3, Indigenous Peoples' Rights:* ILO 169 and UNDRIP apply only to Indigenous Peoples. The most relevant articles for describing the type of collective Indigenous Peoples' rights that might exist in a forest management context are listed in [Annex B](#). The scope of consideration under Principle 3 includes management activities *within* the management unit and those that might affect legal and customary rights *outside* the management unit.

Claims of title to lands and ownership of concessions or tenures are handled through the requirements of Principle 1 (C1.6).

85 RECOMMENDED ACTIONS:

The Organization	Rights Holders
Document all claims of existing rights identified through research about and engagement with rights holders, whether they are affirmed.	Share evidence of claims of existing rights with The Organization. If needed, seek legal assistance.

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

- 86** Time is needed for rights holders 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 customary rights, including livelihoods, knowledge, social cohesion, governance and culture. These questions require consideration by both The Organization and rights holders. If both parties are prepared to continue building a relationship, preparations for further engagement and negotiations may begin.
- 87** At this early stage, rights holders may decide not to engage in the negotiation of an FPIC agreement because, for example, they assert their rights have been violated by The Organization and restitution is required, or they lack the resources necessary to participate. However, if they agree to participate in a process to further identify their rights and interests, established in good faith and with the intent to obtain their free, prior and informed consent, The Organization may proceed with the development of a Process Agreement.
- 88** If good faith engagement is not evident in the initial stages of engagement, the Parties may pause, and identify an alternate approach. The Organization must continue to uphold the rights of Indigenous Peoples and local communities to withhold consent which may mean The Organization ceases operations in the [areas of conflicting rights](#).
- 89** The Organization may continue to uphold the right of affected rights holders, e.g. by making available all information requested by the concerned rights holders to the extent necessary to protect their rights.
- 90** RECOMMENDED ACTIONS:

The Organization	Rights Holders
<p>Communicate understanding of the decision to continue engaging, or not, in a full FPIC process</p> <ul style="list-style-type: none"> Alternative engagement processes may be discussed 	<p>Communicate the decision on further engagement and negotiation potential</p> <ul style="list-style-type: none"> Provide reasons for the decision Consider carefully the benefits/risks and costs of a full FPIC process
<p>If a decision has not been taken by the rights holder, indicate whether the process is ongoing</p> <ul style="list-style-type: none"> Demonstrate that the ongoing process is satisfactory to the rights holder 	<p>Discuss satisfaction with the design of proposed negotiation process</p> <ul style="list-style-type: none"> Indicate resources and tools needed to facilitate a full participatory process
<p>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 certifying bodies (CBs)</p>	<p>Consider the use of a facilitator (interpreter) that is respected by the community to gain a better understanding of FSC and the FPIC-based engagement process, including the roles and responsibilities of CBs</p>

Q13: Is the description of this step clear? If not, why not and how can it be improved?

Q14: Do you disagree with any of the recommended actions? If yes, please identify them and explain why.

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 holders and develop a Process Agreement
2.5 Further define management activities likely to affect rights holders

2.1 Involvement of Others in the Engagement Process

- 91** Other mutually agreed experts and stakeholders may be solicited for to support the emerging scope of the FPIC process. Some experts and stakeholders, such as government institutions, nongovernmental and Indigenous Peoples' organizations, and scientific institutions may have a critical role in both the implementation of the FPIC process and the FPIC Agreement.
- 92** The Organization may work with stakeholders in separate processes or, if all parties agree, in a multi-stakeholder working group. However, such processes should not be assumed to replace an FPIC process between The Organization and affected rights holders.
- 93** The goal of expanded involvement is to support the design and implementation of the FPIC process, generate broader backing for the outcomes of the process among various stakeholders, particularly states, and promote better relationships among all local stakeholders.

Criterion 7.6 of the FSC P&C requires The Organization to engage with interested stakeholders at their request.

2.2 Establish a Structure with Trained Personnel and Resources

- 94** Depending on SIR, The Organization might consider establishing a team with trained personnel and dedicated resources. At a minimum, The Organization should have 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.

95 RECOMMENDED ACTIONS:

The Organization	Rights Holders
<p>Appropriate to SIR, establish an internal structure to deal explicitly with rights holders' engagement processes</p> <ul style="list-style-type: none"> • Receive comprehensive orientation on the culture of the rights holder FPIC • Be trained in recognizing and respecting the protocols and values of rights holders • Be trained in effective communication and translation of complex legal issues, and • 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 	<p>Recommend resources or approaches for The Organization to effectively increase both The Organization and community knowledge</p> <ul style="list-style-type: none"> • E.g. community vetted information such as a resource library or list of accepted knowledge holders

2.3 Develop Appropriate Communication and Information Strategies

96 Communication is an essential aspect of the 'informed' element of FPIC. The required mode, content, and intensity of the communication depends on local circumstances, but the most important aspect is to establish a relationship based on trust and learning. This can be achieved through effective iterative discussions that result in an exchange of information and views on an ongoing basis.

97 The Organization, depending on SIR, may consider developing a communication plan specific to the FPIC Process. This will help ensure that all aspects of the process are communicated to rights holders, other interested parties and CBs. The Organization may take the lead on designing the communication plan, with participation from affected rights holder representatives.

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.

98 Communication with rights holders must be in the language they speak and using a medium they understand and prefer. It is important to note that some words may not exist in rights holders' languages and can be difficult to conceptualize.

99 RECOMMENDED ACTIONS:

The Organization	Rights Holders
Use direct communication (face-to-face) as the default method, unless high levels of literacy are apparent, or circumstances dictate otherwise	
Use a combination of small-group and community-wide sessions to share information, with guidance from rights holder representatives <ul style="list-style-type: none"> • Present information that is complete as early as possible 	

2.4 Engage with Affected Rights Holders and Develop a Process Agreement

100 To achieve a climate of confidence and mutual respect, the FPIC process itself can be a product of an earlier agreement. In this Guideline, this kind of agreement is referred to as a Process Agreement. If established early in the FPIC Process, a Process Agreement will help facilitate a decision-making process by affected rights holders.

101 The Process Agreement is not a consent agreement. It is a formal mechanism, negotiated between The Organization and affected rights holders early in the FPIC process and is to guide early engagement expectations.

102 It may be expressed as a documented resolution, decree, or formal agreement. The Organization should determine if there is also a culturally appropriate means of validating agreement that would enable witnessing by the community (e.g. oral testimony or ceremony). It may also serve as an important indicator of the level of effort that will be needed to develop a plan for the 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

103 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.

104 A Process Agreement may include, but is not limited to:

- 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](#));
- Financial commitments of FPIC process;
- Acceptable use of advisors, facilitators, and observers;
- Capacity-building strategy, if necessary;
- 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 \(3.4\)](#));
- Treatment of intellectual property, such as mapping products ([Step 3 \(3.2\)](#));
- Interim dispute-resolution process, and
- Record of actions taken in the process.

105 If the rights holders withhold their consent to negotiating a Process Agreement, or the negotiations did not result in an agreement, it is possible for The Organization to enter into a [dispute resolution process](#) where the priority is to gain an understanding of the concerns, impacts and development desires of the affected rights holders. Meanwhile, the Organization must uphold the right to withhold consent which may mean The Organization ceases operations in certain [areas](#).

106 RECOMMENDED ACTIONS:

The Organization	Rights Holders
<p>Establish a mutual understanding and agreement on the need for a Process Agreement interim to the FPIC Agreement to support the FPIC process</p> <ul style="list-style-type: none"> • Develop understanding of how the Indigenous and local decision-making procedures work in order to establish a timeline for activities. 	<p>Community engagement plans should be prepared and mutually agreed with The Organization</p> <p>Assess community capacity for participation in the negotiation process in collaboration with The Organization. Capacity includes more than financial resources. It might also include:</p> <ul style="list-style-type: none"> • technical knowledge, networks, and time, and • access to decision-making tools (e.g. geographic information system (GIS) used by The Organization
<p>Consider the involvement of an independent verifier and/or observer</p>	<p>Consider the involvement of an independent verifier and/or observer</p>

2.5 Further Define Management Activities likely to Affect Rights Holders

107 At this stage, The Organization and rights holders can define more precisely the management activities that are likely to affect their rights. This forms the scope of the FPIC process. Effective participatory mapping and assessments will be needed in which affected rights holders are 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.

108 Developing a deep understanding of the defining characteristics of rights holders in the context of the management unit is key (Part 1). In some cases, extensive research may be necessary to define groups for the purposes of understanding who has the right to grant, withhold and withdraw consent through an FPIC process and those who have the right to participate in decision making, but not grant consent. Triangulate information sources such as Indigenous Peoples themselves, local communities, regional confederations, Councils and organizations, academic institutions, community-based organizations and official government databases (e.g. census), if available.

Consider requirements of Principle 7 in the NFSS that are relevant to the implementation of the FPIC process.

109 Once affected rights holders are identified, 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;
- The outcomes of the participatory mapping and subsequent revisions to management activities (See [Step 3.4](#) and [Step 4.1](#)); and
- The costs and benefits resulting from the management activities for all parties.

110 RECOMMENDED ACTIONS:

The Organization	Rights Holders
Be inclusive and respectful of cultural protocols and decision making when identifying customary rights <ul style="list-style-type: none"> • Consider hiring a community facilitator/interpreter 	Become familiar with potential positive and negative impacts of forestry operations
When possible, confirm that external advisors to the process are known, respected and trusted by the affected rights holders	
Provide full content of the proposed management activities to affected rights holders	Become familiar with other principles within the standard that require rights holder engagement (tables 2 and 3 provide some direction on other relevant principles and criteria)

The Organization	Rights Holders
Describe how the harvested resource is used by The Organization and the type of benefits received 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 affected rights holders	Determine capacity needs to ensure effective participation in mapping and impact assessment
Acknowledge cumulative development impacts on rights holders, their lands, resources, and territories	Provide information about other competing lands interests within their lands and territories (e.g. mining, energy developments, etc.)

Q15: Is the description of this step clear? If not, why not and how can it be improved?

Q16: Do you disagree with any of the recommended actions? If yes, please identify them and explain why.

STEP 3: Participatory Mapping and Impact Assessments

Elements of Step 3
3.1 Ensure sufficient community capacity for mapping and assessments
3.2 Participatory mapping
3.3 Conflicting claims between communities
3.4 Engage in participatory impact assessments

3.1 Ensure Sufficient Community Capacity for Mapping and Assessments

- 111 An earlier step in this process ([Step 2](#)) addressed the capacity-building requirements for The Organization. This step reinforces the need to support the capacity-building efforts of affected rights holders that were identified in Step 2 (2.4).
- 112 Prior to the commencement of management activities, a capacity needs assessment in general, and more specifically for mapping and assessments, is recommended. Where resources do not already exist to support the affected rights holder (e.g. mapping experts and coordinators), and the affected rights holders have indicated they require support, The Organization ensures support is made available proportionate to the size, scale, intensity and risk of the operation.
- 113 To ensure the values of affected rights holders are captured through mapping, The Organization acknowledges from the outset that different bodies of knowledge (i.e. ways of

knowing and understanding the world) exist within different groups. Therefore, the methods for mapping must respect the local and traditional knowledge of affected rights holders.

114 RECOMMENDED ACTIONS:

The Organization	Affected Rights Holders
Review the Process Agreement for expectations on mapping and assessments <ul style="list-style-type: none"> • Required/requested scale of maps for mapping and assessment purposes 	Consider adaptation of existing mapping efforts for forestry purposes
Support the building of community readiness: <ul style="list-style-type: none"> • Encourage rights holders to identify individuals to carry out the mapping/assessments • Make available resources where they do not already exist 	Assess community readiness: <ul style="list-style-type: none"> • Identify members to carry out the mapping/assessments, acknowledging that different bodies of knowledge exist within different groups within the community (e.g. youth, elders, women)
Recognize community mapping is an iterative and living process that will evolve over time.	Identify the need for external support and ensure there is a clear plan for putting it in place

3.2 Participatory Mapping

- 115** Participatory mapping is the creation of maps by communities, often with the support of external partners, for the purposes of decision making. They provide a visual representation of what the rights holders consider their lands, territories, and resources, and their significant features. Since claims based on customary rights are often not formally recognized in law, these claims need to be mapped to document community-recognized rights.
- 116** The overview of claims (assertions) and rights identified in [Step 1 \(1.5\)](#) gives a good indication of what needs to be mapped. If the affected rights holders already have maps indicating the location of their interests and values associated with their right to lands, resources and territories, they should be used as a baseline for the participatory mapping process.
- 117** Initial maps created through a participatory mapping exercise will establish a shared understanding between The Organization and affected rights holder of baseline ecological, social, and cultural conditions of traditional lands, territories, and resources. Baseline measures allow for the monitoring of the impacts of management activities over time. Participatory mapping may be integrated with impact assessment.

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

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.

119 In many circumstances the [Best Available Information](#) on the local ecological, social, and cultural conditions of an area will be held by Indigenous Peoples in or adjacent to the management unit. However, these same people may also wish to keep some areas of high cultural significance confidential. Explaining the benefits of identifying such areas may be necessary, for example given the relevance and management opportunities (e.g. protection) of these areas as High Conservation Values (HCV 9 – Cultural Values).

120 Table 2 identifies many areas of the FSC P&Cs that require rights and/or interests to be taken into consideration during mapping and assessments outside of the Principle 3 requirements.

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

Example of rights holder information to be mapped	Relevant IGIs
Legal and customary rights of tenure	3.1.2, 3.4.1, 4.1.2
Legal and 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 rights holders rely 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 agreements	Principle 1, Annex A
Environment values outside the management unit	6.1.1
Identification of native ecosystems	6.5.1

Example of rights holder information to be mapped	Relevant IGIs
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
Indigenous Peoples priority uses of core areas in Intact Forest Landscapes (IFLs)	Principle 9, Annex H

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

122 RECOMMENDED ACTIONS:

The Organization	Affected Rights Holders
Consider using 'works in progress' on mapping and assessments (for other sectors of development or for governance purposes) on lands and territories proposed for development in the FSC process	Use relevant 'works in progress' on mapping and assessments (for other sectors of development or for governance purposes) on lands and territories that may be used in the FSC process, i.e. limit duplication of effort
Make available a mechanism to enable the inclusion of all new information in maps and assessment reports as it becomes available <ul style="list-style-type: none"> Respect the choice of affected rights holders to share (or not), under specified conditions, information related to traditional knowledge, land, and territorial uses 	Provide new information to The Organization as it becomes available Negotiate a confidentiality agreement, or protocol, to address information-sharing; this should be included in the Process Agreement
Prepare a map and/or alternative overview showing all claims and land usage, all HCVs relevant to affected rights holders, and the rights of the identified communities.	

3.3 Conflicting Claims between Communities

123 Creating maps and images, including sketch maps, GIS maps overlaid on topographic maps, satellite images, and aerial photographs can spark latent conflict or re-open boundary discussions. Boundaries between other settlement groups are often vague, overlapping, or otherwise disputed.

124 Mapping for the purposes of implementing an FPIC process may give forests, particularly remote forests, a new value that can escalate conflict between neighbouring groups. Mechanisms for conflict management and [dispute resolution](#) with the FPIC process should be planned for in advance for the following scenarios:

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

Respect the autonomy of 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.

125 The Organization may be able to avoid contested areas of a management unit or reduce the impact on affected rights holders through negotiated efforts. There may also be circumstances where The Organization provides support to affected rights holders to carry out their own investigation and dispute resolution process. The Organization is responsible for discussing the potential impacts of management activities with *all* affected rights holders. If discussion is not possible, The Organization may choose to withdraw from the disputed area until an agreed conflict resolution process is in place.

126 RECOMMENDED ACTIONS:

The Organization	Affected Rights Holders
Develop an understanding of the land stewardship responsibilities of affected rights holders	
Consider making dispute resolution support available for affected rights holders <ul style="list-style-type: none"> • Review conflict resolution mechanisms agreed to in the Process Agreement • Acknowledge ability of right-holders to seek resolutions independently 	Implement mutually agreed conflict resolution mechanisms identified in Process Agreement <ul style="list-style-type: none"> • Seek dialogue and resolution of the conflict • Consider requesting support for this process from The Organization or others • Apply customary procedures for conflict resolution, if appropriate
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 the purposes of 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/or planned forest activity <ul style="list-style-type: none"> Investigate the nature and scope of the conflict and the role of forest activities in the conflict 	

3.4 Engage in Participatory Impact Assessments

- 127** In practice, this step will likely be integrated with the participatory mapping process described in [section 3.2](#). However, if revisions and participatory impact assessments are done separately, be prepared to revise the draft management plan based on the participatory mapping outcomes before implementing a participatory impact assessment.
- 128** Once the affected rights holders are informed, use culturally appropriate methods to explain how the outcomes of the participatory mapping influenced the development of the revised management plan. This information then becomes the basis for the impact assessments.
- 129** An assessment of direct, indirect, and cumulative impacts of multiple-sector development with full respect for traditional, cultural, and social aspects is key. Impact assessments that are part of an FPIC process are participatory to 1) facilitate early warning signs of potential impacts and 2) to increase the likelihood that the assessments will include the issues of concern to affected rights holders.
- 130** Meaningful Participation builds trust in the relationship and agreement on the outcomes of the impact assessment. Since different segments of the affected rights holders may use resources differently, it is important that assessments and baseline studies ensure participation. Participatory impact assessments are also required to ensure that forest management activities do not negatively affect HCVs (Principle 9).
- 131** RECOMMENDED ACTIONS:

The Organization	Affected Rights Holders
Agree on the scope and outcomes of the participatory mapping and impact assessments	
Determine whether affected rights holders have their own protocols, laws and policies that address forest management	Consider educating The Organization and other authorities about community protocols, laws and policies that address forest management
Respecting the 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	Prepare a list of HCV 5 and 6 values (Principle 9) important to the community, being sure to

The Organization	Affected Rights Holders
	specify what can be shared and what is confidential
Determine whether there is a need to change the management plan based on input from the impact assessment <ul style="list-style-type: none"> • If a change is necessary, provide an update of the plan to the affected rights holders • Communicate all changes affected rights holders in advance of the negotiation phase 	

Q17: Is the description of this step clear? If not, why not and how can it be improved?

Q18: Do you agree or disagree with any aspects of the Participatory Impact Assessments? If yes, please identify them and explain why.

STEP 4: Inform Affected Rights Holders

Elements of Step 4
4.1 Revise proposed management activities and fully inform affected rights holders
4.2 The affected rights holders decide on further negotiations

4.1 Revise Proposed Management Activities and Fully Inform Affected Rights Holders

132 By this stage, The Organization should be engaged in an iterative and inclusive information-sharing process with affected rights holders. A desired outcome of an iterative process is to increase the knowledge of both affected rights holders and The Organization in order 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.

133 The Organization may need to revise the proposed management activities to mitigate impacts on identified rights based on the outcomes from the participatory impact assessments (see [Step 3.4](#)). Since the revised proposed management plan represents the interim results of the FPIC Process, all revisions should be completed prior to the revised plan being presented to the communities for a decision. If the community asks for specific additional information, this should be provided as soon as

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

possible. Reports of consultations with rights holders should be comprehensive and reflect all opinions presented.

134 To build trust, it is crucial that The Organization informs the affected rights holders. There is risk in relying on third parties to carry out a communications plan on behalf of The Organization. Regardless, the process for communicating information should be established in the Process Agreement ([Step 2.4](#)).

135 Information that should be shared includes, but is not limited to:

- The outcomes of the participatory impact assessments and HCV assessment;
- Safeguards and measures to identify, assess, analyse, prevent, avoid, mitigate, and remedy actual and potentially negative social, human rights, economic, environmental, and heritage impacts, and a strategy to optimize positive impacts (including 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 (e.g. 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.

136 RECOMMENDED ACTIONS:

The Organization	Affected Rights Holders
<p>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</p>	<p>Be prepared to review the revised activities/plan provided by The Organization based on data and information provided</p> <ul style="list-style-type: none"> • Ensure information sharing is governed by the process agreement and confidentiality clauses • Review the information package to determine whether the benefits and risks are proportional to the overall operation

Requirements under P2 and P5 may fulfil some of the needs and concerns of affected rights holders	Inform the community of the effects (environmental, social, economic, and cultural) of the revised management activities
	Consider collective/collaborative approaches with neighbouring communities to negotiations on mitigating impacts from management activities

4.2 Affected Rights Holders Decide on Further Negotiations

- 137** Once the final proposed management activities are presented to affected rights holders, they should be given time to implement internal decision-making processes and to decide whether they want to continue negotiations on a consent agreement.
- 138** If the affected rights holders decide not to continue with negotiations because they feel the impact of management activities will be too great, they have the right to withdraw from the FPIC process. The Organization should make every effort to understand their reasons. An attempt to revisit the consent question at a later stage is possible, but The Organization must uphold the right of affected rights holders to withhold consent to management activities that affect their rights.
- 139** While an FPIC process is central to the successful implementation of Principle 3, it should not be conducted in isolation of the other requirements in the National Forest Stewardship Standard. An effective FPIC process may generate information that fulfils other criteria. Therefore, significant benefit is gained if The Organization continues to engage in, and allocate resources to, an FPIC process, regardless of whether a consent decision was granted.

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 relevant NFSS.

140 RECOMMENDED ACTIONS:

The Organization	Affected Rights Holders
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	Review the Process Agreement and reiterate the decision-making process If there are changes to the decision-making structure or representation, make those changes known to The Organization (e.g. change in leadership)
Present draft final proposal for consideration and negotiation towards a final consent agreement <ul style="list-style-type: none"> Acknowledge and support the affected rights holder's decision-making process 	Ensure decisions are taken freely, and in accordance with the protocols and process agreement

<p>If the affected rights holders decide not to engage in further negotiations, The Organization may attempt to:</p> <ul style="list-style-type: none"> • 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. • Continue engagement with affected rights holders 	<p>Provide a rationale for decisions (e.g. yes, no, not now) and present them to The Organization and the community</p> <ul style="list-style-type: none"> • The benefit of explaining the decision is to encourage The Organization to enter a problem-solving process if it decides to try to further accommodate affected rights holders
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Q19: Is the description of this step clear? If not, why not and how can it be improved?

Q20: Do you disagree with any of the recommended actions? If yes, please identify them and explain why.

STEP 5: Deliberate and Decide on the FPIC Agreement

Elements of Step 5
5.1 Determine 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 model
5.5 Affected rights holders decide on the proposed management activities

5.1 Determine Readiness of All Parties to Enter Negotiations

- 141** The art of reaching an agreement is unique to every culture, and in some instances strict protocols may exist on how negotiations are carried out and decisions made. Capacity requirements related to these protocols should be accommodated in the Process Agreement and further implemented, if necessary.
- 142** The objective of the FPIC Agreement is to outline 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. The Process Agreement negotiated at the outset of the FPIC process outlines the system or methods of negotiation over the course of the FPIC process, without threat to the practice of a collectively held right.
- 143** Capacity-building for negotiations at this stage may include the following areas of competency depending on the mitigation measures proposed, but they should also be considered valuable assets over the entire FPIC process:

- Legal advice;
- conflict management, negotiation and mediation skills, and advocacy techniques;
- monitoring and reporting skills;
- training in effective participation in forest management partnerships, if applicable;
- transparent and accountable book-keeping and financial management; and
- negotiating mitigation, compensation, restoration, and benefit-sharing.

144 RECOMMENDED ACTIONS:

The Organization	Affected Rights Holders
Review all parties' obligations and targets established through the Process Agreement	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)	Determine who is going to negotiate or assist negotiations and how information will be shared
Ensure negotiators are fully resourced to enter into negotiations with affected rights holders	Ensure there is support for understanding technical aspects of the management activities to determine longer-term impacts Skills and resource needed include: Conflict management, negotiation and mediation skills, advocacy techniques, monitoring and reporting skills, Transparent and accountable bookkeeping (if needed) and transportation needs
Document the fulfilment of benchmarks of community capacity readiness	

5.2 Negotiate Mitigation, Compensation, Restoration and Benefit-sharing

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

Part III sections on Benefit-sharing and Past Grievances should be reviewed along with this section.

146 The Organization should ensure the scope of negotiations is an accurate reflection of the impact of any newly proposed and continued management activities. It is important to also recognize that perceptions of impacts may differ *between* and *within* affected rights holders. Therefore, each affected rights holder must be treated as an autonomous, 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);
- Conditions and process for withdrawing consent;
- Dispute resolution process; and
- Treatment of new ideas arising during negotiations.

- 147** Affected rights holders have access to the results of impact assessments ([Step 3 \(3.2\)](#)). Strategies that prevent and mitigate impacts should be 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](#)).
- 148** The implementation plan for the FPIC Agreement should not be dependent on the participation of third-party stakeholders, such as state governments, to be effective. However, if in [Step 2 \(2.1\)](#) such a stakeholder agreed to participate as part of their legal or legislated duties, this should be indicated in the negotiation process and The Organization should document all agreements with third parties.
- 149** Negotiations and the implementation of agreed measures are likely to happen on an ongoing basis and may not be approached as a separate step as it appears here. As with all steps presented in this Guideline, the intent is to ensure that the activity happens at some point in the FPIC process.
- 150** It is worth reiterating here that the FPIC process should not be approached in isolation of the entire NFSS. Table 3 provides examples of criteria that may be discussed through a comprehensive FPIC process.

Table 3: List of criteria in an NFSS that may be discussed in a comprehensive FPIC process

Criterion	NFSS Requirements that may be discussed in an FPIC Process
1.4	Protect against unauthorized or illegal settlement or resource use
1.6	Management of disputes
4.3	Provide reasonable opportunities for employment, training, and other services
Instructions for SDGs 3.2/4.2	Active engagement and co-management
4.4	Contribute to social and economic development
5.1	Diversify production to strengthen local economy
5.4	Use local processing, services, and value-addition facilities

Criterion	NFSS Requirements that may be discussed in an FPIC Process
6.5	Restoration of native ecosystems
6.7	Protect or restore watercourses
9.1	Identification of HCVs that are critical to the survival of Indigenous Peoples and local community
9.2	Develop management strategies with rights holders where their rights and interests have been identified
9.4	Participatory management planning and monitoring of HCVs

151 RECOMMENDED ACTIONS:

The Organization	Affected Rights Holders
<p>Do not rush the negotiation and ensure the Process Agreement is implemented</p> <ul style="list-style-type: none"> Take the time needed to negotiate in good faith and to the satisfaction of those affected 	<p>Do not rush the negotiation and ensure the Process Agreement is implemented</p> <ul style="list-style-type: none"> Take the time needed to negotiate in good faith and to the satisfaction of those affected Acknowledge differences of opinions that exist within the community
<p>Confirm representatives are able to conclude the negotiation process</p>	<p>Identify the representative(s) who will negotiate the FPIC process</p>
<p>It is important to have a complete set of records for the negotiation process (e.g. meeting minutes); these documents may be co-developed</p>	<p>It is important to have a complete set of records for the negotiation process (e.g. meeting minutes); these documents may be co-developed</p>
	<p>Check the satisfaction of negotiation results with those affected in the community</p>

5.3 Establish Arrangements for Resolving Disputes

- 152** The Organization and affected rights holders should be prepared for unforeseen developments and changes in circumstance. 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. In this respect, it is important to resolve any grievances as soon as possible.
- 153** A dispute resolution process does not remove the right to withhold consent but provides an opportunity to resolve grievances before they escalate to a dispute (or a dispute of substantial magnitude).

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

155 RECOMMENDED ACTIONS:

The Organization	Affected Rights Holders
Review established dispute resolution process included in the Process Agreement (Step 2.5)	Inform The Organization about local protocols on dispute resolution, if not already addressed in Process Agreement
Affected rights holders should be provided with a reliable contact who is available and able to communicate in their preferred language and format	
Schedule regular meetings with the affected rights holders so that individuals or the community can raise their concerns	Complaints should be identified as early as possible, rather than waiting for an escalation to 'conflict' status

5.4 Set up a Participatory Monitoring Model

156 The FPIC process, as it is described in this Guideline, includes an early Process Agreement ([Step 2 \(2.4\)](#)) that incorporates participatory monitoring of the process steps. This step focuses on the development a longer-term participatory monitoring model for the implementation of the negotiated FPIC Agreement reached as a result of the FPIC Process.

157 The right to grant, withhold or withdraw FPIC is retained once a decision is taken by the affected rights holders and communicated to The Organization. Therefore, the parties to the FPIC Agreement should continue to implement the FPIC Process, making improvements where necessary. The parties must plan to monitor the implementation of the FPIC Agreement over the term of the FSC certificate.

158 RECOMMENDED ACTIONS:

The Organization	Affected Rights Holders
Identify and communicate to affected rights holders who within The Organization will be responsible for monitoring the FPIC agreement	Assess whether there is capacity to participate in monitoring <ul style="list-style-type: none"> If there is a lack of capacity, the community could request support from The Organization to monitor the FPIC Agreement
Distinguish between monitoring established in Process Agreement (FPIC Process) and monitoring the implementation of the FPIC Agreement	

5.5 Affected Rights Holders Decide on the Proposed Management Activities

- 159** Decisions on the proposed management activities discussed throughout the FPIC process will be made in accordance with the Process Agreement. The Organization should allow time for internal discussion by the affected rights holders on interim agreements, provide support for independent counsel, allow enough time for inclusive engagement, and explicitly acknowledge that affected rights holders can still say 'no' to all or parts of the proposal.
- 160** 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 must respect and uphold the 'no' decision. In some cases, when consent is withheld, the FPIC Process itself may still be considered satisfactory and beneficial by the affected rights holder (see Policy Motion 40/2017 below). If this is the case, The Organization confirms with the affected rights holders that management activities will not violate identified legal and customary rights.

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 in, and give sufficient time to discuss and settle disputes.

161 RECOMMENDED ACTIONS

The Organization	Affected Rights Holders
Ensure that time and resources are available for the affected rights holder to take a decision according to their internal decision-making process (ideally included in the Process Agreement)	The decision is taken according to internal protocols, ideally explained in the Process Agreement

	If appropriate, the decision should be shared with the entire community before communicating with The Organization to address differences of opinion
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Q21: Is the description of this step clear? If not, why not and how can it be improved?

Q22: Do you disagree with any of the recommended actions? If yes, please identify them and explain why.

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 Mechanism

- 162** Ultimately, the CB has the responsibility to verify that FPIC has been granted by affected rights holders. 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 IGI 3.2.5.
- 163** However, involving a third-party independent 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 certifying bodies to assess whether The Organization fulfils the requirements of the relevant NFSS.
- 164** 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 are able to have an open dialogue and mitigate identified deficiencies.
- 165** RECOMMENDED ACTIONS

The Organization	Affected Rights Holders
Consider the use of independent verification, particularly in complex operating environments <ul style="list-style-type: none"> If an independent observer is used, it should be mutually agreed 	Discuss the value of independent verification with The Organization and support network <ul style="list-style-type: none"> Ideally, verification is addressed in the Process Agreement (Step 2, 2.4) If an independent observer is used, it should be mutually agreed with The Organization

The Organization	Affected Rights Holders
Include conditions of verification in the Process Agreement	
Independent verification should be documented and shared with the affected rights holders as per the Process Agreement	
Work to reach mutual agreement on the content and format of the FPIC Agreement	Work to reach mutual agreement on the content and format of the binding FPIC Agreement

6.2 Formalize the FPIC Agreement

- 166** 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 \(2.4\)](#)), an effective, forward-looking FPIC Agreement will include a dispute resolution process and necessary conditions upon which consent is granted or withdrawn.
- 167** 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).
- 168** Indigenous Peoples, as affected rights holders, may not want to enter a legally binding agreement with The Organization, as it may be perceived to have repercussions on their 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. The potential for this scenario should be discussed early in the development of the FPIC process ([Step 2](#)).
- 169** RECOMMENDED ACTIONS:

The Organization	Affected Rights Holders
Maintain appropriate records of all agreements, including written accounts and audio or film records <ul style="list-style-type: none"> Make records available to the parties of the agreement in their preferred language and/or media formats 	
	Identify the conditions under which a consent decision may be 'withheld' or 'withdrawn and ensure they are discussed with The Organization and included in the FPIC Agreement (or binding agreement)

Q23: Is the description of this step clear? If not, why not and how can it be improved?

Q24: Do you disagree with any of the recommended actions? If yes, please identify them and explain why.

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

- 170** The relationship between The Organization and rights holder does not end once an FPIC Agreement is reached. All parties should continue to invest in maintaining a good relationship by honouring the FPIC Agreement and applying the tools and knowledge acquired during the FPIC process.
- 171** The agreements reached through the FPIC process are based on trust. This requires that representatives of involved parties know and respect each other, be accessible, and be willing and able to find solutions during and after the initial agreement is established. Any important new information or changing circumstances, e.g. legal context or legislation or changes in leadership of rights holders, should be shared transparently and discussed if necessary.
- 172** 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 about the FPIC Agreement and therefore differing indicators and values should be expected and mutually agreed in the monitoring plan.
- 173** The Organization ought to have had several discussions with the rights holder to attempt a preliminary list of indicators to monitor the implementation of the FPIC Agreement. Affected rights holders may provide their own list with justification, but just as with other steps in the FPIC process, these too should be negotiable between the parties. Parties should remain accessible to each other and be open to periodic reviews of the agreements, especially when new information is shared.
- 174** RECOMMENDED ACTIONS:

The Organization	Affected Rights Holders
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 The Organization

The Organization	Affected Rights Holders
<ul style="list-style-type: none"> 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 to withdraw consent	Maintain relationships in good faith, understanding that at any time reasons may be given to withdraw consent

Q25: Is the description of this step clear? If not, why not and how can it be improved?

Q26: Do you disagree with any of the recommended actions? If yes, please identify them and explain why.

Part III: Key Concepts

175 This section of the Guideline provides a brief introduction of key concepts found throughout the FSC P&Cs with the aim 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

176 It is critical that The Organization evaluate how planned management activities build long-lasting and mutually beneficial relationships, including reasonable benefits for the affected rights holders. Benefit-sharing is recommended for obtaining and maintaining FPIC where forest management occurs at a scale and/or intensity that significantly impacts the lands, territories and resources of affected rights holders.

The parties to the FPIC process and Agreement should be transparent and use due diligence in negotiations for any benefit sharing to avoid its misinterpretation as bribing, coercion or manipulation.

177 Benefits may be broadly defined, and can include, for example, joint ventures, profit-sharing, sharing of resource revenue, provision of goods and services, e.g. roads, clinics, housing, and schools, preferential employment, training, and contributions to community-development funds.

Q27: Is the description of the benefit sharing clear?

Q28: If not, why not and how can it be improved?

Binding Agreement

178 A 'binding agreement' describes any agreement that is ratified by affected rights holders and documented in writing or in another format that is culturally appropriate. In the context of an ongoing FPIC process, any agreement reached remains valid as long as it is subject to a continuous process of dialogue and monitoring for compliance.

179 However, a consent decision cannot be expected to permanently fix the affected rights holders 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. The parties to the agreement should anticipate that situations change, and the agreement should include provisions for renegotiation, renewal, termination, economic conditions and other terms and conditions.

180 Once consent is given and documented through an agreement, neither party should withdraw it arbitrarily – it is ‘binding’ on both parties. If consent is withdrawn (or granted), The Organization should determine and document the reason, noting the change of conditions to the agreement and plans to mitigate negative impacts on identified rights. Otherwise, if the conditions upon which the original consent was based are being met, and to the satisfaction of the affected rights holders, ongoing consent is implied.

181 There are practical considerations that may impact the ability of The Organization to produce a binding agreement at the time of audit. For example, community economic priorities in another sector, 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, unplanned community event or governance issue. 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 affected rights holders to accept the temporary activities of The Organization without prejudice to claims of legal or customary rights.

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

Q29: Is the description of the binding agreement clear?

Q30: If not, why not and how can it be improved?

Culturally Appropriate Engagement

182 The phrase ‘culturally appropriate’ is used throughout the FSC P&C and IGLs in relation to 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.

183 Culturally appropriate processes consider cultural differences, such as:

- preferences for direct or indirect negotiation;
- attitudes towards competition, cooperation, and conflict;
- the desire to preserve relationships among complainants;
- authority, social rank, and status;
- ways of understanding and interpreting the world;
- concepts of time management;
- attitudes towards third parties, and
- the broader social and institutional environment in which forestry activities occur.

184 The phrase is defined in the Glossary; however, the most informative guidance on the expectations of 'culturally appropriate engagement' can be found in IGI 7.6.2 which states that culturally appropriate engagement is used to:

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

185 Depending on the SIR of the operation, 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.

Q31: Is the description of the culturally appropriate engagement clear?

Q32: If not, why not and how can it be improved?

Dispute Resolution

186 A dispute resolution process should be viewed as a mutually agreed proactive measure to prevent the breakdown of negotiations. The Organization should make affected rights holders aware of the existing 3-step dispute resolution mechanisms within the FSC system, starting with The Organization, then certifying body, and finally, Accreditation Services International. Depending on the circumstances of the dispute and the rights holder, third-party assistance may be required to utilize the FSC system.

187 General guidance for a dispute resolution process:

- Incorporate a community's own systems for dispute resolution, and make known how internal disputes are addressed;
- Keep it simple and accessible;
- The process should be mutually agreed;
- A neutral third party may be jointly selected to facilitate the process; and
- Senior personnel on all sides of the dispute are encouraged to provide local managers with the mandate to seek time-bound solutions

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

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 affected rights holders.

FSC national offices should monitor disputes that arise to certifying bodies and ASI to understand circumstances and inform future guidance. National offices may also want to ensure certifying bodies practicing in the region have made their dispute resolution process known to affected rights holders.

There are a number of 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

- 188** A dispute may arise that is specific to an area of land or a resource, but not with the FPIC Process in general. In this case, the Parties can use dispute resolution within the Process Agreement. If it becomes clear that a dispute cannot be resolved, and is area or resource specific, the parties may consider adopting a modified (or interim) Process Agreement that outlines conditions that are acceptable to the Parties for continued management activities on the lands and territories of the affected rights holders. It should outline where, why, and how management activities will be conducted, based on the Best Available Information.

Q33: Is the description of the dispute resolution clear?

Q34: If not, why not and how can it be improved?

Iterative Proposals and Decision Making

- 189** The FPIC process supports iterative proposal development by The Organization based on the full participation and decisions of affected rights holders. Within the context of annual audits and 5-year certificate renewal processes, it is possible that a change to the negotiated conditions of an agreement may be required. The FPIC Process should anticipate the potential for change (e.g. new information becomes available, new conditions arise or The Organization alters its plans) and acknowledge that the risk of disruption to management activities be minimized.
- 190** It is the right of Indigenous Peoples to grant, withhold or withdraw consent for management activities affecting their legal and customary rights at any stage of an FPIC process. However, withdrawing consent that is formally or informally documented in a binding agreement should not be done arbitrarily or in bad faith. The terms and conditions of this possibility should be addressed in advance in a Process Agreement and in a culturally appropriate manner.

- 191** A Process Agreement (See [Step 2 \(2.4\)](#)) negotiated early in the relationship should outline an agreed upon, good faith process for altering the conditions of the agreement, including when and how the agreement may be broken, and what would constitute a breach of the agreement. Whether the agreement is formally or informally documented, The Organization must ensure the affected rights holders understand that, at any time in the relationship, they are free to change their decision.
- 192** 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.

Q35: Is the description of the iterative process and decision making clear?

Q36: If not, why not and how can it be improved?

Participatory Monitoring

- 193** Participatory monitoring in the context of the FPIC process is the systematic recording and analysis of information that has been chosen and recorded by affected rights holders and The Organization to inform all parties on the progress (or lack of progress) on the FPIC process.
- 194** 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.
- 195** Affected rights holders are 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 begins). Set periods of data gathering and analysis should also be established at a frequency appropriate to the activity (i.e. daily, weekly, monthly, or seasonally).
- 196** Monitoring should focus on ensuring that the FPIC agreement and associated management and mitigation plans are implemented correctly during forest 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.
- 197** Benefits of participatory monitoring include a record of 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).

Q37: Is the description of the participatory monitoring clear?

Q38: If not, why not and how can it be improved?

Past Grievances

198 The historical context of land tenure and concession allocation may have resulted in significant conflict between Indigenous Peoples, local communities, the State and proponents of resource development. Therefore, affected rights holders identified through the FPIC process may wish to address past grievances as a condition for reaching consent on future forest 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](#)).

199 However, grievances over past management activities 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 should be held responsible for its own management actions that result in lands, territories, and resources of affected rights holders being confiscated, taken, occupied, used, or damaged without their free, prior and informed consent.

The relevant approved NFSS Standards Development Group will have reviewed the IGI's in Criterion 3.4 and accepted, added, adapted modified or dropped IGIs consistent with their national context. The Organization and affected rights holders should be aware and informed of the requirements.

200 Negotiations on existing and unresolved conflicts can be undertaken with the understanding that The Organization may have limited influence on the outcome. Depending on the context of the management unit and the SIR of the management activities, redress or compensation may include:

- return of land to the communities;
- 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.

201 If any of these options are beyond the legal limits or economic viability of The Organization, it may adopt an advocacy role and encourage and/or facilitate dialogue between responsible state authorities and affected rights holders aiming for redress and settlement of past grievances.

Q39: Is the description of the concept of past grievances clear? If not, why not and how can it be improved?

Q40: Do you recommend any additional concepts to be described here? Please explain.

Q41: What improvements would you recommend supporting the development and implementation of an FPIC agreement in your context?

Q42: Please add any additional comments that can inform the on-going work of the FPIC Working Group.

ANNEX A: Glossary of Terms

Terms used in the Guideline and defined in FSC-STD-01-001 V5-12 EN (2015)

202 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).

203 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.

204 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.

205 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

206 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 V4-0*, The term “certificate holder” is sometimes used in this document in place of The Organization.

207 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)

- 208 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
- 209 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: Based on N.L. Peluso and P. Vandergeest. 2001. Genealogies of the political forest and customary rights in Indonesia, Malaysia and Thailand, *Journal of Asian Studies* 60(3):761–812).
- 210 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).
- 211 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: based on FSC-PRO-01-005 V3-0 Processing Appeals).
- 212 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.
- 213 Engaging / 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).
- 214 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: Based on the Preliminary working paper on the principle of Free, Prior and Informed Consent of Indigenous Peoples (...) (E/CN.4/Sub.2/AC.4/2004/4 8 July 2004) of the 22nd Session of the United Nations Commission on Human Rights, Sub-commission on the Promotion and Protection of Human Rights, Working Group on Indigenous Populations, 19–23 July 2004).

- 215 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 (Source: FSC Policy Motion 40/2017).
- 216 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: Gerning B, Odero A, Guido H (2000), Collective Bargaining: ILO Standards and the Principles of the Supervisory Bodies. International Labour Office, Geneva).
- 217 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: Adapted from United Nations Permanent Forum on Indigenous, Factsheet 'Who are Indigenous Peoples' October 2007; United Nations Development Group, 'Guidelines on Indigenous Peoples' Issues' United Nations 2009, United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007).

- 218 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.*

219 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).

220 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).

221 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).

222 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).

223 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).

224 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).

225 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).

226 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).

227 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).

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

229 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: Forest Peoples Programme (Marcus Colchester, 7 October 2009))

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

Terms in use in the Guideline, but not part of the FSC normative framework

- 231 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)
- 232 FPIC Agreement:** A bond between The Organization and 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 from a free, non-coercive dialogue between the parties prior to any management activity taking place that may affect the rights holders.
- 233 Mediation:** a procedure in which the parties in discuss their dispute with the assistance of a trained impartial person who assist them in reaching a settlement/agreement. The mediator is a facilitator who has no power to render a resolution to the conflict.
- 234 Process Agreement:** A bond between The Organization and affected rights holder that affirms a mutually agreed to approach for negotiating the terms and conditions of an FPIC Agreement.
- 235 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

ANNEX B: Relevant Articles of ILO 16 and UNDRIP

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

- 236** 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.
- 237** 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, that based on their indigenous origin or identify.
- 238** 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.
- 239** 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.
- 240** 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.
- 241** Article 7: (1) Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
- 242** (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.
- 243** Article 8: (1) Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
- 244** 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.
- 245** 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.
- 246** 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.

- 247** 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.
- 248** Article 17 (1) Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
- 249** (3) Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.
- 250** 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.
- 251** 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.
- 252** (2) Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.
- 253** 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.
- 254** 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.
- 255** 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.
- 256** 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.

- 257** 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.
- 258** (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.
- 259** 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.
- 260** (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.
- 261** 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.
- 262** 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.
- 263** 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
- 264** 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.
- 265** 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.

The relevant articles of the ILO Convention 169 (1989):

- 266** Article 1: (1) This Convention applies to:
- 267** (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;
- 268** (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.
- 269** (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.
- 270** 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.
- 271** (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.
- 272** Article 4: (1) Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.
- 273** (2) Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.
- 274** Article 5: In applying the provisions of this Convention:
- 275** (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;
- 276** (b) the integrity of the values, practices and institutions of these peoples shall be respected;
- 277** (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.
- 278** 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.

- 279** Article 8: (1) In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.
- 280** 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.
- 281** 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.
- 282** Article 16: (1) Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.
- 283** (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.
- 284** (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.
- 285** (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.
- 286** (5) Persons thus relocated shall be fully compensated for any resulting loss or injury.
- 287** Article 17: (1) Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.
- 288** (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.

- 289** (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.
- 290** 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:
- 291** (a) admission to employment, including skilled employment, as well as measures for promotion and advancement;
- 292** (b) equal remuneration for work of equal value;
- 293** (c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;
- 294** (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.
- 295** (3) The measures taken shall include measures to ensure:
- 296** (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;
- 297** (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;
- 298** (c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;
- 299** (d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.
- 300** 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.