



Forest Stewardship Council®



**Implementing free, prior, and
informed consent (FPIC):
A Forest Stewardship Council
Discussion Paper**

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Status of the discussion paper

This is a draft version of the document that will be used for public consultation to establish baseline information to develop FPIC guidelines. As a draft document, it will serve to inform applicants to the FPIC sub-chamber balanced working group on the state of knowledge on the principle of free, prior, and informed consent. It also presents an enhanced version of the FPIC process first presented in the 2012 FPIC guidelines (FSC, 2012). Ultimately, the intent of this discussion paper is to inspire dialogue that leads to operational guidance on respecting and upholding the right to FPIC in the context of FSC certification. For more information, questions, or comments, please contact Joachim Meier-Dörnberg at j.meier-doernberg@fsc.org.

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Abbreviations

CFUG	community forest user group
CSO	civil society organization
FMU	forest management unit
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
NGO	nongovernmental organization
P&C	Principles and Criteria for Forest Stewardship (FSC-STD-01-001 V5-0 D5-0 EN)
PIPC	FSC Permanent Indigenous Peoples Committee
SDG	standard development group
TWG	technical working group
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
WG	working group
WIPO	World Intellectual Property Organization

A Introduction

The right to free, prior, and informed consent (FPIC) is a key principle of international human rights law. It is intended to protect the legal and customary rights of Indigenous Peoples and prevent further destruction of their lives, cultures, and livelihoods. Increasingly, it is also seen as a right that enables local communities to protect themselves against significant adverse impacts on the resources and territories for which they can make a justified claim of long and established use. Obtaining FPIC of Indigenous Peoples and local communities before undertaking forestry management activities on the lands they legally or customarily own and/or use is an important requirement in the Forest Stewardship Council (FSC) Principles and Criteria (P&C) for Forest Stewardship (FSC, 2015a).

Why a discussion paper?

Although the right of Indigenous Peoples to give, withhold, or withdraw consent has been recognized by FSC since the original P&C were published in 1994, there were few documented examples of good practice in the implementation of this requirement. At the same time, there have been several reports of conflicts within the FSC system arising from this right being disregarded.

The revised FSC P&C (FSC, 2015a) broadened the scope of the right to FPIC and are more specific in determining when consent is needed. Some changes include more explicit requirements for recognizing and addressing the right to FPIC for affected local communities, as well as the need for consent to be obtained **prior** to the implementation of management activities that may affect those rights. This Discussion Paper is meant to:

1. encourage and support discussion among stakeholders, Indigenous Peoples, and FSC on the recognition of the right to FPIC;
2. provide a framework for the development of generally acceptable guidelines for Organizations seeking FPIC.

FSC initiatives since Version 1

Version 1 of the FSC guidelines for implementing FPIC was published in 2012 (FSC, 2012). Since then, several initiatives have been completed that have enhanced the understanding of FPIC in the context of forest management. In chronological order, these are:

- Establishment of the Permanent Indigenous Peoples Committee (PIPC)
- Policy Motion 2014/65
- Field testing (2014–2015)
- Revised FSC P&C and international generic indicators (IGIs) (2015)
- Establishment of the high conservation value working group (2016)
- Establishment of the FPIC technical working group (2016)
- Policy Motion GA2017/40 (New IGI to clarify that FPIC is to be achieved over time through a mutually agreed process)
- Policy Motion GA2017/71 (FSC supports Indigenous Cultural Landscapes)

Establishment of the Permanent Indigenous Peoples Committee (PIPC)

After the publication of Version 1, the FSC PIPC was established to explore how to strengthen and renew the engagement of Indigenous Peoples in FSC. As a standing committee of the FSC International Board of Directors, the PIPC provides ongoing guidance on decisions affecting the FSC system (FSC, 2013).

The PIPC has supported a number projects to address the growing demand for information and guidance on the right to FPIC and effective FPIC processes.

Policy Motion GA2014/65: intact forest landscapes

Policy Motion GA2014/65, adopted at the FSC general assembly in 2014, aiming to protect intact forest landscapes (IFLs), also requires respect for the FPIC of Indigenous Peoples, traditional peoples, and forest-dependent communities in affected forest management units (FMUs) (FSC, 2014b).

Field testing

Version 1 of the FPIC guidelines was tested in 12 locations around the world. The results provided further evidence that there was a need to improve the understanding of FPIC among all stakeholders in the FSC system (FSC, 2014a). Lessons learnt and best practices were discussed with the FPIC technical working group (TWG) and incorporated into this Discussion Paper.

Revised FSC P&C and IGLs

The revised FSC P&C (FSC, 2015a) clarified the scope of the right to FPIC and are more specific in determining when consent is needed in Principles 3 and 4. Obtaining FPIC is a requirement in five criteria within Principles 3 and 4 (C3.2, C3.3, C3.6, C4.2, and C4.8) and, as such, non-compliance with these criteria could prevent the issuing of an FSC certificate. For ongoing, certified management activities, non-compliance could result in requests for corrective action by the certification body and eventually in suspension of the certificate if the issues are not resolved.

High conservation values working group (HCV WG)

The high conservation values working group (HCV WG) was established in 2015 to develop IGLs specifically for intact forest landscapes (IFLs) as per Policy Motion 2014/65 and guidelines on the identification, management, monitoring, and conservation of high conservation values (FSC, 2015c). Members of the FPIC working group joined the HCV WG in 2016 to provide input on the IGLs and the revised FSC HCV Manager's Guide.

FPIC technical working group (FPIC TWG)

A group of technical experts in the areas of indigenous rights, community engagement, auditing and implementation of FSC standards in various regions of the world was assembled in 2016 to provide guidance on the revision of the FSC FPIC guidelines (version 1). Version 2 of the guidelines included substantial content from the field tests and additional guidance for standard development groups (SDGs). The decision was made by the steering committee to convert this document into a Discussion Paper to enable broader engagement with stakeholders in the FSC system.

Policy Motion GA2017/40 clarifying FPIC to be achieved over time

Policy Motion GA2017/40 introduced several small editorial changes to the IGLs related to Indigenous Peoples to correct language that may be construed as disrespectful. It also introduced a new IGI to allow an ongoing mutually agreed FPIC process when the community finds it of higher value than being rushed to conclude an FPIC agreement to comply with Criterion 3.3 by the time of the next audit.

Policy Motion GA2017/71: FSC support for indigenous cultural landscapes

A motion was introduced to the membership during the 2017 general assembly to create a working group to further explore indigenous cultural landscapes (ICLs) in relation to meeting FSC P&C requirements related to FPIC and other landscape values (e.g. conversation networks). While this motion was defeated, members of the social chamber, with support from the environmental chamber, drafted another motion for further consideration by the membership. Policy Motion GA2017/71, which stated very simply that FSC membership supported ICLs, was passed.

How will FPIC guidelines be developed?

This discussion paper outlines best practice methodologies for engagement and agreement-making with Indigenous Peoples and local communities. It explains the responsibilities of the Organization in an FPIC process. In 2018–2019, FSC will develop guidelines to address day-to-day operational scenarios or questions of forest managers and Indigenous Peoples. Guidelines for certificate holders will be developed by an FPIC working group with balanced representation of social, environmental, and economic stakeholders from the Global North and South. FSC may also develop specific FPIC guidelines for indigenous communities working with FSC certificate holders. This would be done in collaboration with Indigenous Peoples, written from their perspective, and made available in appropriate formats and languages.

National guidance may also be required to address specific legal and cultural contexts. Some FSC national offices have already begun this process (e.g. FSC Canada). Guidelines may then be used to develop training materials for staff, local certification bodies, and other interested stakeholders. FSC will monitor the implementation of FPIC and share information throughout the FSC network. As new information is gathered, it is foreseen that regular updates of the guidelines may be needed.

Overview of the discussion paper

This discussion paper is organized into three parts, each successively building upon the previous in the level of detail presented. The first section is an introduction, providing background information on the evolution of Principle 3 and the development of operational guidelines. The second provides general background information on the right to FPIC, its definition, the international legal context, and the benefits and risks of engaging in an FPIC process. The final section describes the FPIC process in seven steps, each containing several elements to provide extensive and practical guidance for those who will implement an FPIC process.

In addition to information on the right to FPIC in the revised FSC P&C and IGIs, a separate document (Implementation of the right to free, prior, and informed consent: FSC Discussion Paper; Supporting Information Version 1, December 2017) provides excerpts from the FSC P&C and IGIs, and relevant articles in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Labour Organization (ILO) Convention 169. This document also gives further guidance on participatory mapping, an overview of tools and resources that may be applied when implementing an FPIC process, and guidance on alternative dispute-resolution mechanisms. Finally, additional guidance is provided on the implementation of FPIC in two specific types of forest management activities: community-based forestry and plantations.

A note on terminology

Reference in the text	Explanation and/or Sources
FSC Principles and Criteria (FSC P&C)	<i>FSC Principles and Criteria for Sustainable Forest Management</i> FSC-STD-01-001 V5-2 (FSC, 2015a)
International generic indicators (IGIs)	FSC-STD-60-004 V1-0 EN (FSC, 2015b)
Community	FSC Principles 3 and 4 require FPIC for Indigenous Peoples, traditional peoples, and local communities. In any FMU this can be applicable to one or more communities of Indigenous Peoples, traditional peoples, and/or local communities. To enhance the readability of these guidelines, these terms are used in a flexible manner. When the terms ‘community’ or ‘communities’ are used, they may refer to Indigenous Peoples, traditional peoples, and

	local communities; and they can refer to a single community or multiple communities
The Organization	This term is used for the person or entity holding or applying for certification. In many situations 'the Organization' may be a forest company or individual operator

Note to standard developers

It is important to note that there are several elements presented in this discussion paper that are also requirements of the FSC P&C and IGLs, and these are not advisory but require conformity. This document highlights when this is the case using explicit text boxes. This formatting should help readers (including SDGs and working groups) cross-reference best practice recommendations with FSC requirements.

B The right to free, prior, and informed consent

Free, prior, and informed consent (FPIC)

Today, FPIC is widely accepted as a right, a principle, and a process to be applied in relations between Indigenous Peoples and those who have competing interests for their land and resources. It is also being increasingly accepted as applying to local communities under certain circumstances.

Indigenous Peoples define FPIC primarily as an expression of their collective right as peoples to self-determination, including respect for their collective decision-making processes. This means that rights holders can accept or reject a development project that will affect their rights. Indigenous Peoples also see FPIC as a principle of negotiating in good faith and with mutual respect and equality (Doyle and Cariño, 2013).

FPIC can be defined simply as:

The right to participate in decision-making and to give, modify, withhold, or withdraw consent to an activity affecting the holder of this right. Consent must be freely given, obtained prior to implementation of such activities, and be founded upon an understanding of the full range of issues implicated by the activity or decision in question; hence the formulation: free, prior, and informed consent (Colchester and MacKay, 2004).

Clarifying the four elements: free, prior, informed, and consent

Free

'Free' refers to a process that is self-directed by the community from which consent is being sought, and one that 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 to negotiate conditions. The Organization clearly expresses its commitment to not proceed without consent at all stages where FPIC is required.

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 and times and in languages and formats agreed by the rights holders. All community members are encouraged to participate, regardless of gender, age, or standing, and meetings should be organized accordingly.

A dispute-resolution procedure should be in place before negotiations break down. Third-party assistance – legal or otherwise – should be made available to communities to provide additional sources of information, mediate resolution, or strengthen the position of the rights holders. When consent is not given, the timescale to the next opportunity for decision-making is mutually agreed, as well as the conditions under which decisions may be reversed.

Prior

An important temporal aspect of decision-making is introduced by the element 'prior'. In the context of forest management this means there is no impact on the legal or customary rights of the communities before making a negotiated consent agreement. Ideally, consent is obtained before any permits, licences, or titles governing forest management are granted or even before designating a forest area. However, in practice, concessions are granted by governments before FPIC has been granted.

FSC requires Organizations to determine whether they have been granted a concession that overlap legal and customary rights. When there are potentially overlapping claims, the Organization must engage with the communities to define an acceptable remedy that will

lead to a consent agreement before there is any impact on those rights. Until a culturally appropriate engagement process is in place to address FPIC, the Organization may be asked to avoid or defer operations in planned management areas where there is a likelihood of significant impact on community rights. If the Organization fails to obtain FPIC, there may be an option to excise those parts of the FMU that overlap community rights from the scope of certification. This must be done in compliance with the FSC policy on excision, FSC-POL-20-003 (FSC, 2004).

The legal implications of the concession or title for the communities' rights also needs to be considered. A clause may need to be included in an FPIC agreement to allow the community to accept the (temporary) presence of the Organization without prejudice to their claims for legal recognition of the underlying customary right or native title. In this context, it is important to be aware that the decision-making timeline established by the community must be respected. Adequate time must be granted to understand, access, and analyse all the relevant information on the proposed activity, including its potential impacts and the community's rights. The risk of investing in management options that will adversely impact affected communities is minimized the earlier an FPIC process agreement is established.

Informed

Forest management planning generates significant amounts of technical information that is inaccessible in its raw form to most people outside of the forestry profession. The 'informed' element of FPIC refers to the type and format of information that should be provided by the Organization to support community decision-making processes. It is vital to ensure that the community has a clear and confirmed understanding of the management activity proposal and is aware of the specific activities they are being asked to consent to.

Information provided by the Organization should be objective, covering the potential positive and negative impacts of both the forest management activities and giving or withholding consent, including the perspectives of the affected people expressed through participatory mapping and impact assessments. It should also be complete, covering the spectrum of potential social, socio-economic, cultural, environmental, and human-rights impacts; and be accessible, clear, consistent, accurate, and transparent.

Information should be delivered in a language and format that the community can understand (including radio, video, theatre, graphics, documentaries, photos) and include opportunities for the community to access independent legal or technical advice. It is important to use direct communication (face-to-face meetings and other alternative, interactive methods) where there are low levels of literacy across the community, and to deliver the information at locations chosen by the community. All sectors of the community, including those from remote areas, men and women, the young and elderly, and marginalized groups, should have access to the same information. It should be provided on an ongoing and continuous basis throughout the FPIC process before and after consent has been given, with any new information passed to affected communities as soon as it becomes available.

Consent

The final and distinguishing element of FPIC is the 'consent' decision. It refers to a collective agreement made by a community and reached through a process of dialogue, deliberation, and decision-making (by consensus, majority, etc.) agreed to by the community. The decision involves saying 'yes' or 'no' to a proposed plan and includes options to apply conditions. In the event of a change in the proposed activities or the emergence of new information, the community may also reconsider its decision. The community has the right to define its own decision-making process, but it is also important for the Organization to determine and document whether the decision-making process intentionally excludes individuals or groups within the community.

Consent is not the same as engagement or consultation, although these are necessary precursors to achieving consent. It is the expression of rights (e.g. to self-determination,

lands, resources, territories, and culture) and may be given or withheld in phases, over specific periods of time, and for distinct stages of the forest management operation. This means that consent is not a one-off decision that gives an everlasting social licence to the Organization, but part of an iterative process, described by various Indigenous Peoples as ‘living consent’, which requires continual monitoring, maintenance, and reaffirmation.

A consent decision may be reversed and can be revisited by rights holders as situations change. Once consent is given, however, the community cannot withdraw it arbitrarily. The FPIC agreement is binding on both parties and the Organization must try to determine and document the reason for the withdrawing or granting of a consent decision. Otherwise, if the conditions upon which the original consent was based are being met, ongoing consent is implied.

There have been some challenges to this notion of ‘collective agreement’ as it implies that the community is homogeneous and without diversity of thought, roles, or experience. While the intent of FPIC is to recognize and uphold the right to self-determination, there are documented instances of traditional governance and decision-making processes that violate individual human rights. Therefore, the FPIC process must include mechanisms to monitor the impact of forest management activities on community health and well-being to ensure that FSC does not exacerbate existing inequalities. Ideally, FSC processes improve the well-being of all members of the community.

Legal basis for the right to FPIC for Indigenous Peoples and local communities

FPIC is referenced in ILO Convention 169 (ILO, 1989) and the Convention on Biological Diversity (United Nations, 1992), and increasingly in international legal instruments, policies, and jurisprudence (see Doyle and Cariño, 2013).

Who has the right to FPIC?

Indigenous Peoples, local communities, and traditional peoples have the right to FPIC to the extent necessary to protect their rights, resources, lands, and territories. There are significant challenges in defining the terms ‘Indigenous Peoples’ and ‘local communities’ in the context of a global certification system. Best practice at the international level is avoid the application of a universal definition. Instead, the approach has been to provide guidance to identify the peoples concerned in any given country. This is particularly important to FSC, as Principles 3 and 4 require the identification and engagement of Indigenous Peoples and local communities in the determination of legal and customary rights.

International human rights law requires that, at a minimum, there must be good faith, informed consultations with all affected persons, including women and those particularly vulnerable, and full respect for human rights (UNHRC, 2007: annex 1, paras 38–39). The case for FPIC in this circumstance is based on: (a) the right to meaningful participation in environmental decision-making (UNEP, 1992); (b) the right to control access to their lands and resources (Inter-American Court of Human Rights, 2005); (c) contemporary standards of public participation as a hallmark of legitimate governance; (d) basic principles of equity and justice (WRI et al., 2005: 72); and (e) the UN Declaration on the Right to Development: “Everyone has the right to development” (Hill et al., 2010: 4).

Indigenous Peoples’ rights to FPIC

The importance of consent as the basis for relations between states and Indigenous Peoples traces back to early Spanish colonialism (Doyle, 2015). It was observed as long ago as 1975 by the International Court of Justice in its advisory opinion in the Western Sahara case, which stated that entry into the territory of Indigenous Peoples required their freely informed consent as evidenced by an agreement (ICJ, 1975; Janis, 1976).

Indigenous Peoples may live among other groups or next to non-indigenous communities who are equally dependent on the forest, and treating these groups differently could create conflict. Some human rights mechanisms have extended the right to FPIC to communities other than Indigenous Peoples, including the UN Human Rights Committee, and the UN Special Rapporteur on the Rights of Indigenous Peoples (UN-REDD Programme, 2013: 11).

Local communities’ rights to FPIC

Although the legal precedent for FPIC relates to the rights of Indigenous Peoples, there is growing recognition, including by FSC, that all communities with legal or customary rights should play a meaningful role in decision-making on projects that significantly affect them, including having the ability to refuse to host projects that provide inadequate benefits or do not help them to realize their development goals (WRI et al., 2005: 72).

For non-indigenous communities, the case for FPIC is based on: (a) the right to meaningful participation in environmental decision-making (UNEP, 1992); (b) the right to control access to their lands and resources (Inter-American Court of Human Rights, 2005); (c) contemporary standards of public participation as a hallmark of legitimate governance; (d) basic principles of equity and justice (WRI et al., 2005: 72); and (e) the UN Declaration on the Right to Development: “Everyone has the right to development” (Hill et al., 2010: 4).

Nature and scope of Indigenous Peoples’ right to land, resources, and territories

To more fully appreciate the right of Indigenous Peoples to FPIC, efforts must be made to first understand the scope of their rights to lands, resources, and territories. Feiring (2013) identifies five principles within UNDRIP and ILO 169 that support the implementation of the right to FPIC: collective rights, traditional occupation and ownership or use, natural resources, non-exclusive occupation of lands, and cross-border kinship and cooperation.

Guiding principles

Table 1. Guiding principles to determine the scope of Indigenous Peoples’ rights to lands, resources, and territories

Principle or concept	Description	UNDRIP and ILO source
Territory	Rights extend beyond the land directly occupied/cultivated/inhabited to the broader territory that includes total environments (or landscapes) inclusive of natural resources and water sources	UNDRIP art. 26; ILO 169 art. 13.2
Collective rights	Land rights have individual and collective aspects; communities may have customary ways of recognizing land and resource rights of individual members, households, or families; collective rights are connected to their collective rights to self-determination, non-discrimination, cultural identity, and development as distinct peoples	UNDRIP preamble, art. 25; ILO 169 art. 13.1
Traditional occupation, ownership, or use	Traditional occupation and use is the basis for establishing land rights, not state recognition or registration of that ownership	UNDRIP art. 25, 26.1, 26.2; ILO 169 art. 14.1
Natural resources	The right to ownership and use of lands and territories extends to the natural resources, including the right to own, use, develop, and control those resources	UNDRIP art. 26; ILO 169 art. 15.1

Non-exclusive occupation of lands	Traditional use and occupation may not have resulted in exclusionary infrastructure commonly recognized in modern property law; however, customary laws govern the use and occupation of territories	ILO 169 art. 14
Cross-border kinship and cooperation	The establishment of state boundaries, including forest-concession boundaries, involuntarily separated Indigenous Peoples; culturally appropriate engagement should recognize that kinship and cooperative relationships may still exist across these boundaries	UNDRIP art. 36; ILO 169 art. 32

Source: Adapted from Feiring (2013).

FPIC and veto power

There is ongoing debate regarding the legal authority afforded to peoples with the right to FPIC. Some believe that FPIC implies a **general** veto power over decisions that may affect them, while others conclude that consent is the objective of meaningful and good-faith consultation and engagement. FSC has not entered, nor does it intend to enter, the debate on behalf of Indigenous Peoples and other stakeholders. Instead, FSC will continue to monitor outcomes of international and national interpretations of the right to FPIC and regularly update its FPIC guidelines to reflect new developments in international law.

The most widely publicized international interpretation of FPIC in the context of decision-making authority is the statement by the UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya who states that article 19 of the UNDRIP “should not be regarded as according Indigenous Peoples a general ‘veto power’ over decisions that may affect them, but rather as establishing consent as the objective of consultations with Indigenous Peoples” (Anaya, 2009: 46). In other words, while UNDRIP and ILO 169 provide for consultation with the objective of achieving FPIC, consent is not always an absolute requirement.

There has also been clear evidence that undertaking consultation with the limited intention to inform potentially affected communities about a predetermined decision is not in compliance with UNDRIP or ILO 169. In general, the requirement for obtaining consent varies in accordance with the severity of the potential impact on affected Indigenous Peoples. Therefore, the key question for Organizations and peoples with rights to FPIC is: **what are the potential impacts of the management activities on legal and customary rights holders?**

In the case of FSC-certified forest management activities, it follows that if a proposed activity directly impacts the rights of Indigenous Peoples to land, resources, and territories, there is “a strong presumption that the proposed activity should not go forward without Indigenous Peoples’ consent. In certain contexts, that presumption may harden into a prohibition of the measure or project in the absence of indigenous consent” (Anaya 2009: 47). However, even if an FPIC process has been concluded without agreement or consent, Organizations are still required respect the substantive rights of Indigenous Peoples (e.g. the rights to land and property) (ILO, 2013: 16) as per IGI 3.2.2 (FSC, 2015b).

Benefits and risks of FPIC: ‘go slow to go fast’

It is important to note that the culture, dynamics, and decision-making procedures of Organizations and communities are very different. Organizations usually prefer quick processes with long-term commitments (i.e. certainty), while communities prefer extensive and participatory processes with outcomes that remain open to adjustment. Hence, it is important to ‘go slow to go fast’ and to take time to build relationships before moving forward.

Benefits: Applying FPIC in a meaningful way clearly contributes to building an open, ongoing, and equitable relationship between different stakeholders. When implemented properly, it will ensure that resources are shared fairly, forests are managed equitably and sustainably, and communities are offered an opportunity for fair compensation, sustainable access to resources, and, if they wish, a role in forest management. A well-designed FPIC process cannot fully redress power imbalances between communities and forest companies, but it can create mutually beneficial coexistence and cooperation.

Risks: Implementing FPIC is not without risk. A lack of appreciation of indigenous decision-making by outsiders, purposeful manipulation of indigenous institutions, manipulation of decision-making by indigenous elites, and misunderstanding by Indigenous Peoples of the legal, social, and economic implications of projects (FPP, 2007) diminish the value of decision-making by indigenous leaders.

Risk management: Organizations may regard FPIC as too difficult or poorly defined to implement effectively, or inconsistent with host-country preferences or policies. However, the risks of not applying FPIC properly may well be underestimated. For example, in 2014, Ernst and Young elevated “the social license to operate” to third place on their list of the greatest business risks affecting the mining industry (Ernst and Young, 2014).

Recognizing the right to FPIC and implementing an FPIC process can support the Organization’s social licence to operate and reduce legal, financial, and reputational risks resulting from conflicts. It is therefore likely to create a better and safer working environment.

C An FPIC process: step by step

A step-by-step process for engagement with Indigenous Peoples and local communities with a right to FPIC was developed in Version 1 of the FSC FPIC guidelines (FSC, 2012). The process remains the same; however, lessons learnt through field testing and implementation of previous FSC P&C have been incorporated. Each step is presented in detail in the next section.

The seven steps of the FPIC process

Step 1: Identify rights holders and their rights through engagement

Step 2: Prepare for further engagement and agree on the scope of the FPIC process

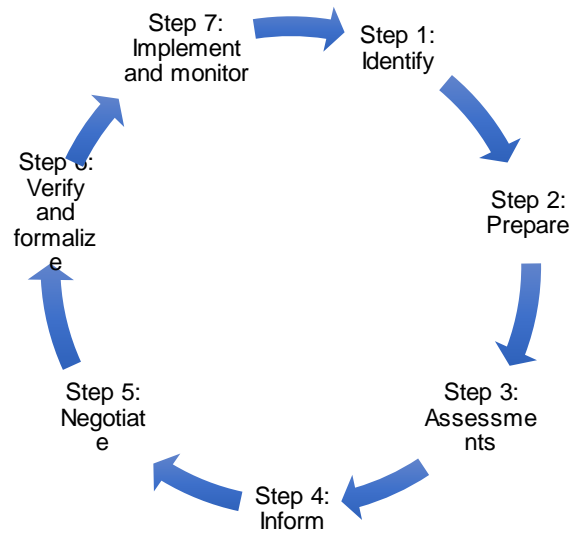
Step 3: Undertake participatory mapping and impact assessments

Step 4: Inform affected rights holders

Step 5: Negotiate and allow rights holders to decide on an FPIC proposal

Step 6: Verify and formalize the FPIC agreement

Step 7: Implement and monitor the FPIC agreement.



Preparing for success

Organizations are responsible for ensuring compliance with the FSC P&C, including IGI 3.2.4, the granting of FPIC by affected rights holders that may or may not have a vested interest in FSC certification. This challenge is best addressed with preparation, patience, persistence, and respect. The following conditions support successful engagement:

- building long-term relationships
- being aware of power imbalance
- striving for mutual agreement
- designing a continuous and flexible process
- building agreement on the scope of rights
- verifying and documenting the process.

Build long-term relationships

FPIC is about building good and mutually beneficial relationships with the communities whose legal and customary rights are affected by the forest management activities. This requires a long-term approach to engagement. A successful FPIC process involves building and maintaining trust, which includes asking the communities what FPIC means to them and allowing them to develop their capacities. It is important to recognize and respect the protocols and values of Indigenous Peoples in the FPIC process. FPIC is a dialogue and iterative learning process that requires an investment of time, resources, and continuous improvement.

Be aware of power imbalance

In most cases there is an imbalance of power, knowledge, and resources between the communities and the Organization. Although the right to say ‘no’ empowers the communities, most likely there will be a need to build the capacities of the communities or provide access to technical or legal advice pertaining specifically to the practice and activities of forest management. At the same time, it should be recognized and acknowledged that communities have expert knowledge about their own environment, culture, processes, and institutions.

Strive for mutual agreement

Although there is a certain logic in the sequence of the seven steps, it is important to realize that an FPIC process is developed **in partnership** with the communities **from the outset**, and that engaging with them may lead to other choices regarding the way in which the FPIC process is designed and implemented. The process may also need to involve several communities. In other words, the steps and activities should be adapted to the specific circumstances.

Design a continuous and flexible process

Field testing highlighted the value of the step-by-step approach in planning the way forward, and as a tool to measure improvements in relationships with communities. A flexible approach is the key to success. While field testing established the value of all of the elements described in the seven steps, in practice it is not necessary to stick rigidly to the order in which they are presented.

Most importantly, an FPIC process is not a one-off decision, but an iterative and continuing process which aims to build an ongoing and positive relationship between the Organization and the affected communities. The quality of this relationship is the key to successfully upholding the right to FPIC. Informed engagement with communities is an element that runs through the whole process in a continuous action cycle. For example, in Step 7, if monitoring reveals new information or changing circumstances, the process could go back to Step 5 for renegotiation.

Additional support, e.g. capacity-building, could become part of the process. For example, when communities are involved in mapping, they become better informed through gathering the information themselves. Similarly, mapping and impact assessments do not have to be separate activities; dialogue on measures to mitigate negative impacts or increase positive impacts can be interwoven with participatory impact assessment.

Build agreement on the scope of rights

Because an FPIC process may take considerable time and can be complicated, flexibility is needed when setting benchmarks and timescales to define the scope of rights for the FPIC process. There should be a possibility to reach an agreement with communities on an FPIC process for an initially agreed scope of rights, while simultaneously negotiating a roadmap towards consent on a wider scope of rights. This could be helpful in a situation where defining and agreeing on the scope of customary rights still requires considerable research and dialogue. To avoid a corrective action request until they obtain and maintain FPIC on the full scope of legal and customary rights, the Organization should be engaged in a mutually agreed FPIC process with the affected communities that is advancing, in good faith, and with which the community is satisfied (see Policy Motion GA40/2017).

Verify the FPIC process

The certification body has the responsibility to verify that community consent is given freely, prior to any impacts of the Organization on their legal and customary rights, and with full information in appropriate formats and languages; or, if the FPIC agreement has yet to be made, to assess whether the agreed FPIC process and/or roadmap on the FPIC scope are progressing meaningfully and to the satisfaction of all parties. Involving an independent verifier in the FPIC process can be useful to help deliver the evidence needed by the certification body and assess whether the Organization is fulfilling its requirements.

Discussing and planning independent verification at an early stage of the process is addressed in Step 2, while Step 6 covers ensuring that the FPIC process is verified independently at the end.

Document the FPIC process

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

Although some information may be recorded by an independent facilitator, the Organization needs to keep the records. The Organization should encourage the community to do the same and check that they are conforming to this request.

Step 1: Identify rights holders and their rights through engagement

Elements in Step 1	Important questions	Desired output
1.1 Identify rights holders: Indigenous Peoples, traditional peoples, and local communities	Did the Organization identify – through engagement – which potentially affected communities have a right to FPIC and to which rights, resources, lands, and territories FPIC applies?	A preliminary overview of rights holders and their legal and customary rights
1.2 Identify claims, rights, aspirations, and goals of communities	Did the affected communities participate in identifying their members and their rights, resources, lands, and territories?	Overview of claimed rights, aspirations, and goals
1.3 Examine and record how communities make decisions and allow community to decide how it chooses to be represented in decisions, while encouraging the community to identify an inclusive decision-making process	Did the community choose freely how to be represented? Is it clear how the community takes decisions and what are their freely chosen representative institutions?	Overview of freely chosen representative institutions and decision-making model
1.4 Inform representative institutions about planned forestry management activities	Does the agreed decision-making model include all members of the community? Did the community decision-making representatives understand the proposed forestry management activities?	Presentation of outline forestry operations in appropriate language and format
1.5 Identify whether the community will consider planned forest management activities	Does the community want to consider the proposed forestry management activities and engage further?	Decision by representative institutions of affected communities

1.1 Identify rights holders: Indigenous Peoples, traditional peoples, and local communities

The first step in an FPIC process is to identify the Indigenous Peoples, traditional peoples, and local communities (rights holders) and their legal and customary rights, resources, lands, or territories in or around the management unit that may be affected by the planned or

ongoing forestry activities. **This defines the scope of the FPIC process.** It should be noted that the recognition of Indigenous Peoples or local communities does not depend on recognition by any state or by the way any state may define the terms ‘indigenous’ or ‘local community’.

1.1.1 Who are the FPIC rights holders: identifying Indigenous Peoples, traditional peoples, and local communities

Indigenous Peoples, local communities, and traditional peoples have the right to FPIC to the extent necessary to protect their rights, resources, lands, and territories.

FSC P&C and IGIs
C3.1, 4.1, and 4.2

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

- *self-identification as Indigenous Peoples at the individual level and acceptance by the community as their member is a key criterion*
- *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 in societies*
- *resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.* (FSC, 2011b)

Local communities: *Communities of any size that are in or adjacent to the management unit, and 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.* (FSC, 2011b)

Traditional peoples: *Social groups or peoples who do not self-identify as indigenous but who affirm rights to their lands, forests, and other resources based on long-established custom or traditional occupation and use.* (FSC, 2011b)

Indigenous and traditional peoples

Consistent with ILO Convention 169 on tribal and Indigenous Peoples (ILO, 1989), the American Convention on Human Rights, and the African Charter on Human and Peoples’ Rights, most traditional peoples should be considered as Indigenous Peoples, in which case FSC Principle 3 applies. Examples of traditional peoples are descendants of African peoples taken against their will to the Americas as slaves, referred to with different names such as ‘Saramaka’ in Suriname and French Guiana or ‘Quilombolas’ in Brazil. In some countries, traditional peoples whose rights are not acknowledged in national law as equivalent to those of Indigenous Peoples in the context of the management unit, are treated in the FSC P&C as local communities. In most countries, traditional peoples’ rights are acknowledged in national law, including ratified treaties, as equivalent to those of Indigenous Peoples in the context of the management unit; these are treated in FSC P&C as equal to Indigenous Peoples (FSC, 2011b).

Self-identification as Indigenous Peoples is considered a fundamental criterion for determining who they are. Article 33 of UNDRIP (United Nations, 2008) refers to the rights of Indigenous Peoples to decide their own identities and membership procedures. It is important to ask whether there are any people in or around the FMU who identify themselves as Indigenous Peoples or an equivalent term in local languages. In the FSC definition of ‘local communities’ there is no element of self-identification.

Identifying Indigenous Peoples and local communities can be a challenging task, particularly when segments of the community (e.g. the youth) live in urban areas but should still be included in the FPIC process. Such factors should be checked with the rest of the community. Migration can complicate the situation further; for example, some communities in Kalimantan, Indonesia and Ujamaa villages in Tanzania now comprise mostly transmigrated people with only a few indigenous individuals remaining. The danger is that the dominant group will not necessarily invite people they see as 'outlaws' to the consultations.

It should also be kept in mind that some may not be aware of their right to self-identify as Indigenous Peoples. Some flexibility and additional training and capacity-building may therefore be required. Extensive research on the people who may be affected by forest operations is also recommended. Depending on the Organization's knowledge of the country and the specific area, it may be necessary to consult national, regional, or local experts as well as nongovernmental organizations (NGOs) or civil society organizations (CSOs). Further, identification must then be undertaken with the full engagement of the communities concerned.

Local communities

Since FPIC for local communities applies only to their established legal or customary rights within the management unit (Criterion 4.2), **it is important for the scope of the FPIC process to distinguish Indigenous Peoples and local communities**. This distinction is also relevant because Indigenous Peoples have their collective rights recognized by ILO Convention 169 and UNDRIP, both of which need to be upheld by the Organization (Criterion 3.4). However, local communities may not have these collective or customary rights, which may result in different scopes for FPIC processes for Indigenous Peoples and local communities.

Local communities with affected rights outside the FMU (e.g. access to water or fish from a river outside the FMU, but which also runs through the FMU) would be classed as 'affected stakeholders' according to FSC Criterion 7.6. These rights are then protected by Criterion 4.5, which requires engagement instead of FPIC.

Indigenous Peoples and local communities living in a mixed society

Different groups, including representatives of Indigenous Peoples, often live together in a single community. It may be impractical or undesirable to design different FPIC processes for different segments of such a community since it may interfere with internal organization and could even lead to disputes. One solution identified in the field tests was that the mixed society self-identified as a local community under Principle 4 within the context of FSC certification, while a part of the community maintained their identity as Indigenous Peoples in their engagement with government authorities in relation to implementation of their rights. In other situations, Indigenous Peoples living in a mixed community may feel more comfortable having their own FPIC process. In this case, they should be allowed to exercise their choice, especially when they have concerns about being fairly represented.

Government recognition of Indigenous Peoples

Recognition of the term 'Indigenous Peoples' may be a sensitive issue. For example, in Africa, many governments argue that most people could be considered 'indigenous', while the Government of China states there are no Indigenous Peoples in the country. However, this ignores the principle of self-identification and does not adequately recognize the marginalization of such groups. **The recognition of Indigenous Peoples by the Organization does not depend on recognition by any state or by the way the state defines the term.**

If a government does not allow the Organization to identify communities as Indigenous Peoples, the Organization still has the responsibility to fulfil the FSC P&C and respect the principle of self-identification. The Organization should enter into dialogue with the competent authorities about the need to uphold the FSC P&C. Ultimately, the Organization should discuss with the certification body how this issue should be addressed in the event of no solution being found even following dialogue with all the parties involved. The certification body could escalate the question to FSC if necessary. Meanwhile, the Organization should still respect the legal and customary rights that are legitimately claimed by these communities.

Communities of special concern

Uncontacted Indigenous Peoples or Indigenous Peoples living in voluntary isolation:

Because these groups are extremely vulnerable, it is of the utmost importance that the Organization avoids any contact, even accidental, since transmitting an illness could annihilate an entire community.

Companies should conduct due diligence, including enquiring with local indigenous communities or the relevant entities at national, subnational, and local levels to identify whether they are operating near Indigenous Peoples living in voluntary isolation. If there are signs of isolated people, FPIC cannot be achieved, and no management of the area is acceptable. The Organization must withdraw from that area and avoid contact with these communities, including any attempts to contact them for the purposes of consultation or obtaining their consent.

FSC P&C and IGIs
See instructions for standard developers in the IGIs for C3.1

Nomadic Indigenous Peoples: Nomadic peoples such as pastoralists, who also depend on and may have customary rights to forest goods and services such as water, should not be overlooked, and it is important to be aware that there may be conflicts of interest with other forest-dependent communities.

Agricultural indigenous communities: In some countries, agricultural communities have been sharing forest areas with hunter-gatherers for many years. In this case, both groups should be considered as 'Indigenous Peoples'.

Community-based forestry institutions: A field test with a community forest user group (CFUG) determined that FPIC can be conducted by CFUG group representatives. The Organization in this case is the CFUG executive committee that manages the forest activities. The CFUG required FPIC from its members, which was organized through the CFUG general assembly.

1.2 Identify claims, rights, aspirations, and goals of communities

It is a common misperception that FPIC applies only when Indigenous Peoples or local communities have legally recognized rights, when in fact it is important to realize that, in line with international law, FSC recognizes customary and tenure rights as well. FSC definitions of customary rights and tenure are therefore very important in this context.

Customary rights: *Rights that 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. (FSC, 2011b)*

Tenure: *Socially defined agreements held by individuals or groups, recognized by legal statutes or customary practice, regarding the 'bundle of rights and duties' of ownership, holding, access, and/or usage of a particular land unit or the associated resources therein (such as individual trees, plant species, water, minerals). (FSC, 2011b)*

1.2.1 Which legal and customary rights are covered in the scope of the FPIC process?

The next task is to determine which of the identified Indigenous Peoples and local communities have a fair and legitimate claim to rights, resources, lands, and territories in or near the management unit based on long-established use. Organizations should start by recording all existing claims of rights, whether these are affirmed or not (due, for example, to a lack of awareness or empowerment).

FSC P&C and IGIs
IGI 3.1.2, 4.1.2; C3.2, 4.2; C3.5, 4.7; C3.6, 4.8; and IGI 7.6.1

Traditional knowledge

Special attention is required for upholding the right to protect and utilize the traditional knowledge of communities since this is a sensitive and complicated issue. For example, traditional knowledge is held collectively by communities and, in many cases, shared widely and based on oral traditions, thereby making it difficult to identify exclusive owners (Morgera and Tsioumani, 2014).

Traditional knowledge: Information, know-how, skills, and practices that are developed, sustained, and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity. (FSC, 2015b)

Traditional knowledge can be found in a wide variety of contexts, including agricultural, scientific, technical, ecological, and medicinal, as well as biodiversity-related knowledge (WIPO, nd-b). The World Intellectual Property Organization (WIPO) has developed a draft toolkit (What is Intellectual Property, August 2016) to provide practical assistance to traditional knowledge holders on documenting their knowledge. Identifying, collecting, and organizing traditional knowledge has become a widely discussed option to guarantee the social, cultural, and economic interests of Indigenous Peoples and local communities.

Documenting traditional knowledge has emerged as one of the tools that may impede its further loss, maintain such knowledge over time, support benefit-sharing, and, ultimately, protect traditional knowledge from unwanted uses. However, concerns and questions have been raised regarding documentation and the potential effects on the rights, cultures, and livelihoods of Indigenous Peoples and local communities. This includes concerns over placing traditional knowledge in the public domain together with loss of control over its use (WIPO, nd-c).

Organizations must ensure the FPIC of communities before traditional knowledge is identified, selected, collected, or organized. Given the concerns mentioned above regarding documenting traditional knowledge, Organizations should be careful with this issue and make use of the guidance provided by WIPO as well as informing communities about the availability of the toolkit.

Regarding compensation or benefit-sharing for the utilization of traditional knowledge, Organizations should take note of concerns and guidance expressed by the Indigenous Peoples Council on Biocolonialism (Harry and Kanehe, 2005). These include an indigenous critique of an example of a traditional knowledge benefit-sharing agreement and some considerations for Indigenous Peoples before entering benefit-sharing agreements. The Organization should inform the communities about these sources of concern and guidance as part of the FPIC process.

Culturally appropriate engagement

The FSC P&C and IGIs stipulate that legal and customary rights, claims, aspirations, and goals should be identified through engagement with communities in a culturally appropriate way. It is important to realize that cultures of Indigenous Peoples may be seriously eroded

due to external pressure and impacts. Organizations are therefore advised to engage with local experts about the customs, values, sensitivities, and ways of life of the communities involved.

The instructions for standard developers contained in Criterion 7.6

further clarify: that 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.

FSC P&C and IGIs
C3.1 and C4.1

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. (FSC, 2015b)

Claims to these rights must be fair and legitimate, which means that they need to be based on long-established use. Since the definition of Indigenous Peoples already includes such elements as historical continuity and strong links to territories, these requirements might be addressed when Indigenous Peoples are identified. In situations where Indigenous Peoples have been forcibly relocated, they may not fulfil the requirement of long-established use of the area they were moved to, but their claim may still be fair and legitimate. Since the definition of local communities does not include such elements as historical continuity and strong links to territories, it may be difficult to verify these requirements once the local communities have been identified. What is considered a 'fair and legitimate' claim based on 'long and established use' cannot be defined in general, since situations vary. The recommendation here is to look 'far and wide' and to be as inclusive as possible.

In some regions, there is no written language or records supporting claims made by communities with regards to their customary rights. In these cases, other culturally acceptable ways need to be applied to identify, agree, and document these rights; for example, oral and honour systems, written accounts, audio and film records. Some Indigenous Peoples may not own the resources (based on legal title, legal ownership, or customary rights) but may continue to have resource access rights; for example, communal collecting of non-timber forest products for both cultural and economic purposes.

The nature of the rights in question and the precise groups or sub-groups who affirm the rights and can be recognized as rights holders are identified and analysed locally through engagement with the communities. This process may require the involvement of local institutions, organizations, and authorities. In the case of Indigenous Peoples, national standards are required to develop a methodology that will lead to implementing culturally appropriate approaches to rights identification and documentation.

When communities claim their rights, it is recommended that the Organization applies a precautionary approach and treats them as if they have these rights until it is mutually agreed that they do not. This approach should also apply in establishing ownership of traditional knowledge. For further guidance on situations where the Organization and communities cannot agree on the extent of the legal and customary rights to include in the scope of the FPIC process.

Areas of special importance for communities and HCVs 4, 5, and 6

The FSC P&C can be confusing regarding the requirement of FPIC for the protection of areas of special cultural, ecological, economic, religious, or spiritual significance. The FSC Principles 3, 4, and 9 do not explicitly require FPIC for the management and/or protection of such sites but instead require it to be agreed through engagement with the communities. However, areas of special cultural, ecological, economic (e.g. food production), religious, or spiritual significance and for which communities hold legal or customary rights would also fall under Criteria 3.2 and 4.2 and would therefore require FPIC. It is very likely that Indigenous Peoples or local communities would also have legal or customary rights for areas covered by HCVs 5 and 6.

FSC P&C and IGIs

C3.2, C3.5, IGI 3.5.1, 3.5.2, 3.5.3, C4.2, C4.7, IGI 4.7.1, 4.7.2, 4.7.3 and P9

When the scope of rights is determined and mutually agreed

If the Organization identifies Indigenous Peoples or local communities that could be affected by their planned or ongoing operations and agrees that their rights, resources, lands, or territories are legitimately claimed, the right to FPIC applies and the Organization must continue to implement an FPIC process.

When the scope of rights is not mutually agreed

If there is disagreement with the affected communities on the scope of the recognized rights that should be included in an FPIC process, a roadmap or plan of action should be mutually agreed with the aim of obtaining agreement on the full FPIC scope, while continuing the FPIC process on the mutually agreed scope of rights. This is further addressed in Step 2 since the Organization may first need to prepare for further engagement with the communities identified.

1.3 Examine and record how communities make decisions

A consent-seeking FPIC process needs a mutually agreed schedule to guide the stages from initial discussions, information-gathering, consideration of impacts, benefit and mitigation options, to negotiating, implementing, and monitoring the agreement. It is important to obtain consent at each stage.

1.3.1 Respect the institutions of communities

Organizations are required to engage with communities in a culturally appropriate way and to recognize and uphold the rights of Indigenous Peoples, as described in UNDRIP and ILO Convention 169. This will determine 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. Communities must be represented by institutions of their own choosing; consequently, the Organization can only secure community consent if it is aware of their decision-making process. This process needs to be identified and agreed upon.

FSC P&C and IGIs

C3.4 and IGI 3.2.1, 4.2.1

The representative institutions of communities may be their own customary institutions, institutions that have been imposed by the state but later accepted by the community, and/or novel institutions set up by the community themselves to deal with outsiders. There is no rule to say which one is the best since it depends on the circumstances. The important factor is that the people choose how they want to be represented and do not have to accept institutions chosen or imposed by others. They can choose to be represented by more than one institution. It may not always be easy for communities to explain or disclose their internal decision-making processes, which can be unclear and may vary from informal to formal, while a mix of customary and new institutions can also be used.

To avoid misunderstandings, the Organization should first work in an open way to identify the individuals chosen by the community to represent them at the various stages of the FPIC process. In presenting a project proposal to a community, the Organization should describe each of the steps where they think community consent will be needed before the planning or implementation proceeds to the next step. A list of key questions and considerations could be developed with the community and used as a guide to review the design of each stage in relation to FPIC.

The FPIC process should allow for diverse views to be heard and for internal conflicts to be resolved. It is important to ensure that the community's own decision-making process does not exclude any community members. The FPIC process should contribute to an empowered community.

Inclusive process and respecting human rights

Organizations need to ensure that the traditional decision-making process is not in conflict with internationally recognized human rights, such as non-discrimination. UNDRIP requires that indigenous institutions function "in accordance with international human rights standards" (Article 34) and calls for attention "to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities", including the elimination of all forms of discrimination and violence against indigenous children and women (Article 22) (Anaya, 2009: 17).

Gender-role awareness is vital. For example, most subsistence farmers worldwide are women, and they rely heavily on their local environment for their food and livelihoods. At the same time, they may have a precarious position due to non-existent land ownership rights, limited access to technology and credit, an inferior status within households and communities, and lower level of education. This greatly inhibits their decision-making power. Therefore, it is particularly important for forest management to ensure that women are properly included in the FPIC process.

There are several ways that an Organization can respect the right of communities to freely choose their own representative institutions while ensuring broad representation in decision-making. The usual practice is to facilitate the formation of a representative community committee that includes representatives of all stakeholder groups (all ethnic groups, women, elders, and youth) without alienating the traditional leadership.

Community consultation protocols, if available and developed through an inclusive process, could be used with other techniques such as working with a trusted third party (e.g. a community-based organization or NGO or hired interlocutors) that can ensure an inclusive process in the community as well as a level of independence from the Organization.

Where communities do not have such protocols or guidelines, they may need to build capacity and be provided with support to develop their own FPIC rules internally before they engage with the Organization. The Organization should be aware, however, that if the community does not want to disclose their internal decision-making process, it must accept that. The Organization can then only emphasize why it is important that the process is inclusive. If this is the case, the Organization should still verify that there is broad support from all segments of the community for the decisions taken.

1.3.2 Considerations regarding community decision-making

In some circumstances, traditional culture may have begun to break down, or members of the community may be in conflict with each other and communal decision-making processes are no longer robust. Or, where communities are hierarchical, leaders may refuse to include women and/or 'weaker' groups in the decision-making process. In such situations, the FPIC process becomes more complex and the community will need time and capacity-building

support to revive their former decision-making structures or devise new ones, as well as support to resolve conflicts.

In some circumstances, it may be too complicated to work out a solution in the early stages of the FPIC process. However, the Organization should be able to gather a fair idea of how decisions are taken in the community and to identify whether the affected community wants to consider forest management activities. This will suggest whether further investments in engagement with the community are relevant.

If addressing these issues is deemed too complicated or demanding on time and other resources, the Organization may decide to refrain from seeking FPIC. It must then also refrain from any activity affecting the legal or customary rights of the community. Remember the rule of thumb that sound, consensus-based decisions emerge from processes that are iterative and inclusive, and this will take time (see Figure 1, page 42).

Organizations should identify the community's preferred procedures for consent and its actual form (existing or revised), including what constitutes consent for a given right-holder group (see Anderson, 2011: 20–23, 39–40; FSC, 2006: 8; UN-REDD Programme, 2012: 30).

1.4 Inform representative institutions about planned forestry management activities

At this stage, Organizations will have insight about which people and communities will be affected by the planned forest management activities, which rights are at stake, and which institutions and people take the decisions on behalf of these communities. The Organization should then inform these institutions about the main features of the planned forestry management activities, without being too technical or detailed.

Information should be sufficient for the representative institutions to take an informed decision as to whether they are willing to consider the forest operation in or near their territories, and whether they are interested in continuing engagement with the Organization. The communities should be informed about their rights and it should be clearly stated that they have the right to modify or withhold their consent to the proposal for further engagement.

As the forest management plan should be developed in close consultation with the affected communities, naturally the information at this stage cannot be very detailed. If an operation is already ongoing, the information could be more specific.

FSC P&C and IGIs
IGI 3.2.4 and 4.2.4

It is important to manage the expectations of the community. Thus, the information provided must give a fair reflection of what can be expected from the proposed forest operation and should not exaggerate the potential benefits while hiding the risks. Information should be provided in a language and format that is clear and appropriate to local institutions.

1.5 Identify whether the community will consider planned forest management activities

The representative institutions of the Indigenous Peoples or local communities should be given sufficient time to discuss the information provided among themselves and, if desired, with their community members. They should also be given the opportunity to ask further questions and it should be obvious that they are free to consider the forest management activities. If they want to consider them, the Organization can begin to prepare for further engagement. If not, their decision must be respected and there can be no forest management activities in their territories. The Organization may try to build a relationship with the community and return to the question of interest in the forest operation at a later

time. However, the Organization must always refrain from putting any pressure on the community that infringes on the requirement of 'free'.

Step 2: Prepare for further engagement and agree on the scope of the FPIC process

Elements of Step 2	Important questions	Desired output
2.1 Establish a relationship with other stakeholders	Are relevant off-site stakeholders identified and is there an established relationship?	Relations with government, scientists, and/or NGOs established
2.2 Establish a structure within the Organization and train a social team	Is there a structure and appropriately trained social team within the Organization that is capable of building good relationships with the affected communities?	Structure is established, and social team trained
2.3 Develop appropriate communication and information strategies	Is there a communication and information strategy that allows the Organization to communicate in culturally appropriate, transparent, and participatory ways with all members of the affected communities?	Written communication strategy known in the Organization
2.4 Explore host-state approaches to FPIC	Is there a gap analysis of the host-state approach to FPIC and FSC requirements on FPIC?	Internal report on implementation of FPIC regulations and gap analysis with the FSC FPIC requirements
2.5 Engage with communities and agree on the FPIC process and (a roadmap to agree on) the scope	Has the Organization agreed with the affected communities on the FPIC process and scope, including having a third-party verifier, observer, or facilitator? Is there agreement on the role and responsibilities of the third-party verifier, observer, or facilitator?	Agreed FPIC process and scope, and, if needed, contract with verifier/observer/facilitator
2.6 Further define management activities likely to affect the communities	Have the activities that may affect identified communities been fully defined?	Concept of forest management plan includes description of potential impacts on rights
2.7 Set realistic and flexible timelines and budgets for the FPIC process (and roadmap)	If there is no agreement on the FPIC scope, is there a roadmap towards agreement? Has the Organization included the needs of the identified communities in the timelines and budgets for the implementation of the FPIC process?	Documented timeline and budget

2.1 Establish a relationship with other stakeholders

Some stakeholders, such as government institutions, NGOs, and scientific institutions, could play a beneficial role in the FPIC process. In addition, C7.6 of the FSC P&C requires the Organization to engage with interested stakeholders at their request. This means that the Organization should consider engagement with other actors in addition to Indigenous Peoples and local communities.

FSC P&C and IGIs
C7.6 and IGI 7.6.4

The organization can work with stakeholders in separate relationships or, if all parties agree it is useful, in a multi-stakeholder working group, but this should not replace the FPIC process between the Organization and the community. The aims are to support the implementation of the FPIC process, generate broader backing for the outcomes process among the various stakeholders, and promote better relationships among stakeholders.

2.2 Establish a structure within the Organization and train a social team

For some small-scale, low-intensity, and low-risk management activities, this element may be needed only to a limited extent or not at all. For others, the Organization should establish the relevant structures and competences for the FPIC process. The Organization should at least:

- establish an internal social team to deal explicitly with Indigenous Peoples and local communities;
- dedicate sufficient human resources and operational funds to ensure that the social team is able to fulfil its tasks;
- ensure that the social team can intervene directly in the decision-making bodies of the Organization (board, management, council).

When establishing a social team, it is important to ensure that it has appropriate staff with suitable capacities, and that it undertakes the correct tasks.

2.2.1 Composition of the team

The leader of the social team should be an expert in social forestry and local society and culture who is able to build cross-cultural communication channels. The size of the team should be proportional to the difficulty of the task, the size of the population, and the size of the operation. The social team should also include staff members who are women and members of ethnic groups represented in the local population.

2.2.2 Training and facilitation of the team

The team should receive comprehensive orientation on the culture of the communities and FPIC; should be trained in recognizing and respecting the protocols and values of Indigenous Peoples, and in effective communication and translation of complex legal issues; and be encouraged to involve additional expertise from others. The team needs to have dedicated materials and equipment (vehicles to visit communities regularly, DVD players, video cameras, information boards, etc.). It is crucial that there is good coordination with forestry workers and management within the Organization to avoid misunderstandings.

2.3 Develop appropriate communication and information strategies

The required form, 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 mutual exchange of information and views on an ongoing basis with all segments of the community.

A communication plan helps to ensure that all aspects of the consent process are communicated to the Indigenous Peoples, local communities, and other interested parties (see Step 2.1 on stakeholder engagement). Generally, the Organization would take the lead

when designing the communication plan, but should work closely with the community. Best practices dictate that information should be presented as completely and as early as possible.

The co-design of a participatory mapping and impact assessment (see Step 3) is an effective way to combine informing the community with the process of building a relationship based on trust.

2.3.2 Communicate in appropriate formats and language

Communication with each community must be in the language the communities speak and using a medium they understand and prefer. It is important to note that some words may not exist in indigenous languages and can be difficult to conceptualize.

Direct communication (face-to-face) should be the default method unless high levels of literacy are apparent. Most successful community engagement efforts have used a combination of small-group and community-wide sessions to share information. They can be delivered in stages, starting from preparing for initial communication of the Organization's interest in the community.

2.4 Explore host-state approaches to FPIC

The Organization should explore the host-state approaches to the right to FPIC, to find out whether the laws or policies also require FPIC or conflict with the FSC FPIC requirement. If the government has already obtained consent, e.g. before it gives out a licence, it is important to check whether the consent was obtained freely and through an informed, participatory process. The Organization should follow any national laws that stipulate how it should consult or seek consent from communities or Indigenous Peoples, while at the same time fulfilling the requirements of the FSC standard.

2.4.1 Conflicts between laws/regulations and certification requirements

FSC sets a higher standard than many national laws in dealing with Indigenous Peoples and local communities. In many countries this goes beyond the minimum legal requirements. This can be problematic since many governments may be actively hostile to the concept of Indigenous Peoples' rights, despite adoption of UNDRIP. Local interpretations of FPIC may also be complicated.

In a situation where the authorities of a state would make it impossible to apply FPIC, for instance by blocking the Organization's access to the communities, forbidding the company from carrying out a consent process, or forcibly resettling communities after giving the Organization the concession, the Organization may be unable to obtain consent from the communities and so unable to fulfil the FSC P&C. The Organization is then advised to enter discussions with the competent authorities and the certification body to seek a solution. FSC has determined that the certification body shall evaluate any conflicts between laws or regulations and certification requirements of the applicable FSC standard, on a case-by-case basis, in arrangement with involved or affected parties (FSC, 2009: section 8.20). If no solution can be found, the certification body can escalate the issue to FSC.

2.5 Agree on the scope of the FPIC process

To achieve a climate of confidence and mutual respect, the FPIC process itself should be a product of agreement. The Organization should also create time and space for communities to create their own engagement protocol based on their own values. Besides the internal decision-making process of the community, the FPIC process agreement should include an agreement on the scope of the FPIC process, who will represent the parties in engagement with the Organization in the FPIC process, where and when meetings will take place, and how decisions will be made. It should clarify the various phases of the FPIC process and

indicate clearly when and on which topics a community decision is needed. Other aspects that should be included are: clarity on who carries the costs of the FPIC process; the use of advisors, facilitators, and observers; capacity-building; a mechanism for monitoring the FPIC process; and a dispute-resolution process. (This is further explained below and should be taken into consideration in Step 2.7.)

In indigenous societies, decision-making may be in the form of consensus. The views of different groups in the community are sought in different ways and not always in a formalized way. The right to FPIC is accorded to communities as collectives; it involves not just one or two but all members of the community. So, it is important to let the community decide and express when and how to give their consent. Consent can be expressed in resolutions, decrees, or formal agreements.

2.5.1 What if the scope of the FPIC process is not agreed?

When there is disagreement with the affected communities on the recognition of the claimed legal and customary rights to be included in the scope of the FPIC process, a plan or roadmap should be agreed upon to guide conflict/dispute resolution. The longer-term outcome of the plan is an agreed scope of FPIC-related rights. Meanwhile, the Organization and affected communities can continue to work through an FPIC process on the agreed rights and activities.

Capacity-building and resources may be needed for further research. Organizations are advised to include members of the community who have knowledge on the worldviews and traditional global visions relevant to the identification and understanding of customary rights. An external advisor who is respected and trusted by the communities could also be hired to assist in this process. The FSC national office and government authorities could be included in the dialogue.

The FSC P&C requires the legal and customary rights of communities to be upheld. Therefore, when a community claims these rights, the Organization takes a risk when it does not acknowledge these claims without any justification. If communities claim rights it is recommended that the Organization apply the precautionary approach: until it is mutually agreed, or it can be proven that they have no customary rights, treat the claimants as if they have these rights.

2.5.2 The FPIC process can be a burden for the community

It is important to realize that the communities are not seeking certification and the FPIC process can be a significant burden on their time, resources, and external influence. They may also be involved in other consultation processes with the government or companies on developments affecting their rights, or in interventions with NGOs or studies with universities. Therefore, it is recommended that FPIC-related activities be fitted into the community's regular day-to-day activities.

Who should pay the FPIC process costs?

Ideally, funding and support for the community would be available from third parties, such as home and host governments and international financial institutions. When it is not, and since the Organization seeking FSC certification puts the burden of the FPIC process on the communities, it is only fair that the Organization provides sufficient resources to cover effective participation, including the necessary capacity-building and use of advisors by the community. This should be in proportion to the scale, intensity, and risk of the proposed activities. Provision of resources may also be a condition imposed by the communities for engaging with the Organization.

Whichever funding mechanism is used, communities should be able to spend it freely according to their needs, including hiring their own consultants. One way to do this could be to set up a bank or 'escrow' account, with the community transparently reporting its use of

the funds. Any incentives that make the FPIC process unnecessarily lengthy or complicated and thereby provide additional resources to the community should be avoided. However, providing resources to community members to participate in FPIC meetings may be perceived as bribery and cause a loss of trust among the community and so should be handled with great care and transparency.

2.5.3 What if there is more than one community involved?

When there is more than one community in an FMU, a joint FPIC process can be considered, but it should be realized this may create conflict between the communities involved; for example, when the communities not giving consent to the forest activity are outnumbered by those who give their consent. The Organization should allow space for communities to come together, if they wish, and decide how they want to design a joint process. But Organizations should be aware that FPIC must be achieved with all communities. Communities should therefore always be given the option to decide for themselves. This could, for example, include the option for a community's land to be excised from the certified areas and from forestry operations if they do not give their consent, in compliance with the FSC policy on excision (FSC, 2004).

2.5.4 Involving a third-party verifier, observer, or facilitator

It is vital that the Organization provides evidence about the FPIC agreement and the FPIC process for verification purposes. For example, to prove that communities have gained sufficient understanding of the information to have given their informed consent and that consent has been given without any pressure or intimidation. The involvement of an independent third party to verify and/or observe the FPIC process can be helpful in this regard.

Organizations are advised to consider the involvement of an independent verifier and/or observer in the early stages of the process. Working with the communities, the parties should agree on the choice of verifier or observer to ensure that trust is maintained. The frequency of observations should also be agreed. If observation takes place only at the end of the process, this would be a typical judgemental verification, where the auditor uses its best judgement to sample sites, people and product because they cannot talk to everyone or test everything. In the case of a more complex FPIC process, the verifier or observer could be involved at various stages in the process.

The Organization and/or the community may want to make use of an independent facilitator in the FPIC process. This might be especially useful when the FPIC process is long or complex, or when it has been difficult to build trust between the parties involved. However, it is important to realize that trust in the relationship needs to be built primarily by the Organization itself. The same is true when use is made of a facilitator.

2.5.5 Go slow to go fast

The more time invested in establishing good communications at the beginning of the FPIC process, the more likely that later negotiations will result in good solutions. Developing a mutually agreed FPIC process may take considerable time and effort on both sides and will require the establishment of a climate of mutual respect, openness, and trust.

Common pitfalls of FPIC processes

- Negotiating with representatives who are not recognized by the community or in a way that leaves out the interests of important parts of the community.
- Thinking that initial consent to discuss a plan means willingness to negotiate or even consent to other parts.
- Not allowing sufficient time for a community to discuss the development or obtain independent information and advice.

- Representatives and delegations may abuse their power and impose inappropriate or unrealistic demands.
- 'Sharp practice' (as referred to by lawyers) is not helpful on either side; FPIC in FSC potentially delivers mutual benefits and carries obligations for constructive engagement on both sides.

2.6 Further define management activities likely to affect the communities

Once the Organization has identified the potentially affected communities and their rights, it can define more precisely the activities (e.g. including harvesting, road construction, transportation, operation of bush camps, and silviculture) that are likely to affect them. Effective participatory mapping and assessments will be needed in which Indigenous Peoples and local communities are fully engaged (see Steps 3.3 and 3.4). These will provide further information and help the Organization to further define and amend the management plan before entering into negotiations (see Step 4.1).

FSC P&C and IGIs
See P7, C7.2, C7.3,
C7.4, C7.5

2.7 Set realistic and flexible timelines and budgets for the FPIC process

Implementing FPIC requires time and resources. The decision-making timeline established by Indigenous Peoples must be respected, since it reflects the time they need to understand, analyse, and evaluate the activities under consideration.

Some communities may want to have multiple village gatherings to discuss the proposal, allowing time between meetings to let the matter 'sink in' or for family discussions. Others may need to wait for the right moment to consult their elders or shamans. Some communities make big decisions only after house-to-house consultations. There may be cases of unexpected deaths or diseases in the village, which keep people busy. It may be the planting or harvesting season when everyone is in the fields, or people may be away for weeks or even months taking care of livestock.

Step 3: Participatory mapping and impact assessments

Elements of Step 3	Important questions	Desired outputs
3.1 Ensure sufficient community capacity for mapping and assessments	<p>Was a capacity needs assessment completed to guide the participation of community members in mapping and impact assessment?</p> <p>Do the selected community members for the participatory mapping and assessments agree that they are sufficiently trained and compensated?</p>	<p>Capacity needs assessment conducted</p> <p>Community members trained</p>
3.2 Participatory mapping	<p>Did the selected community members participate effectively in identifying the resources, sites of special significance, legal and customary ownership, tenure, or use rights they require to be protected and are their locations indicated on maps where appropriate?</p> <p>Are the affected communities satisfied that their concerns have been recorded appropriately (e.g. in writing, maps, videos), made publicly available, are understood by the communities, and have been incorporated in the management plan as required?</p>	<p>Mapping and/or other type of overview completed showing all land claims and land usage, all HCVs relevant to communities, and the rights of the identified communities</p>
3.3 Facilitation of conflicting claims between communities	<p>Do the affected communities confirm that there are no outstanding conflicts related to the rights affected by the planned forestry management activities?</p>	<p>Conflict-resolution mechanisms agreed</p>
3.4 Redefine proposed management activities and engage in participatory impact assessments	<p>Did the selected community members participate effectively in identifying all possible positive and negative impacts of the proposed forestry management activities on the rights and resources of their communities, including protection, mitigation, benefit-sharing, and compensation arrangements, and did they agree on the outcomes?</p>	<p>Scope and outcomes of the participatory impact assessments agreed</p>

3.1 Ensure sufficient community capacity for mapping and assessments

An effective FPIC process requires all sides to have sufficient access to the financial, human, and material resources they need to engage fully with each other and understand and debate any proposed forest operations. Step 2.2 addresses capacity-building for the Organization itself, while this step addresses the need to build the capacities of the communities. While the Organization needs to build its capacity to engage in a culturally appropriate manner, communities may have other capacity-building needs.

Indigenous Peoples and local communities are typically disadvantaged in terms of political influence, financial resources, access to information, and relevant education in comparison with the companies that are their counterparts in the FPIC process. Companies should address this imbalance of power by ensuring that communities can access the financial, technical, and other assistance they need, without influencing their positions in the consultations.

The capacity-building support should be in proportion to the scale, intensity, and risks of the proposed forestry management activities. Capacity-building will be needed at various stages of the FPIC process (see Step 5.1) and different communities will have different requirements.

3.2 Participatory mapping

Since land claims based on customary rights are often not formally recognized in law, they need to be mapped to document community-recognized rights. Participatory mapping involves representatives of the Organization working with communities to identify and record on a map all the elements that are relevant to the FPIC process. Such mapping should set the baselines so that impacts over time can be monitored. Participatory mapping should be integrated with impact assessment (see Step 3.4).

3.2.1 Who should do the mapping?

Representatives of all the communities located in or adjacent to the FMU (identified in Step 1) should participate. Good practice in participatory mapping involves the participation of different groups from within a community, including women, youth, the poor, as well as established elders and elites. Each group has different values, uses, and resources to include in the maps. The participation of neighbouring communities is essential to confirm boundaries and ensure all access and use rights are noted, to avoid creating conflicts.

In the context of identifying intact forest landscapes or indigenous cultural landscapes which may overlap the FMUs of various FSC-certified Organizations, it is also important to include representatives of Indigenous Peoples and local communities to identify the areas where they claim legal or customary rights.

3.2.2 What should be mapped and how to proceed?

The overview of the rights, claims, aspirations, and goals of Indigenous Peoples and local communities that need to be identified by the FSC P&C provided in Step 1.2 gives a good indication of what needs to be mapped. The mapping should also identify other activities besides the forest management operation, such as mining and tourism, which may have an impact on the rights of the communities involved. Further guidance on how to conduct the mapping and the tools available is provided in the Supporting Information document (sections 4 and 5).

3.3 Conflicting claims between communities

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 communities are often vague, overlapping, or otherwise disputed. Giving forests, particularly remote forests, a new value and seeking to establish clear boundaries can therefore result in tensions and conflicts. Mechanisms for conflict management and resolution should be planned for in advance.

When boundary conflicts emerge between neighbouring communities, the Organization may be able to agree to boundaries that function solely for the purposes of the planned forest management activities. It may be useful to keep the initial maps rather sketchy rather than making them very precise, to allow room for discussion. Where there are hunter-gatherers or shifting cultivators, it is sensible to map usage zones rather than customary lands, and to make use of an independent specialist. This accounts for the fact that the land rights of these groups are often not recognized by other communities and may be complicated by resettlement policies.

When the rights of communities are contested or cannot be identified clearly, the Organization should include information such as the factual situation with regard to legal and customary rights, the current use of the land and resources, the tenure of the rights being contested, and the positions of the parties involved. Such recording should be undertaken through engagement with the communities involved.

FSC P&C and IGIs
IGI 3.1.2

Where multiple communities have different claims to land and resources, Organizations may decide to prioritize FPIC processes, starting with a process aiming for consent with those having the most recognized customary or legally supported claim or those most directly affected by management activities. This also requires a process of consultation with those who have interests but who lack recognized legal or customary rights and who are not directly affected. Best practice indicates, however, that it is sensible to devise an extensive engagement process and develop an agreement with each of the communities involved to prevent competition and resentment among them.

3.4 Redefine proposed management activities and engage in participatory impact assessments

This step should be integrated with the participatory mapping process described in Step 3.2. However, if it is done separately, the information gathered through the participatory mapping might give reason to redefine the management plan before implementing the participatory impact assessment. Information from the resolution of boundary disputes may guide the Organization to the communities with which the impact assessment should be conducted.

3.4.1 Redefine proposed forest management activities

Based on the participatory mapping, the Organization may need to redefine the proposed management activities and adapt the draft management plan. This should be done before the Organization engages in participatory impact assessments because the impacts will depend on the planned activities. The communities need to be informed, using an appropriate language and format, about how the outcomes of the participatory mapping influenced the development of the management plan. This information will be the basis for the impact assessments.

3.4.2 Participatory impact assessment

The key objective is for the community to be involved in the assessment of all impacts – negative and positive – that the proposed management activities would have on all rights,

lands, land uses, resources, and resource uses. 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 should be participatory, firstly, to ensure a continuation of the process of informing the communities of the likely impacts and benefits of the proposed or planned forest management activities. And secondly, to guarantee that the assessments include the issues that concern the affected stakeholders. Participation is also helpful to build trust in the relationship and agree on the outcomes of the impact assessment. Since different segments of the communities may use resources differently, it is important that assessments and baseline studies ensure the participation of all.

FSC P&C and IGIs
The FSC P&C C4.5

Most impact assessments will include mitigation plans, benefit-sharing arrangements, and compensation provisions, but these may be negotiated further at a later stage (see Step 5.2). Communities have to be informed of the value – in economic, social, and environmental terms – of the resources over which they are considering delegation of control. In cases of co-management or joint venture arrangements between the Organization and communities, more detailed information should be shared (e.g. financial arrangements, profitability of production, pricing mechanisms, loans and debt repayment, and financial risks). Participatory impact assessments are also required to ensure that forest management activities do not affect HCVs (Principle 9).

FSC P&C and IGIs
IGI 3.2.4 and 4.2.4,
and P9, C9.1, C9.2,
and C9.3

Step 4: Inform affected rights holders

Elements of Step 4	Important questions	Desired output
4.1 Redefine proposed activities and fully inform communities about the proposed forestry operation	Did all the community members fully understand the potential benefits and costs of the proposed forestry operations?	Information and communication activities documented
4.2 The communities decide whether they want to enter into negotiations	Did the community use the agreed decision-making model to guide their judgement on entering negotiations with the Organization?	Community decision achieved

4.1 Redefine proposed activities and fully inform communities about the proposed forestry operation

Given the outcomes from the participatory impact assessments (see Step 3.4), the Organization may need to redefine the proposed activities and adapt the draft forest management plan. This should be done before presenting the draft plan to the communities, since the plan is subject to their consent in that it affects their rights, lands, and resources. In practice, the participatory mapping, impact assessment, and redefining of the management plan should be an integrated process.

To build trust it is crucial that the Organization itself always informs the communities fully, in a timely and unbiased way, and transparently. The Organization will need to engage the communities in an iterative and inclusive information-sharing process to ensure that their knowledge base expands sufficiently to understand the technical information and interpret the outcomes of the impact assessments. If the community asks for specific additional information, this should be provided as soon as possible. Reports of the consultations must reflect all opinions.

A full information package should be left with the community for their internal discussion. Parties can work with non-disclosure agreements if these are needed for confidentiality reasons (see Step 2.3).

FSC P&C and IGIs
IGI 3.2.4 and 4.2.4 and instruction for standard developers C7.5

4.2 The communities decide whether they want to enter into negotiations

Once the Organization has presented its draft final proposal regarding the planned forest management activities, the communities are given time to decide whether they want to enter into negotiations towards the final consent agreement. This is therefore one of the most important steps in the iterative FPIC process.

If the community decides not to engage in negotiations, the proposed activities affecting their rights, resources, lands, or territories must be modified or cancelled to avoid any impacts on their rights. The Organization could consider continuing its engagement with the community if the community agrees and may revisit the question at a later stage, but must ensure that the process remains 'free'. Otherwise, if all agree, the communities and the Organization can begin the formal negotiations.

Step 5: Negotiate and allow rights holders to decide on an FPIC proposal

Elements of Step 5	Important questions	Desired output
5.1 Ensure agreement on capacity readiness of the community	Did the community agree that their capacity was sufficient to enter negotiations with the Organization? Did the negotiating community members feel comfortable and capable during the negotiations?	Fulfilment of benchmarks of capacity readiness of community documented
5.2 Negotiate mitigation, compensation, restoration, and benefit-sharing	Did all the community members understand all aspects of the proposed consent agreement? Did all the community members fully understand their rights, including their right to say 'no' to the proposal?	Written agreement or other documents on mitigation, compensation, restoration, and benefits prepared
5.3 Establish arrangements for resolving complaints, disputes, and conflicts		Written agreement on grievance mechanisms achieved
5.4 Set up a participatory monitoring model		Participatory monitoring model established
5.5 The community decides freely on the proposal	Was the decision taken without any coercion or manipulation and in accordance with the agreed decision-making model? Did the communities have enough time to decide on the proposal?	Community decision on Organization's proposal taken

5.1 Ensure capacity readiness of the community

Further capacity-building may be needed at this stage to ensure that the community is ready for negotiations (see Step 3.1). Capacity-building needs should be assessed, and agreement made on delivering this support. At this stage, capacity-building may include:

- all technical aspects such as conflict management, negotiation and mediation skills, advocacy techniques, monitoring and reporting skills, and transportation needs;
- training in effective participation in forest management partnerships (if applicable);
- transparent and accountable book-keeping and fund management.

5.2 Negotiate mitigation, compensation, restoration, and benefit-sharing

The Organization and the communities will try to reach an agreement on measures to mitigate the negative and optimize the positive impacts; compensation for past, current, or future losses or damages; benefit-sharing, job opportunities, and co-management; and safeguards. Conditions under which consent can be withdrawn should also be discussed.

Negotiation consists of dialogue on proposals, interests, and concerns. Periods of negotiation and interactive dialogue are likely to be interspersed with time allowed for community leaders and members to freely discuss their concerns and proposals among themselves. Some elements of negotiation are likely to be implemented throughout the FPIC process.

FSC P&C and IGIs
C1.4, C4.3, C4.4,
C5.1, C5.4, C6.5,
C6.7, and C9.4

5.2.1 Equitable benefit-sharing

It is critical that the Organization evaluates whether and how the planned forest management activities build long-lasting and mutually beneficial relationships, including equitable benefits for the affected communities. This is the best guarantee for obtaining and maintaining FPIC from the affected communities. Benefit-sharing can include, for example, joint ventures, profit-sharing, provision of goods and services (e.g. roads, clinics, housing, and schools), preferential employment, training, and contributions to community-development funds, including for culturally appropriate purposes. Sometimes provision of such benefits is required by national law. Situations where ownership of forest resources is contested between the communities and the government, or between the communities and the Organization, can be challenging, and it is important to ensure agreement on the scope of the FPIC process (Step 2.5).

5.2.2 Resolution of past grievances

Communities may wish to address grievances from the past as a condition for reaching consent on future forest management activities. For Indigenous Peoples, Criterion 3.4 requires Organizations to uphold UNDRIP, which stipulates:

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. (United Nations, 2008: Article 28)

Negotiations on existing unresolved conflicts can be undertaken and could include such options as:

- return of land to the communities
- rehabilitation of affected lands and forests
- payment for the relinquishment of rights
- payments for losses and damages
- improved benefits in participatory forest management arrangements or for workers
- compensatory development plans agreed with the communities.

If any of these options go beyond the competence or the economic viability of the Organization because of the legislative enabling environment of the forestry sector of the country in which the Organization operates, the Organization could encourage and facilitate dialogue between the competent authorities and the affected communities aiming for redress and settlement of past grievances.

5.3 Establish arrangement for resolving complaints, disputes, and conflicts

Both the community and the Organization need to be prepared for unforeseen developments. Despite good intentions and optimal efforts, the parties involved may still raise complaints or grievances that may escalate into disputes or serious conflicts, or grievances from the past may still need to be resolved consistent with the FSC standard. The inclusion of an arrangement for resolving disputes from either party is a failsafe to

FSC P&C and IGIs
C1.6, 4.6; C3.1 and
4.1, IGI 3.2.3, 4.2.3

maintain a good relationship. In this respect, it is important to resolve any complaints as soon as possible and avoid repeating disputes or conflicts over the same issues.

5.3.1 Agree on the dispute-resolution mechanism

As long as the dispute-resolution mechanism is mutually agreed there can be flexibility on how it is designed and implemented. Different mechanisms may be required for different types of disputes or communities.

Incorporate communities' own systems for dispute resolution

Communities may have their own conflict-resolving mechanisms that should be considered when agreeing how to resolve disputes with the Organization. However, it should be noted that communities' own dispute-resolution mechanisms may have been eroded or may not be simple to implement. The grievance mechanism should include how to address potential internal conflicts that can affect the agreement. It is important to distinguish between issues that can be dealt with and those that cannot.

Try to keep it simple

Arrangements should not be too rigid or any more complicated than necessary. Ensure the Organization is easily accessible and will receive grievances at an early stage to avoid escalation. In the early stages, grievance mechanisms may be less formalized. Community members could be informed which person or people in the Organization's community-engagement team they should contact, or schedule regular meetings within the community in which individuals or the community can raise their concerns.

Where local or national laws for resolving grievances and compensation exist, implementation of their provisions might suffice to comply with the FSC criteria, provided that the community agrees that these mechanisms are applied.

General rules for grievance and dispute-resolution mechanisms

- The grievance or dispute-resolution mechanisms themselves are mutually agreed.
- Fairness is subjective and a neutral third party may be required for mediation.
- If a grievance cannot be resolved, an agreement should be sought to abstain from actions related to that specific grievance that might escalate the grievance into a conflict.
- In many cases, mediation would be a better solution than arbitration. The latter can be used if mediation fails.
- Lawsuits should be used only as a last resort.

Grievance mechanism for the Organization

The guidance above applies to situations in which affected rights holders, as a group or as individuals, have complaints about the forest management activities of the Organization. Organizations that have a complaint against the communities can also make use of the agreed dispute-settlement mechanism. For example, if the Organization upholds the FPIC agreement and the community obstructs the agreed forest management activities.

5.4 Set up a participatory monitoring model

Monitoring is an essential part of responsible forest management and the communities should be fully involved in monitoring the aspects that affect them. Monitoring should focus

on ensuring that the FPIC agreement and associated management and mitigation plans are implemented correctly during forest management activities.

While the community may wish to carry out its own monitoring independently, the Organization should involve the community in any monitoring activities relating to the FPIC agreement. Joint or community monitoring mechanisms (and jointly run dispute-resolution bodies) are emerging as best practices.

FSC P&C and IGIs
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, C9.4, IGI 9.4.1,
9.4.2, 9.4.3 and 9.4.4

5.5 The community decides freely on the forest management proposal

Decisions on the proposal will be made in accordance with the agreed decision-making model. It is therefore important to allow time for discussion on interim agreements, ensure freedom and resources for independent counsel, allow enough time for inclusive engagement, and explicitly allow communities to still say 'no'. The Organization can only be required to ensure that the decision is taken through the agreed decision-making model of the community and that the community is given the time they need to make their decision. In the end, it is the community's responsibility how they decide.

However, it should be noted that the giving or withholding of consent by a community is not a one-off process. At this point, the communities have been able to give or withhold their consent to various stages of the process. The right to FPIC is ongoing throughout the life cycle of the forest management activities and should be based on an ongoing relationship of trust and agreement between the stakeholders.

Communities may decide to reject or accept only certain parts of the proposal. These decisions should be respected, and the Organization should not try to renegotiate the deal immediately without some attempt to understand the conditions required to revisit the proposal. If the community agrees to explain why they withheld consent, it may be possible to revise the proposal and render it acceptable. Be aware that the community is not obliged to explain in detail their reasons for withholding consent, but they are more likely to do so when the negotiations occurred in good faith and in an open and transparent way.

The territories and resources of communities that do not give their consent should not be included in the planned forest management activities. The Organization then has to reconsider whether the forest management activities are still viable. In any case it has to refrain from any activities that could have an impact on the rights, resources, or lands of those communities that withhold their consent.

If the Organization decides to re-start the negotiations based on a revised management plan, and the communities agree to renegotiate, then it is probably not necessary to repeat the whole FPIC process. A large number of achievements from the previous FPIC process may still be valid.

Step 6: Verify and formalize the FPIC agreement

Elements of Step 6	Important questions	Desired output
6.1 Verify the FPIC process	<p>Has the independent verification of the FPIC process taken place according to the agreed schedule?</p> <p>Did the independent verification of the FPIC process reveal flaws that require going back to previous steps in the FPIC process?</p>	Independent verification documented
6.2 Formalize the consent agreement	<p>Was the agreement formalized in a way that satisfies the communities and makes it binding on all parties involved?</p> <p>Is the consent agreement made publicly available in languages that are locally and nationally relevant?</p>	Format for binding agreement mutually agreed

6.1 Verify the FPIC process

Ultimately, the certification body has the responsibility to verify that the FPIC of a community has been given, or to assess whether the agreed FPIC process and FPIC scope are progressing in a meaningful way, and to the satisfaction of all parties. Involving a third-party independent verifier in the FPIC process could contribute greatly to delivering the evidence needed by the certification body to assess whether the Organization fulfils the FSC P&C requirements.

By reviewing available or required documentation and by interviewing randomly selected individuals from the parties involved, independent verifiers will form a view of the quality of the FPIC process and the level of satisfaction of the communities. If verification identifies deficiencies in the process or the granting of consent, the community has the right to require this to be addressed. The community can require that their consent to the project is renegotiated from the stage of the FPIC process that was identified as inadequate.

6.2 Formalize the consent agreement

Once the Organization and the communities formalize the FPIC agreement, they are bound by it. The monitoring mechanism should 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 (including the Organization) can make use of the complaint or grievance mechanisms.

FSC P&C and IGIs
 C3.3, instructions for standard developers to C3.3, IGIs 3.3.1, 3.3.2, 3.3.3, C3.6, IGIs 3.6.1, 3.6.2, C4.8, IGIs 4.8.1 and 4.8.2

6.2.1 What constitutes a binding agreement?

A 'binding agreement' may be, but is not limited to, a written agreement. Any agreement reached remains subject to a continuous process of dialogue and negotiation, according to

circumstances, or because in the traditional customs of the community no subject or decision is ever regarded as finally closed, or where the operational status of a decision is situation-specific.

A decision from a community to withdraw consent may reveal a flaw in the FPIC process, e.g. if the community was not well informed, did not understand the information well enough, or did not feel free to express their opinions or negotiate a better deal. The community may not want to withdraw consent entirely, but to renegotiate a certain part of the agreement, while still agreeing that management activities can continue.

A binding agreement implies that neither party is able to withdraw consent arbitrarily – the agreement is binding on both parties. If the conditions upon which the original consent was based are being met, ongoing consent is implied. To avoid the risk of arbitrary withdrawal of consent, the conditions for withdrawing should be included in the FPIC agreement. Parties can also agree to periodic review of the FPIC agreement at which time both parties can suggest modifications. In situations where community land use is dynamic and can be determined on a seasonal or yearly basis, regular updating and renewal of the FPIC agreement will be necessary.

What should be included in the binding agreement?

The FSC P&C require that a binding agreement shall include a specified duration; make provision for renegotiation, renewal, or termination; specify economic conditions (e.g. benefit-sharing, compensation, legal fees); and make provision for participatory monitoring. The FSC P&C also require provision for 'other terms and conditions', which include the elements that are important for negotiation.

What is an appropriate format for a binding agreement?

The format of the binding agreement should be agreed mutually and can be written, oral (audio or video), a traditional ceremony, or a combination of presentations. The written agreement could be formalized in a legal document that is binding on both parties and, if possible, endorsed by the local government or relevant authority. The Organization must maintain appropriate records of all agreements, including written accounts and audio or film records, and these should be made available to the communities in their preferred language and media formats.

FSC P&C and IGIs
IGI 3.3.1 and 3.3.2

Legal and judicial obstacles can arise, however, when Indigenous Peoples' institutions lack legal personality in national law, or Indigenous Peoples are not even recognized or registered as citizens. This reinforces the importance of respecting customary laws and honouring customary systems for maintaining agreements.

Indigenous Peoples may also not want to make a legally binding agreement with an Organization as it may have repercussions on their legal position with regard to negotiations with the government. In these situations, parties could, for example, make a memorandum of understanding or protocol agreement.

Step 7: Implement and monitor the FPIC agreement

Elements of Step 7	Important questions	Desired output
7.1 Implement and jointly monitor the FPIC agreement	<p>Do the affected communities participate in the management planning, research, and monitoring of the forest management activities to the extent that this affects them?</p> <p>Is there a positive and collaborative working relationship between the Organization and the affected communities?</p> <p>Are the communities satisfied with the way the agreement is implemented?</p> <p>Are there any complaints about the implementation of the consent agreement?</p> <p>Are complaints on the implementation agreement resolved in a way that satisfies all parties involved?</p>	Implementation progress reported

7.1 Implement and monitor the FPIC agreement in a participatory way

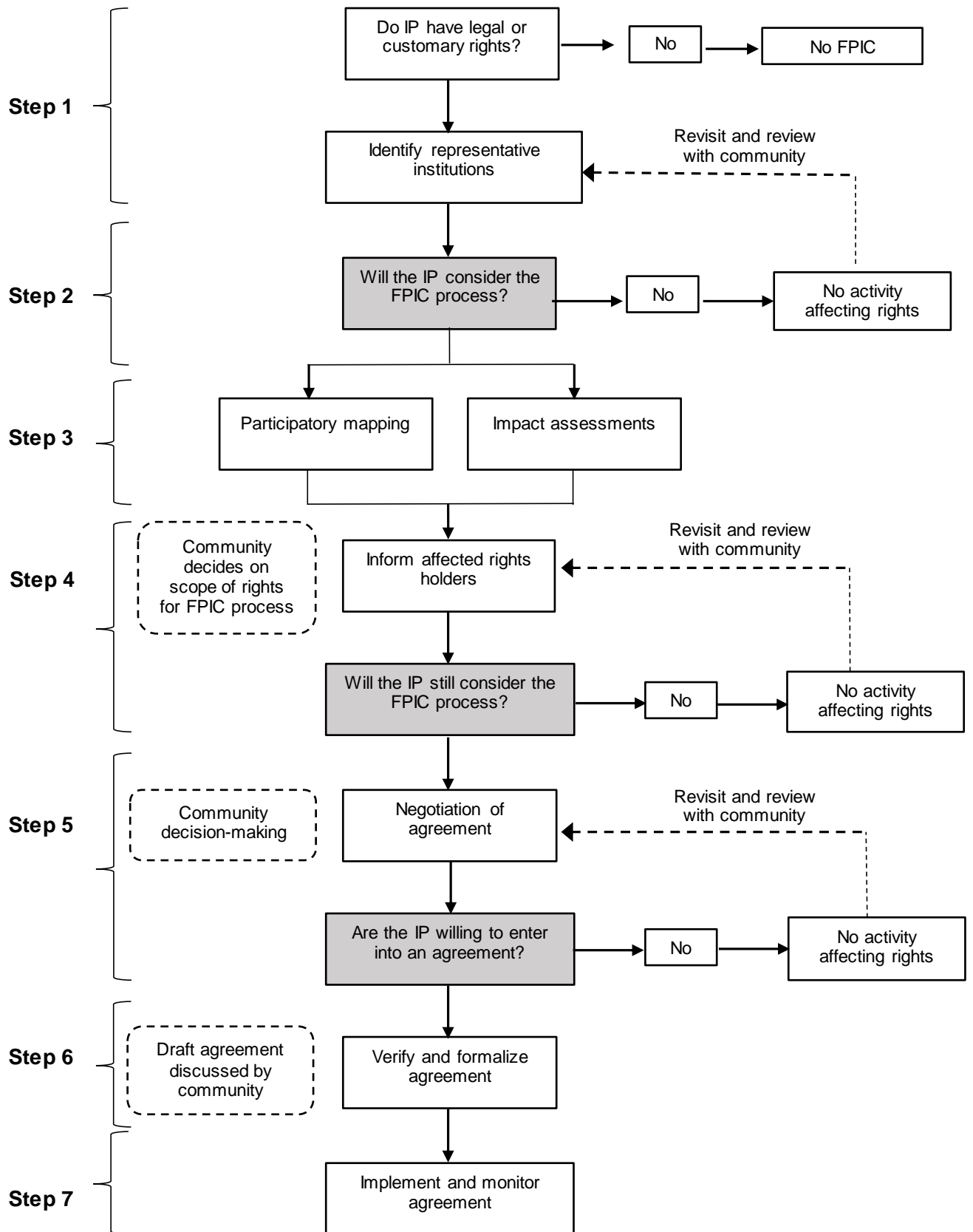
It is important to be aware that the relationship between the Organization and the communities does not end once a consent agreement is reached. All parties should continue to invest in a good relationship by honouring the agreement and applying the tools and lessons learnt during the FPIC process.

Make sure the monitoring is participatory as agreed in Step 5.4. Monitoring should focus on whether the FPIC agreement and the associated management plan are being implemented as agreed.

The agreements reached through an FPIC process are based on trust. This requires that representatives of involved parties must know and respect each other, must be accessible, and must be willing and able to find solutions during and after the initial agreement process. Any important new information or changing circumstances or policies should be shared transparently and discussed if necessary.

An FPIC process diagram

Details regarding the theory and best practice evidence for the 7-step FPIC process are provided and will form the foundation of future operational guidelines. However, it should be understood that the aim of this discussion paper is to encourage further discussion on the practical implementation (i.e. in the field) of FPIC in the context of FSC certification. Therefore, in advance of the detail, an FPIC process map has been combined with community decision options to demonstrate potential operational outcomes of the FPIC process (Figure 1).



IP = Indigenous Peoples

Figure 1. FPIC process diagram
 Source: Adapted from Anderson (2011: 24–25).

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