



**FORESTS
FOR ALL
FOREVER**[™]

Free, Prior and Informed Consent Guidance

Version 1
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A Working Document

It should be noted that there will be periodic updates to this version based on the application of this Guidance and increased understanding of the implementation of FPIC based on further testing and experience gained in the field. FSC Canada will monitor the application of this Guidance document and continue to seek input and feedback from members, interested stakeholders and Indigenous Peoples with the aim to improve it as well as create additional resources to support the implementation of FPIC.

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1 INTRODUCTION

Respecting the right to FPIC is, by definition, a locally and culturally specific process in which the affected communities themselves determine the steps involved. It is therefore not possible to produce a universally applicable “how to” guideline.

~Anderson 2011: 3

FSC International Generic Indicators (IGIs) for Principle 3 were adapted to reflect the current context of Aboriginal and treaty rights in Canada. Principle 3 supports the recognition and protection of the “legal and customary rights” of Indigenous Peoples.

The processes presented in this document are not requirements for certification (i.e. they are non-normative). The information contained in this document *aims to improve the outcome of efforts by The Organization to address the requirement of recognizing and upholding the rights of Indigenous Peoples in the context of the FSC National Forest Stewardship Standard of Canada (referred to here as FSC Canada’s Standard)*. This document was developed to:

- Support The Organization, governments, interested stakeholders and Indigenous Peoples as “rights holders” to understand the origin of Principle 3 Indigenous Rights requirements, and
- Support existing relationships between The Organization and Indigenous Peoples as they prepare for addressing new requirements of Principle 3 indicators.

1.1 WHY DO WE NEED FPIC GUIDANCE?

FSC Canada seeks to develop a common understanding of the right to FPIC processes to facilitate decisions based on FPIC and address issues related to the implementation of FPIC in Canada among participants in the FSC system (i.e. The Organization, affected Indigenous Peoples, interested stakeholders). However, several factors pose a challenge to the implementation of Principle 3:

- Indigenous Peoples may not be aware that they have a right to FPIC;
- Application of FPIC occurs at a local (management unit) scale within a voluntary certification context; generalized international requirements require local adaptation.
- The Organization and Indigenous Peoples may not be aware of the differences between government consultation requirements and FSC requirements related to FPIC;
- There is uncertainty about existing Indigenous community engagement processes led by governments and whether they adequately respect the right to FPIC;
- There is an evolving legal framework around the application of FPIC to private lands¹; and
- A complex forest management planning environment requires further clarification on the scope of an FSC FPIC process.

¹ FSC Canada will continue to monitor the legal and legislative contexts to ensure that compliance with Principle 1 and Principle 3 is addressed.

1.2 GUIDANCE DEVELOPMENT

The FPIC Guidance was developed through a consultative process that involved a technical writer, the FSC Principle 3 Technical Expert Panel (TEP), public consultations sessions with interested stakeholders at various meeting and conference venues across the country, and finally FSC Chamber representatives on the Standard Development Group (SDG), staff and consultants².

Early in 2017, FSC initiated a comprehensive testing program for draft normative and guidance documents. The results of testing were used to improve the Guidance document. It was reviewed again by an external expert and approved by the SDG and FSC Canada Board of Directors.

1.2.1 CONTINUAL IMPROVEMENT

The information contained in this Guidance document reflects FSC's commitment to human rights and corporate social responsibility in the context of a voluntary, third party standard for sustainable forest management. FSC Canada recognizes that Canadian jurisprudence regarding Aboriginal and treaty rights and best practices is quickly evolving, and we are hopeful that this Guidance will help strengthen the understanding of the right to free, prior and informed consent. FSC Canada is committed to updating this document as more information becomes available.

1.2.2 FSC INTERNATIONAL FPIC GUIDELINES VS FSC CANADA GUIDANCE

The international legal and human rights framework of this FPIC Guidance document is based on the 2012 FSC International Guidelines for the Implementation of the Right to Free, Prior and Informed Consent (Version 1). It was a seminal document at the time because it provided a methodology for the application of FPIC in the context of forest management certification. The legal and legislative foundations of consultation, accommodation and consent are based on the unique Canadian context. Therefore, while the general principles of engagement and FPIC are shared with the FSC International document, this Guidance serves to support Indigenous Peoples and The Organizations operating in a Canadian context.

FSC International is currently revising Version 1 to reflect new knowledge garnered through application of the 2012 Guidelines and case study information gathered through FPIC field tests, including one in Canada.³

² A complete list of the events and forums organized or supported by FSC Canada where Principle 3 and FPIC were discussed is available in the "List of Contributors" section of the FSC Canada's Standard.

³ FSC-GUI-30-003 (V1-0) FSC Guidelines for the Implementation of the Right to Free, Prior and Informed Consent (FPIC). Version 2 of FSC International Guidance on FPIC will be available in 2019. Version 1 of this document is still relevant and available for review at <https://ic.fsc.org/download.fsc-fpic-guidelines-version-1.a-1243.pdf>

2 BACKGROUND

The global understanding of the right to free, prior and informed consent (FPIC) is quickly evolving. Considerable effort has been made to develop decision making frameworks, or guidelines, to support the legal and moral responsibilities of governments, non-governmental organizations and the private sector in their role of recognizing and upholding the rights of Indigenous Peoples.⁴

In 2012, the FSC membership approved a new version of FSC's Principles & Criteria (FSC-STD-01-001 V5-0 EN) upon which the new FSC Canada Standard is based. Under this new Standard, requirements for the recognition of Indigenous Peoples Rights are strengthened with the addition of free, prior and informed consent (or FPIC), based on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO 169.

2.1 FREE, PRIOR AND INFORMED CONSENT (FPIC)

As an international organization, FSC recognizes and upholds well-established and protected human rights standards, including the rights of Indigenous Peoples, as part of its framework for supporting the practice of sustainable forest management. The role and responsibilities of Indigenous Peoples in achieving global sustainable development standards was recognized in 1987 with the publication of the UN World Commission on Environment and Development (WCED) report titled "Our Common Future" (or the Brundtland Report) and later in the Development Convention on Biological Diversity (CBD) and Article 8(j) (1993). The founding members of FSC upheld these same principles and entrenched Principle 3: Indigenous Peoples' Rights in the first FSC Principles & Criteria published in 1994.

The concept of FPIC emerged in response to growing pressures faced by Indigenous Peoples related to natural resource extraction on their traditional homelands and territories. It can be described as:

*The right to participate in decision-making and to give, 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.*⁵

FPIC is recognized in several international agreements and instruments, including:

- 1989 | International Labour Organization (ILO) Convention No. 169
- 1992 | The Convention on Biological Diversity (CBD)
- 1992 | United Nations Framework Convention on Climate Change (UNFCCC)

⁴ A list of useful resources are included in Annex A.

⁵ Based on Colchester and MacKay (2004).

2007	The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) endorsed by member Nations, except Canada, USA, Australia and New Zealand ⁶
2010	Canada issues Statement of Support endorsing the principles of UNDRIP
2016	Canada announces full support, without qualification, of UNDRIP

Internationally, FPIC is linked to treaty norms,⁷ the right to develop and maintain cultures⁸ and the right to self-determination in international law and non-binding international agreements. UNDRIP is the most often cited source for our current understanding of FPIC. Six articles of UNDRIP⁹ (10, 11(2), 19, 28, 29(2) and 32(2)), subject to article 46 recognizing the sovereignty of nation states, explicitly refer to FPIC. Article 32(2) regarding resource development projects is particularly significant:

Article 32: (2) States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

An important nuance in all of the international instruments supporting FPIC is the connection made between use and ownership rights based on long-standing ties to lands and resources, participatory decision making and the elevation and support for basic human rights afforded to Indigenous Peoples. A list of relevant articles in both UNDRIP and ILO 169 can be found in Annex A.

2.1.1 INTERNATIONAL COMMITMENT TO UPHOLD INDIGENOUS RIGHTS

While Canada is not a signatory to ILO 169 and has only recently considered adopting UNDRIP within its legislative and legal framework, Principle 3 still requires The Organization to assess these international instruments against their management activities. During the development of the International Generic Indicators (IGIs) upon which FSC Canada's Standard is built, FSC International identified articles relevant to the practice of sustainable forest management (See Appendix A).

UNDRIP

The UNDRIP is the product of 25 years of negotiation between United Nation member states and Indigenous Peoples from around the world, including Canada. The Declaration deals with a wide spectrum of Indigenous rights. It protects collective rights that may not be addressed in other human rights instruments that emphasize individual rights. UNDRIP also safeguards the individual rights of Indigenous People. This latter point is particularly relevant in Canada, since the Canadian Charter of Rights and Freedoms did not apply to Indigenous Peoples living on Indian Reserve lands (as per the *Indian Act, 1982*) until 2008 (legislation passed in 2011).¹⁰

⁶ Australia endorsed UNDRIP in 2009; New Zealand and the United States endorse UNDRIP in 2010.

⁷ Article 1 of the International Human Rights Covenants.

⁸ Article 27 of the International Covenant on Civil and Political Rights (ICCPR) and article 15 of the International Covenant on Economic Social and Cultural Rights (ICECSR).

⁹ See Annex A for more details.

¹⁰ See <https://www.canada.ca/en/canadian-heritage/services/rights-indigenous-peoples.html> for more information.

ILO

In addition to UNDRIP, FSC Canada’s Standard includes indicators related to International Labor Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples. It is the only international legally binding instrument dedicated to the protection of Indigenous Peoples rights. Canada has not ratified this convention. ILO 169 gives greater recognition to Indigenous Peoples and calls for Indigenous participation in the decision-making processes that affect their lives. This Convention focuses on Indigenous participation in political, social and economic matters controlled by nation state governments and corporations but it stops short of calling for Indigenous Peoples to have the right to grant consent for resource development projects.

UNDRIP, ILO and FSC Canada’s Standard

The majority of the articles in both the UNDRIP and ILO 169 address the relationship between Indigenous Peoples and the nation state. The requirements of the Standard under Criterion 3.4 include recognizing and upholding not only the rights of Indigenous Peoples, but also the social structures that support their customs and cultures. This requirement is intended to facilitate a wider discussion and dialogue between affected Indigenous Peoples and The Organization about the role forest management might have in bridging the relationship between governments, Indigenous Peoples and forest developers within their territories.

Criterion 3.4

The Organization shall recognize and uphold the rights, customs and culture of Indigenous Peoples as defined in the United Nations Declaration on the Rights of Indigenous Peoples (2007) and ILO Convention 169 (1989).

Voluntary certification undertaken at the scale of a forest management unit by non-state forest managers is recognized as uniquely different than the relationship between Indigenous People and the Government of Canada or a provincial/territorial government. Indigenous Peoples may raise concerns related to the implementation of UNDRIP or ILO 169 that reach beyond the scope of The Organization’s influence. Establishing an early understanding of the limits of forest management in influencing government activities will mitigate unattainable expectations. However, keeping in mind that knowledge exchange is a two-way process, the parties to an FPIC process may engage in discussions about UNDRIP or ILO that may result in innovative and mutually beneficial agreements as a result of the thinking outside the “forest management box”. Further discussion on implementing Criterion 3.4 can be found in Section 3.1 of this document under Step 2.

2.1.2 FPIC IN CANADA

Historically, the government of Canada restricted or abolished the basic human rights¹¹ of Indigenous Peoples. *Indian Act* was the instrument to remove and restrict access to traditional territories through the creation of Indian reserves and travel off reserves using the “pass system”. The Indian Act also prohibited Indigenous Peoples from soliciting funds to pursue their legal claims. Federal and provincial permitting systems restricted people’s access to natural resources both on reserve and off. Indigenous Peoples’ right to self-determination was not recognized; the right to vote in federal

¹¹ As recognized in the Universal Declaration of Human Rights (1948). See <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> for more information.

elections was granted only in 1960. These restrictions were imposed by the governments to expand unfettered access to lands and resources for the enjoyment and profit of non-Indigenous Peoples.

Federal inquiries into the status (e.g. Royal Commission on Aboriginal Peoples (1996)) and treatment of Indigenous Peoples (e.g. Truth and Reconciliation Commission) have revealed the consequences of government-sanctioned programs specifically designed to assimilate and eliminate Indigenous Peoples from the Canadian landscape. Governments and greater society are now grappling with the consequences of these actions.

In 2016, Canada recognized UNDRIP, without qualification, but a debate continues as to whether the principles contained within UNDRIP are currently addressed through existing legal and legislative frameworks in Canada. Indigenous Peoples' right to self-determination (and self-identification) and right to property are particularly relevant to the interpretation of FPIC in FSC Canada's Standard.

The complete principle of free, prior and informed consent is not explicitly mentioned in Canadian law or legislation; however, the concept of 'consent' is not foreign to the Canadian legal system or forestry regulations. The Canadian courts have focused on the participatory aspects of affected rights holders. It is now generally understood that resource extraction activities, such as forestry, require, at a minimum, "good faith" consultation and in some cases even consent when significant and long-lasting impacts on Aboriginal and treaty rights are probable.¹²

Consultation in good faith implies that the parties make every effort to reach an agreement, conduct genuine and constructive negotiations, avoid delays in negotiations, respect agreements concluded, and give sufficient time to discuss and settle disputes.¹³ This summary of good faith, along with the Government's policy on consultation and accommodation, mirrors many aspects of the FPIC process, with one significant difference. ***In government consultation processes, there is no requirement to respect the right to self-determination and associated authority of Indigenous Peoples to grant or withhold consent.***

It should be noted that on May 30, 2018 the House of Commons passed the third reading of Romeo Saganash's *Private Member's Bill C-262*, an Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples. The Act requires the government of Canada to "take all measures necessary to ensure the laws of Canada are consistent" with the UNDRIP. The Act also requires the Minister responsible for Indigenous Affairs to report to Parliament annually on how government is ensuring its laws are consistent with the UNDRIP and implementing a national action plan to achieve UNDRIP's objectives. The Bill proceeded to the Senate in May 2018 but died on the order paper when the federal election was called for the fall of 2019. The fate of the bill now rests with a new government.

2.2 ABORIGINAL AND TREATY RIGHTS IN CANADA

Aboriginal and treaty rights are protected by subsection 35(1) of the *Constitution Act, 1982*. One of the most recognizable outcomes of the evolving case law around the recognition and affirmation of Aboriginal and treaty rights has been the development of government consultation and

¹² See *Delgamuukw v. BC 1997: Para 168*.

¹³ FSC Policy Motion 40/2017.

accommodation policies and procedures. Each province and territory has developed a customized approach to consultation and accommodation that reflects its legal and jurisdictional responsibilities for forest management on public lands. Each jurisdiction approaches the management of private lands differently, and there is no universal or regional guidance on the application of Aboriginal rights to private lands. In the context of FSC Canada's Standard and this Guidance document, Aboriginal and treaty rights are considered Indigenous rights.

Aboriginal rights: Aboriginal rights are collective rights which flow from Aboriginal Peoples' continued use and occupation of certain areas. They are inherent rights which Aboriginal peoples have practised and enjoyed since before European contact. Aboriginal rights may be divided into two categories: generic rights and specific rights.

Examples of generic rights include:

- Rights to exclusive use of land (Aboriginal title);
- Rights to subsistence resources and activities;
- The right to self-determination and self-government;
- The right to practise one's own culture and customs, including language and religion; and/or
- The right to enter into treaties.

Examples of specific rights, or rights held by an individual Indigenous community, and which have been defined as a result of a court case include:

- The right to fish (e.g. Sparrow decision – non-treaty related right); and
- The right to hunt (e.g. Métis in Sault Ste. Marie, Ontario)

Treaty Rights: Treaty rights refer to a specific set of Aboriginal rights set out in a treaty between an Aboriginal group and the British government (historic treaty), and now Canada (modern-day treaty under the federal Comprehensive Claims Policy first implemented in 1975). A treaty is a legally binding agreement that sets out the rights, responsibilities and relationships between sovereign nations. Differences in the interpretation of historic treaties by governments and Indigenous Peoples remain the centre of many resource conflicts.

Métis Rights: The Supreme Court, in the *Powley* case (2003), outlined a basic legal test that an individual would need to pass in order to be considered "Métis" for the purposes of asserting Aboriginal rights under section 35 of the *Constitution*. The major criteria – or "*Powley* test" – stipulates the individual must:

- identify as a Métis person;
- be a member of a present-day Métis community; and
- have ties to a historic Métis community.

Further to the third criterion, to be considered a 'historic rights-bearing community', it must be proven that a mixed-ancestry group of Indian-European or Inuit-European people:

- formed a 'distinctive' collective social identity;
- lived together in the same geographic area; and
- shared a common way of life.

In *Powley*, the Supreme Court of Canada stated that the term Métis in Section 35 of the *Constitution Act, 1982* does not encompass all individuals with mixed “Indian” (as defined in the *Indian Act*) and European heritage. Rather, it refers to a distinctive population who, in addition to their mixed ancestry, developed their own customs and recognizable group identity separate from their Indian or Inuit and European forbearers. The Métis communities claiming Aboriginal rights must have emerged in an area prior to the Crown effecting control over a non-colonized region (e.g. the *Powley* case is based on the historical occupation in and around Sault Ste. Marie, Ontario).¹⁴

2.2.1 PUBLIC LANDS

Forest regulations on public lands require The Organization to identify or have knowledge of local Indigenous communities within its Forest Management Unit (FMU). A provincial government or territory establishes the scope of rights to be considered under its consultation policies and they work with forest license holders to implement consultation and accommodation procedures with Indigenous communities. The focus of government is to support the participation of Indigenous Peoples in forest management activities; the authority to make the final decision with respect to management planning and development remains with the provincial government.

2.2.2 PRIVATE LANDS

Canadian courts and legislation recognize that legal and customary rights (specifically use rights) and private property rights (i.e. right of ownership) may co-exist.¹⁵ Should the assertion of a legal or customary right of an Indigenous community overlap the rights of a private landholder, the minimum expectations would include: 1) a response by The Organization to the assertion, and 2) demonstration that The Organization has followed all applicable laws (Principle 1).

This Guidance does not abrogate or derogate from the right to property. The legal and customary rights addressed in Principle 3 are based on the pre-settlement condition of the region (i.e. prior to the granting of land) and must be identified on a case-by-case basis, preferably through culturally appropriate engagement and relationship building.

Sincere attempts should be made by The Organization owning private lands to meet with Indigenous people to discuss the nature and scope of their rights and to understand how management activities may affect those rights. Nevertheless, where those rights are asserted without evidence, and the negative impact of the assertion is assessed as being too high, private land owners may decide to weigh their property rights against the rights of Indigenous people (see Intent Box 3.1.3 in FSC Canada’s Standard).

The mechanisms used to uphold Indigenous rights on private lands may differ between landowners and from public lands. There is an evolving legal framework related to Aboriginal and treaty rights and private lands in Canada. The national discussion on FPIC and Supreme Court rulings on Indigenous rights in Canada have so far focused on the role of governments in upholding Aboriginal rights on public lands and we are therefore still grappling with the application of FPIC on private lands. FSC Canada will monitor the evolving legal framework and the implementation of Principle 3 and adapt the FPIC Guidance or provide normative direction when/if necessary.

¹⁴ Quoted from: <https://www.aadnc-aandc.gc.ca/eng/1100100014413/1100100014414>.

¹⁵ For a recent review of Aboriginal title and private property, see *Borrows* (2015); For an early example of treaty rights applied to private lands see *R. v. Bartleman, 1984 BC CA*.

2.2.3 EXISTING CONSULTATION AND ACCOMMODATION PRACTICES

Some Indigenous communities and representative organizations have developed consultation and accommodation guidelines to reflect their own interpretations and expectations of a nation-to-nation relationship. This provides an ideal opportunity for The Organization to start building a relationship based on the mutual respect. Therefore, efforts should be made to determine whether Indigenous Peoples that may be affected by management activities have existing consultation and accommodation protocols. If they do exist, best practice dictates that The Organization assess those protocols jointly with the community. In combination with an assessment of the regulatory requirements related to consultation and accommodation applicable in the jurisdiction, The Organization and the Indigenous community seek to develop a harmonized protocol agreeable to the parties.

Ultimately, the scope of rights considered by the Government in a consultation and accommodation process may or may not reflect all the principles and values included in FSC Canada's Standard or the customary practice of affected Indigenous communities. Indicators found outside of Principle 3 that call for culturally appropriate engagement with Indigenous Peoples do not focus on a rights-based approach to development. **Criteria 6.5 and 9.1**, for example, recognize the inherent value of Indigenous knowledge systems to the development of a Conservation Areas Networks and identification of High Conservation Values. Therefore, while government-defined consultation and accommodation policies and procedures may provide a useful framework for organizational engagement with Indigenous communities, adaptation is required to ensure conformance with Principle 3 and other criteria requiring engagement with Indigenous Peoples.

2.2.4 GETTING TO KNOW AFFECTED RIGHTS HOLDERS

A "right" is defined as a moral or legal entitlement to have or obtain something, or to act in a certain way.¹⁶ FSC Canada's Standard differentiates a legal right, which is legally recognized under domestic and international law, from a customary right that may not be recognized in law, but is observed by members of an Indigenous community giving it the force of law by being in practice for a long period of time.

The legal rights and customary rights addressed in Principle 3 are based on the pre-settlement conditions of the region (i.e. prior to the granting of land rights) and must be identified on a case-by-case basis, preferably through culturally appropriate engagement and relationship building.

Legal Rights: The Organization is likely to be familiar with the term "legal right" as there is a strong foundation of Aboriginal law in Canada related to the duty to consult that has a direct impact on the practice of forestry. Section 35(1) of the *Constitution Act, 1982* recognizes and affirms Aboriginal and treaty rights. Sources for important legal decisions can be found in Annex A.

¹⁶ Definition from <https://en.oxforddictionaries.com/definition/right> [Accessed Nov 21, 2017]

Customary rights: A customary right is defined in the Glossary of FSC Canada’s Standard; however, its application in the context of management activities may not be well understood. In Canada; the term “customary right” is not common in Indigenous rights discourse. It is much more common to come across references to customary law, traditional law, Natural Law or legal traditions that are codified in written (e.g. wampum belts or sacred scrolls) and unwritten forms (e.g. songs, dances) and passed on through the generations. More importantly, the values, beliefs, and understandings of such laws are conveyed through the continuing practices, customs and traditions of the society. These practices, as defined in the Glossary of FSC Canada’s Standard, make up the customary rights of Indigenous Peoples.

Examples of customary rights and associated responsibilities:

- Access to resources used for culturally-based craft and commerce
 - black ash for basket making; white birch for birch bark canoe making
- Access to and use of healthy, undeveloped environments that contain important herbs and medicines used in ceremony and healing
 - cedar, sweetgrass, sage, and others
- Access to forest resources
 - Firewood; wild plant food sources such as nut trees, berries and herbs
- Access to forested areas to carry out traditional management practices that encourage culturally important species abundance and diversity
- Access to and protection of ceremonial sites

The resources required to document, negotiate and/or litigate Aboriginal rights claims are prohibitive for most Indigenous communities. Therefore, many communities will not be able to supply The Organization with ready-made lists of the application of legal and customary rights to forest management. FPIC may be an even newer concept for some Indigenous Peoples and forest managers, especially those individuals outside of political positions. All parties are encouraged to be proactive, but patient, when initiating conversations about FPIC and, when necessary, they should seek guidance from experts and trusted advisors to Indigenous Peoples and The Organization.

2.2.5 EXISTING TOOLS TO SUPPORT IDENTIFICATION

Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) maintains a web-based geographic information system called the Aboriginal and Treaty Rights Information System (ATRIS)¹⁷ that provides access to documents and maps that can be used to determine consultation obligations.

ATRIS contains information on:

- Aboriginal communities and organizations, including:
 - contact information for Chiefs and band offices
 - tribal council affiliations
 - some Métis organizations (local, provincial or territorial and national)
 - Inuit communities and governments
 - other relevant information on Aboriginal groups, communities and organizations
- Treaties and agreements, including:
 - historic and modern treaties
 - self-government agreements
 - other agreements, such as consultation protocols
- Claims and negotiations, including publicly available information on:

¹⁷ Aboriginal and Treaty Rights Information System (ATRIS). http://sida-it-atris.aadnc-aandc.gc.ca/atris_online/home-accueil.aspx

- specific claims that have been filed in Canada
- comprehensive claims that have been filed in Canada
- related claims and self-government negotiations
- Court cases and decisions, including:
 - litigation between Aboriginal groups and the Government relating to Section 35 Aboriginal and treaty rights
 - litigation between Aboriginal groups and the Government relating to consultation matters
 - key court decisions related to the legal duty to consult (Government and private sector)
- Consultation related information, including:
 - historical context
 - community perspectives
 - reports, studies, correspondence or agreements

2.2.6 CONSULTATION VS FPIC

There is a substantial legal history available regarding the evolution of the duty to consult and accommodate the infringement of Aboriginal rights on public lands in Canada, the details of which are not covered in this document. This section provides a brief overview of consultation and is specific to its application on public lands.

Meaningful Consultation is recognized by governments as a legal requirement of their fiduciary obligation and has been defined as “engagement between Indigenous Peoples, governments and proponents to determine where and when development projects may infringe on Aboriginal rights and whether that infringement is justified”.¹⁸ A consultation process may be deemed meaningful when it incorporates both procedural and substantive aspects, including some or all the following actions:

Procedural:

- Consultation initiated at the earliest development stage possible;
- All aspects of the consultation process are open, transparent and timely;
- Information exchange processes are timely and reasonable (including delegation of this responsibility to proponents); and
- Assistance is provided to the affected Indigenous Peoples to help develop a reasonable understanding of the information provided, where necessary.

Substantive:

- The affected Indigenous Peoples must have an opportunity to express their interests and concerns;
- The government must ensure the interests and concerns of Indigenous Peoples are seriously considered in development plans (e.g. engage in problem solving or negotiation); and

¹⁸ See Minister of Aboriginal Affairs and Northern Development Canada. 2011. Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult. Available at: http://www.aadnc-aadnc.gc.ca/eng/1100100014664/1100100014675#chp3_2_3

- The government must, wherever possible, demonstrably integrate the interests and concerns of Indigenous Peoples into the proposed plan of action (e.g. modification of plans, mitigation, compensation or some other form of accommodation).

The courts have established that the scope of the duty to consult with Indigenous Peoples is proportionate to a preliminary assessment of the strength of the claim supporting the existence of the Aboriginal right or title by the Government and to the seriousness of the potentially adverse effect upon the right or title claimed. The Government is not under any duty to reach an agreement. Rather, the commitment is to ensure a meaningful process of consultation in good faith.

Meaningful consultation is not the equivalent of free, prior, informed consent (FPIC), but it is a necessary process to reach an FPIC agreement. While the procedural aspects of meaningful consultation complement the principle of FPIC, the substantive aspects related to the decision-making power of Indigenous Peoples for planned management activities stop short of authorizing consent. Specifically, under current regulations the Government determines the strength of a rights claim and associated requirements of consultation. There is no obligation to reach an agreement. The Government and the courts have focused on the participatory aspects of decision-making processes, not the right to self-determination which is the foundation of the right to FPIC.

3 IMPLEMENTING AN FPIC PROCESS

Respecting the right to FPIC cannot be a process with boxes that can be ‘ticked’ as they are completed. The right of indigenous peoples to give or withhold their consent to development that affects their territory is part of their collective right to self-determination, which includes the right to determine what type of process of consultation and decision-making is appropriate for them.

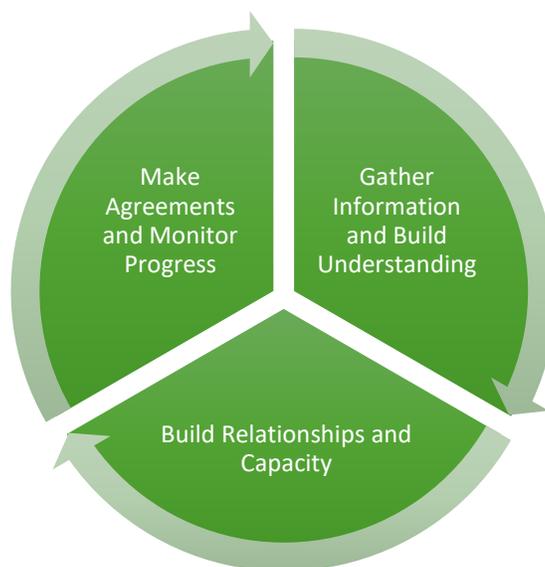
~Anderson 2011: 11

Upholding the right to FPIC involves a series of actions taken by The Organization to achieve a binding agreement with affected Indigenous Peoples. This is referred to as an “FPIC process”. There are numerous factors that will influence the design and implementation of an FPIC process and no two FPIC processes will be the same.

A key component of a successful process is the willingness and ability of The Organization and Indigenous Peoples to respect and support each other’s interests and visions regarding the forest and their ways of making decisions. An FPIC process developed in collaboration will more likely reveal challenges and contentious issues in advance of a significant investment in management planning.

The Organization engaged in forest management activities on public land in Canada has been required to engage with Indigenous People for some time; therefore, it is possible that The Organization and Indigenous communities will enter into an FPIC process with a history of relationship-building and engagement.

This Guidance will assist in the development of engagement processes based on the objective of obtaining consent as per the requirements of **Principle 3**. This section introduces a three-phase process that can be broadly applied in the context for FSC certification: 1) Gathering Information and Building Understanding, 2) Building Relationships and Capacity and 3) Making Agreements and Monitoring Progress.



3.1 PROCESS OVERVIEW

Table 1 breaks down the three-phase process into seven-steps that have been adapted from the International draft *FSC Guidelines for the Implementation of the Right to Free, Prior and Informed Consent (FPIC)* (FSC-GUI-30-003 V2-0 – EN DRAFT 1.0).¹⁹ Each step is cross-referenced with relevant **Principle 3** Indicators and other relevant Indicators that may not be rights-based, but interest-based. It is important to note that while the process is presented here as a linear, or sequential, 7-step process culminating in a binding agreement, it is not always possible to implement the steps sequentially nor will it always be necessary to fulfill all the steps identified.

Table 1: Seven-step FPIC process and related indicators (Adapted from FSC International Guidelines on FPIC)

FPIC Process Phases and Steps	Principle 3 Indicators	Other relevant Indicators
Phase 1: Gather Information and Build Understanding		
Step 1: Identify rights holders and their rights through engagement	3.1.1, 3.1.2, and 3.1.4	1.3.1, 4.1.2, and 6.5.1
Phase 2: Build Relationships and Capacity		
Step 2: Prepare for further engagement and agree on the scope of the FPIC process	3.1.3, 3.1.4, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.5, 3.4.1, 3.4.2 and 3.5.1	4.3.1, 4.4.1, 6.5.1, 7.1.1, 8.2.2, and 9.1.2
Step 3: Undertake participatory mapping and impact assessments	3.2.5, 3.5.2 and 3.5.3	4.5.1, 6.4.2, 6.4.3, 6.4.5, 6.5.8, 6.8.7, 9.4.2 and 10.9.1
Phase 3: Make Agreements and Monitor Progress		
Step 4: Management activities revised, and affected rights holders informed	3.2.5	
Step 5: Negotiate an agreement with rights holders on FPIC proposal	3.2.5, 3.3.1 to 3.3.3, 3.6.1 and 3.6.2	6.5.8, 6.5.11, and 8.2.2
Step 6: Verify and formalize the FPIC agreement	3.3.1, 3.3.3	
Step 7: Implement and monitor the FPIC agreement	3.3.3	8.2.2

The nature and scope of the FPIC process will depend on the impact of management activities on the rights of affected Indigenous Peoples. Mitigation efforts, including agreements, may be addressed at the strategic and/or operational level of management planning. This will determine the frequency of review, renegotiation and revision.

¹⁹ See FSC-GUI-30-003 V2-0 - EN DRAFT 1.0: FSC Guidelines for the Implementation of the Right to Free, Prior and Informed Consent (FPIC), 2019, available at www.fsc.org

Criterion 3.1 includes a recognition that Indigenous rights may be contested by government, creating conflict between statutory decision makers and affected Indigenous Peoples. When such conditions exist, The Organization should make best efforts to work within its sphere of influence to achieve conformance and document conflicts with legislative and procedural requirements that delay and/or inhibit conformance (Indicator 3.1.2.5) and seek agreement on an interim scope of rights (Indicator 3.1.3)

PHASE 1: GATHER INFORMATION AND BUILD UNDERSTANDING

This first phase of an FPIC process is focused on determining *who* has the right to FPIC and *what* rights may be affected by management activities. The following questions may be used to guide preparations for Step 1:

- Who are the Indigenous Peoples with territories, claimed rights, interests and concerns that overlap, and are adjacent to, the Forest Management Unit?
- What are the claimed rights, interests and concerns and where are they located on the FMU?
- Can the identified rights, interests and concerns be addressed by The Organization through a forest management planning activity? For example, through information sharing, collaborative decision-making, technical support, or the development of an MOU? These are examples of “means” by which an Organization may recognize and uphold an identified right.

STEP 1: IDENTIFY RIGHTS HOLDERS AND THEIR RIGHTS THROUGH ENGAGEMENT

Based on the boundaries of the FMU and proposed management plan, The Organization identifies Indigenous Peoples with legal and customary rights, including their rights to resources, lands or territories in and around the FMU. This may be accomplished through consultation with specialists, governments, and/or territorial organizations that represent groups of communities (e.g. tribal councils or political territorial organizations).

Relevant Indicators:

1.3.1., 3.1.1, 3.1.2, 3.1.4, 4.1.2, and 6.5.1

At this early stage of consultation and engagement, The Organization may begin to define the scope of the FPIC process by:

- a) Identifying Indigenous Peoples that may be affected by management activities within and around the FMU,
- b) Identifying fair and legitimate claims to rights,
- c) Identifying aspirations and goals of affected Indigenous Peoples related to forest management, traditional knowledge and engagement,
- d) Examining how Indigenous Peoples make decisions,
- e) Informing Indigenous Peoples and/or their representative institutions about planned management activities, and
- f) Identifying whether the affected Indigenous Peoples will consider entering further discussions about the planned management activities.

The Organization will need to determine which communities of Indigenous Peoples are affected by the proposed management activities. Those affected may then be identified as an “affected Indigenous community” (also referred as “rights holders”) in the context of FSC Canada’s Standard and will therefore have the right to grant, withhold or withdraw free, prior and informed consent.

When multiple rights have been asserted from different Indigenous communities on the same land base (aka overlapping claims), The Organization should use the precautionary approach and treat each claim equally, until those with recognized legal and customary rights related to the proposed management activities are distinguished from those with interests on the FMU.

In any community, it is likely that there are multiple points of view on forest management activities. The Organization should establish early in the relationship building process whether community members, other those identified as legal representatives,²⁰ should be included in the FPIC process.

Some interests and concerns may be brought forward by Indigenous Peoples that do not fall within the scope of Principle 3 (e.g. business-to-business agreements) or within the right to FPIC. The Organization may want to ensure that affected Indigenous Peoples are aware of other principles within FSC Canada's Standard (such as Principles 5, 6, 7 or 9), that may be more relevant to address specific interests and concerns.

During this phase of the process, (Indicator 3.1.4), The Organization is asked to provide a "summary of means", or strategies available within its sphere of influence, to uphold legal and customary rights in relation to proposed management activities. This exercise, when done early in the process, will help The Organization and affected Indigenous Peoples to determine their understanding of "rights" and "sphere of influence". Depending on the circumstances, The Organization and affected Indigenous Peoples may agree to a variety or suite of mechanisms to uphold rights. An FPIC process should be used for those rights that may be directly affected by management activities.

The processes used to reach this initial decision should establish the terms of engagement around who is giving consent, how consent will be given, including a shared understanding of terms used in FSC Canada's Standard, such as "mutually agreed", "customary rights", "culturally appropriate", "rights and responsibilities", "consent", "good faith", "best efforts", and "binding agreement". It is important to note that Indigenous Peoples are entitled to use their own language and terminology to express these ideas.

PHASE 2: BUILD RELATIONSHIPS AND CAPACITY

Forest management planning will involve people and institutions external to The Organization. This represents the network and sphere of influence of The Organization. In this phase of development supporting relationships are established or confirmed within this network and may include people/resources from government, academia, and non-governmental organizations (NGOs).

This phase of development is based on best practices from case studies in various resource development sectors around the world (e.g. mining and energy).²¹ Some of the process steps may not directly reference the requirements of specific indicators; however, these steps support building and maintaining a setting for dialogue and relationship building that is necessary for upholding the right to FPIC. The following questions will help The Organization to relate the FPIC process steps to indicators in Criterion 3.2:

²⁰ In the context of First Nations or Indian Bands as per the Indian Act, the legal decision makers are recognized by the courts to be the elected Chief and Council as per *Behn v. Moulton Contracting Ltd.* 2013.

²¹ Annex B provides a list of resources consulted during the development of this document. Many include case studies that may be of interest.

- Is the affected Indigenous community able to participate, in a meaningful way, in strategic discussions (e.g. conservation area network planning (Principle 6), high conservation values (Principle 9)) and operational planning (Principle 7)?
- Is there a common understanding of what constitutes a “violation” of a right (e.g. destruction of a sacred site) between the affected Indigenous community and The Organization?
- Is there an effective complaint and dispute resolution process available when a violation of rights is claimed?
- Is there a clear understanding of rights that are subject to consent-based agreements through an FPIC process and those that may exist, but are not affected by management activities and therefore not subject to an FPIC process?
- Are there existing land use and resource management plans that have been accepted by the affected Indigenous community?

STEP 2: PREPARE FOR FURTHER ENGAGEMENT AND AGREE ON THE SCOPE OF THE FPIC PROCESS.

The level of effort required by The Organization to further scope an FPIC process will depend on the number of communities and complexity of the local situation. For The Organization operating on a large FMU, this step may support (and be supported by) procedural (technical) responsibilities delegated by the provincial/territorial government through regular forest management planning requirements (e.g. delegated consultation responsibilities).

Relevant Indicators:

3.1.3, 3.1.4, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.5, 3.4.1, 3.4.2, 3.5.1, 4.3.1, 4.4.1, 6.5.1, 7.1.1, 8.2.2, and 9.1.2

The intent of this step is to determine the scope of rights to be covered by an FPIC process, establish support (i.e. timelines and budgets) and refine the draft forest management plan, where possible. The Organization may want to consider the following actions:

- a) Establish a relationship with stakeholders that can support engagement with affected Indigenous communities,
- b) Establish how affected Indigenous community make decisions regarding forestry activities,
- c) Establish a clear structure within The Organization to implement engagement processes,
- d) Identifying communication and information sharing needs,
- e) Engage with affected Indigenous communities and agree on an approach to agreement making, including the scope of rights and activities covered by the agreement,
- f) Agree on the approach to FPIC process verification and monitoring,
- g) Understand how government approaches to consultation and accommodation align and differ from engagement based on FPIC,
- h) Further define management activities likely to affect affected Indigenous communities, and
- i) Establish realistic and flexible timelines and budgets for engagement.

The Organization is expected to understand, articulate and uphold the legal and customary rights of affected Indigenous communities. This will take time and effort by a variety of stakeholders. Governments and non-governmental organizations familiar with the socio-political landscape of the FMU may help The Organization to scope out the extent of work already done that would support management planning and culturally appropriate engagement.

Depending on the region, some FMUs may overlap with a significant number of Indigenous and local communities. Under such circumstances, it might be nearly impossible to implement a full FPIC

process with all affected Indigenous communities within the confines of an audit cycle. Indigenous communities might consider using a collaborative management planning approach among neighbouring communities (e.g. Joint Forest Management Tables) to reduce workload and costs for all participants. It might also be necessary to prioritize engagement based on a risk of impact to rights. Internal structures to coordinate, implement and monitor engagement processes is critical under these circumstances.

Resources and time are scarce for all parties. Recognizing that the workload for Indigenous communities and an Organization may already be high, the parties are encouraged to work collaboratively to harmonize FSC requirements with the existing regulatory framework where possible. Organizations are encouraged to travel to Indigenous communities, share technical information and make mapping tools available to assist Indigenous communities build capacity to be involved in an FPIC process.

Open and effective communication is essential for building and maintaining relationships. Therefore, it is advisable that The Organization develop communication and information sharing strategies that can be used as part of the agreement building process. This is particularly important for an Organization that is entering a new relationship with Indigenous Peoples or attempting to amend past conflicts. If affected Indigenous communities have delegated forest management planning responsibilities to a representative organization (e.g. a Tribal Council), The Organization should confirm who the decision makers are when negotiating final agreements.

As mentioned earlier, rights and interests identified by Indigenous Peoples related to the UNDRIP or ILO 169 may be raised and seem outside the sphere of influence of The Organization. However, culturally appropriate engagement processes (including time and effort by both parties) that encourage “out of the box” thinking may result in innovative means to address Indigenous Peoples’ rights, customs and cultural interests through forest management activities and associated networking opportunities.

Every circumstance will vary based on the sphere of influence of The Organization and the location of the FMU in Canada. It is critical for Indigenous communities to build an early understanding of the limits of influence of The Organization on government-to-government relationships with Indigenous Peoples.

The Organization might consider assessing the extent to which existing engagement processes (Organization-driven and government processes) address the requirements of an FPIC process. This will inform discussion (or negotiations) with affected Indigenous communities on the design of the FPIC process and the scope of rights to which the process applies. At this early stage, it may already be possible to modify the forest management plan (or annual operating plan) to avoid affecting the rights of affected Indigenous communities. All modifications, mitigation and avoidance measures should be documented.

STEP 3: UNDERTAKE PARTICIPATORY MAPPING AND IMPACT ASSESSMENTS

Indigenous communities may have various levels of knowledge of data collection processes for the purposes of management planning. Support for the participation of affected Indigenous communities may be required and should be arranged by The Organization in collaboration with other stakeholders in the FMU. This may include governments, NGOs and academic institutions. The Organization may initiate and support this work by:

Relevant Indicators:

3.2.5, 3.5.2 and 3.5.3,
4.5.1, 6.4.2, 6.4.3, 6.4.5,
6.5.8, 6.8.7, 9.4.2 and
10.9.1

- a) Assessing community and organizational capacity for mapping and assessments;
- b) Supporting a participatory mapping exercise to document rights and forest-based activities;
- c) Facilitating and supporting dispute resolution processes;
- d) Engaging affected communities in impact assessments; and
- e) Redefining proposed management activities to mitigate impacts on rights and address broader interests and concerns.

The term “assessment” is not intended to refer to formal “environmental impact assessments” that are conducted under federal and provincial laws and regulations. “Assessment” is intended to mean technical assessments of the manner and extent to which proposed or undertaken management activities affect the environment or social condition of the community, directly and indirectly. The scope of the assessment is typically outlined at the start of the FPIC process so that the management activities have some well-defined boundaries.

The information used to assess impacts on identified Indigenous rights should be made available in a format that is accessible to all members of the affected Indigenous communities while still contributing to the management planning process of The Organization. The draft forest management plan may be refined further based on mapping and assessment outcomes (See **Step 4**).

Existing land use plans: It should be noted that land use planning led by governments, NGOs and Indigenous communities or their representative organizations has occurred in many parts of Canada. The Organization should determine whether the affected Indigenous communities have participated in and accept the outcomes of these plans or assessments. If the plans are supported, they may inform data collection exercises required in Principle 3 and other principles in FSC Canada’s Standard. Where information is lacking, The Organization may work within its sphere of influence to gather relevant information for documentation and mapping (See **Step 2**).

PHASE 3: MAKE AGREEMENTS AND MONITOR PROGRESS

Certification to Principle 3 of FSC Canada’s Standard is the sole responsibility of The Organization. However, Indigenous Peoples, and more specifically affected Indigenous communities, play a central role when addressing the requirements of the Principle. Agreements reached through an FPIC process are based on trust and will therefore require continuous monitoring and adjustment to maintain and build the required relationships. It is critical that The Organization makes and implements agreements based on a shared understanding of FSC certification and the Principles & Criteria of FSC Canada’s Standard.

- Does the affected Indigenous community feel able to make a decision that is free from coercion, manipulation or intimidation?

- Has all the necessary information on proposed management activities been provided to the affected Indigenous community in a format that can be used for community-based decision making?
- Has the information been provided sufficiently in advance of scheduled meetings to allow affected Indigenous community to discuss the implications of the proposed management activities with community members, staff and/or consultants?
- Has information on FSC dispute resolution processes been provided to Indigenous Peoples with rights in the FMU?
 - Are affected Indigenous communities aware of the distinct roles and responsibilities of FSC Canada as standard developers, The Organizations as certificate holders, and certification bodies and auditors as monitors of the implementation of standards?

This final phase of the FPIC process outlined in **Steps 4 to 7** connect the information gathering and relationship building process to formal agreement making and monitoring. These steps outline best practices related to providing adequate time and support for community-based decisions and monitoring for continuous improvement. There is also a discussion of the likely circumstances of an ongoing FPIC process that has not yet resulted in a formal agreement with an affected Indigenous community.

STEP 4: MANAGEMENT ACTIVITIES REVISED AND AFFECTED INDIGENOUS COMMUNITIES INFORMED

Based on the outcomes of community engagement and research (e.g. mapping and impact assessments), The Organization may decide to amend proposed management activities and inform communities how the proposed amendments ensure protection of their rights. It should be clear what, where and when forest management activities will take place, and how they differ from the original plan presented in **Step 1**.

Relevant Indicator:

3.2.5

The affected Indigenous community is then given time and, where necessary, support to incorporate the results of the FPIC process into its internal decision-making structures. At this point, the Indigenous community freely decides whether it wants to enter into a formal FPIC agreement on the proposed management activities.

These final steps of the FPIC process lead to the adoption of an agreement. They may also be the point of departure from responsibilities commonly held by The Organization in relation to governments’ duty to consult and accommodate Aboriginal and treaty rights in Canada. FSC has committed to a standard of sustainable forest management that requires The Organization to recognize and uphold the rights of Indigenous Peoples as per the UNDRIP and ILO 169.

STEP 5: NEGOTIATE AN AGREEMENT WITH THE AFFECTED INDIGENOUS COMMUNITY ON THE FPIC PROPOSAL

The purpose of this step is to ensure “negotiations are the product of a balanced conversation” (Ritchie 2013: 403) based on an Indigenous community’s capacity to engage in a decision-making process. Negotiations may include agreements on the mechanism for demonstrating consent (e.g. written or oral agreement), dispute resolution mechanisms, mitigation measures, avoidance requirements and benefit sharing, if

Relevant Indicators:

3.2.5, 3.3.1 to 3.3.3, 3.6.1, 3.6.2, 6.5.8, 6.5.11,

applicable, and monitoring and process verification. Affected Indigenous communities are then provided the space and time to decide freely on the binding agreement and associated proposed forest management plan (or annual operational plan).

If the affected Indigenous community decides to negotiate a binding agreement, it is the responsibility of both The Organization and the Indigenous community to, if applicable:

- a) Ensure agreement on a decision-making process and capacity readiness;
- b) Negotiate economic conditions;
- c) Establish an arrangement for renegotiation, renewal, termination, resolving complaints, disputes and conflicts;
- d) Set up a participatory monitoring model; and
- e) Ensure the community decision on the agreement is free from coercion, manipulation or intimidation.

The affected Indigenous community and The Organization may have a long-standing and mutually agreed engagement process. If there is documented support from the affected Indigenous community for the existing process, The Organization should verify that their process adequately addresses the right to provide free, prior and informed consent. It is important to note that while established consultation and accommodation processes may be effective relationship building mechanisms, upholding the right to FPIC includes the acknowledgement that consent may be required for management activities that affect Indigenous rights of ownership, use and management of land, territories and resources. Acknowledging consent requirements may not be required or supported by governments.

STEP 6: VERIFY AND FORMALIZE THE AGREEMENT

Verification is used to ensure the FPIC process has been carried out according to the objectives set out by The Organization and the affected Indigenous community early in the process (See **Step 2**). It is also an important step in the monitoring of social and environmental impacts of management activities (See Criterion 8.2 and **Step 7**). Verification is considered best practice in international literature because, by including it as part of the FPIC process, The Organization can evaluate its performance in advance of an audit. The scope and nature of the verification process should be mutually agreed in advance as it will involve direct engagement with individuals within affected Indigenous communities.

Relevant Indicators:

3.3.1 and 3.3.3

If verification reveals flaws in the FPIC process, The Organization and the affected Indigenous community may decide to return to previous steps in the process and, if possible, correct or repair any weaknesses. If the FPIC process is verified with no flaws, the binding agreement may be formalized by a mutually agreed mechanism (e.g. signing ceremony, community feast, Band Council Resolution (BCR) or a combination of activities). The outcome of the decision, but not necessarily the content of the agreement, is made publicly available.

When there is No Agreement: If an agreement has not been reached, but there is continued support from affected Indigenous community for the FPIC process, The Organization should demonstrate best efforts and persistent and sincere attempts to address the requirements of the indicators. The relationship with the affected Indigenous community should improve through the implementation of culturally appropriate engagement. However, setbacks may occur that affect the FPIC process. These

setbacks should be documented, and a plan prepared for how to address issues/disputes and repair the relationship.

If the affected Indigenous community decides that they are unable to enter further discussions about management activities, The Organization should consider the legal and social risks of carrying out management activities that may affect or infringe upon claimed rights.

Prior to halting engagement with The Organization, the Indigenous community is encouraged to communicate the nature of its concern to The Organization and, where possible, seek solutions. The parties are encouraged to maintain informal communication and if desired establish and use a dispute resolution process as a means of continuing dialogue between the parties.

STEP 7: IMPLEMENT AND MONITOR THE AGREEMENT

Monitoring is used to ensure the FPIC process, like other social and environmental requirements, has been carried out according to FSC Canada's Standard (See Criterion 8.2). The agreement records the series of consent decisions required and agreed to by the affected Indigenous community throughout the FPIC process. The agreement may include:

Relevant Indicators:

3.3.3 and 8.2.2

- Details on how decisions will be made;
- Plans for how to engage the community and establish a protocol;
- A consultation protocol that includes a shared understanding of what, how, where and when consultation should take place;
- The types of operational activities (e.g. harvesting plan, road building) and strategic decisions (e.g. protected areas recommendations, HCV designations that may restrict use or access by affected Indigenous community) that require agreement because they pose a threat to claimed rights;
- A capacity building plan to support community participation in management planning with agreed terms and conditions;
- Research and monitoring plans related to rights-based impacts;
- A dispute resolution procedure; and
- A review and amendment procedure for the agreement.

Once the agreement is formalized, implementation and monitoring should occur according to the terms and conditions. However, when political, economic or social change affect the forest sector and/or Indigenous community, management planning and the operational activities of The Organization may need to be revisited. When these changes are beyond the control of The Organization (e.g. oil and gas development permitting or capacity-related funding reductions by government) and there is a setback in the process, the affected Indigenous community may wish to renegotiate or withdraw their consent.

A flexible FPIC process will accommodate minor setbacks and allow for minor pauses in operations with little to no disruption to forest management activities. Larger, more fundamental changes to the circumstances of the FMU or policy environment may lead to the suspension (perhaps temporarily) of an FPIC process to allow the community time to adjust and re-evaluate the terms of engagement and agreement. The implementation of an agreed dispute resolution process is particularly important to mitigate these circumstances, protect the relationship between the parties, and prevent an abrupt withdrawal of either party from an agreement.

The final step in the FPIC process is the monitoring of agreement implementation. Continuous improvement through engagement is critical to building and maintaining mutually respectful relationships between The Organization and Indigenous Peoples. Monitoring provides a structure for systematic collection and analysis of data/information to track progress towards achieving the objectives of the binding agreement. It allows for early detection of issues related to implementation and provides an information base for continuous improvement of the FPIC process.

3.2 SUMMARY CHARTS

Figure 1 is a flow chart representation of the 7-Step FPIC Process. This diagram, along with the foundation concepts presented above, is based on best practice literature on the implementation of FPIC in an international context (See Anderson 2011: 24) and is included in the FSC International draft *FSC Guidelines for the Implementation of the Right to Free, Prior and Informed Consent (FPIC)* (FSC-GUI-30-003 V2.0 – EN DRAFT 1.0). It is included here for consideration as a general model for engagement and decision-making. It clearly indicates decisions that will be required by the affected Indigenous communities as part of an FPIC process.

Figure 2 represents the specific requirements of indicators in Principle 3 in FSC Canada's Standard. The intent of the diagram is to highlight opportunities for The Organization to obtain a consent decision (shown as diamonds) as well as pathways to dispute/conflict resolution. *It should be noted that these figures will be tested and revised with the implementation and monitoring of FSC Canada's Standard Principle 3 to reflect the experiences of The Organization and Indigenous communities working in a range of contexts (e.g. public lands, private lands, and small holders).*

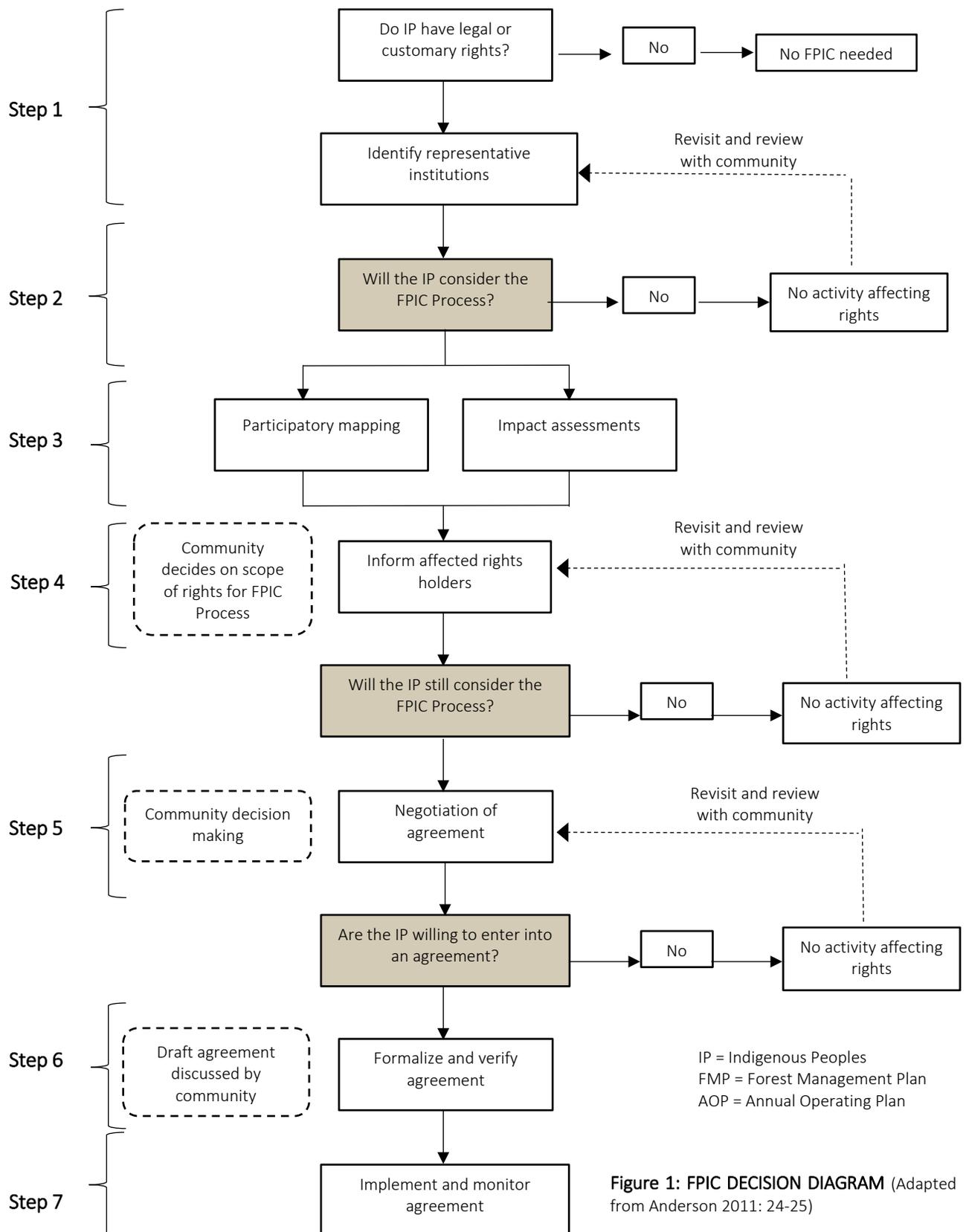


Figure 1: FPIC DECISION DIAGRAM (Adapted from Anderson 2011: 24-25)

Note: Relevant Principle 3 Indicators are identified in brackets.

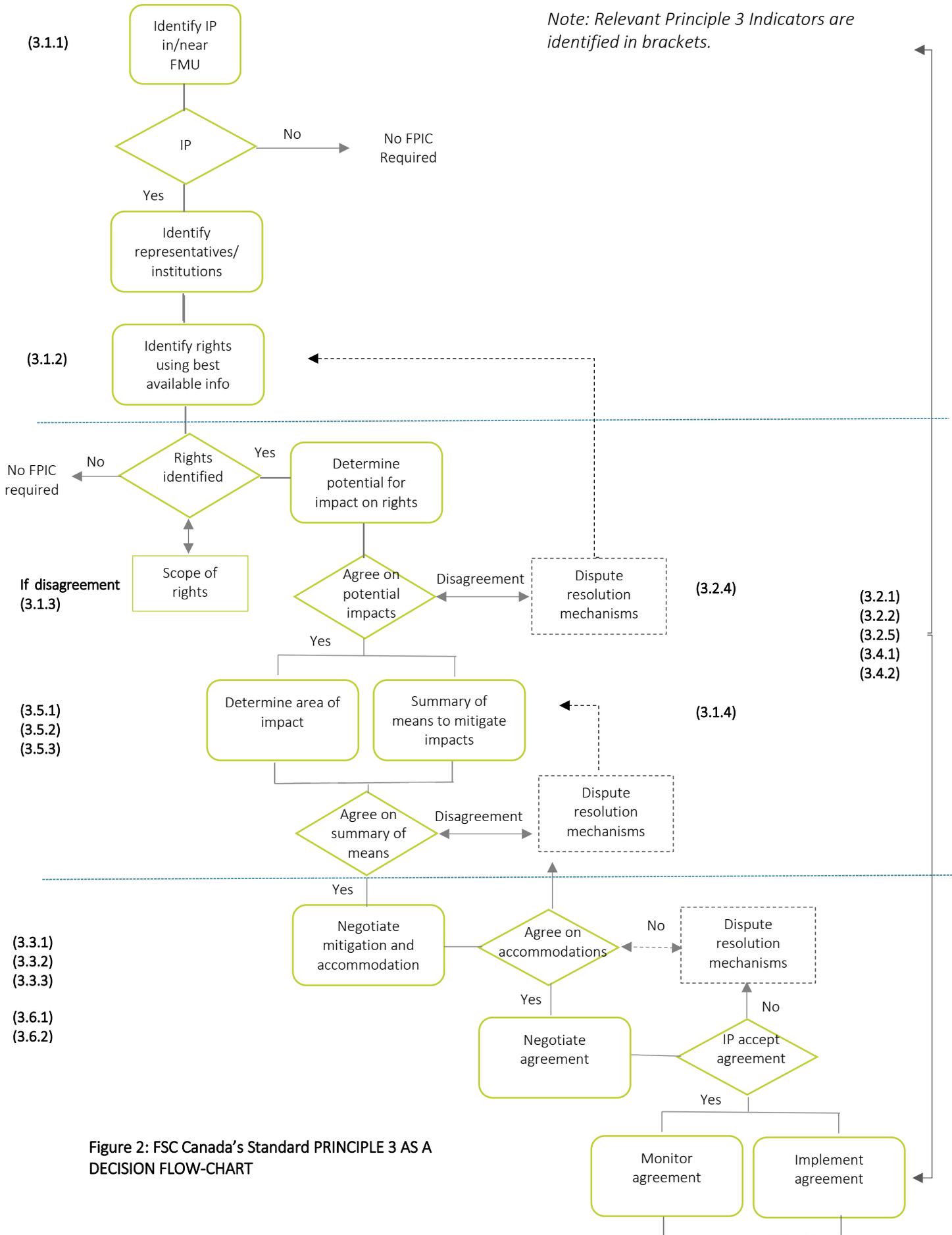


Figure 2: FSC Canada's Standard PRINCIPLE 3 AS A DECISION FLOW-CHART

APPENDIX A: RELEVANT ARTICLES IN UNDRIP AND ILO TO FSC STANDARDS

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

Note: *The following articles of the UN Declaration are related to the application of FPIC, but the UNDRIP should be read in its entirety to fully understand the meaning of FPIC.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 28: (1) Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and

resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their Free, Prior and Informed Consent.

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

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

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

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

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

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

Article 45: Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46: (1) Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

Relevant articles of the ILO Convention 169 (1989):

Article 1: (1) This Convention applies to:

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

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

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

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

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

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

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

Article 5: In applying the provisions of this Convention:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) equal remuneration for work of equal value;

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

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

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

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

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

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

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

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

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

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GENERAL RESOURCES

University of British Columbia: Indigenous Foundations -
<http://indigenousfoundations.web.arts.ubc.ca/home/>

Simon Fraser University: Summary of court cases and direct links to the court case database CanLII, see <http://www.lib.sfu.ca/help/research-assistance/subject/criminology/legal-information/indigenous-scc-cases#land-title>

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INDIGENOUS RIGHTS AND PRIVATE LANDS—LEGAL DEVELOPMENTS

Tribunal Decisions and Court Cases

B.C. Environment Appeal Board, 2003 between Cowichan Tribes and TimberWest. The Appeal Board stated that it “does not accept TimberWest’s assertion that Aboriginal rights and title are subordinate to the rights of a fee simple landholder.” Available at: <http://www.eab.gov.bc.ca/pest/2002pes008a.pdf> (Accessed 12 December 2018)

Hupacasath First Nation v. British Columbia (Minister of Forests) et al., 2005 BCSC 1712. Regarding the sale of Weyerhaeuser’s assets to Brascan, including 70,000 acres of private lands which Brascan intended to remove from the Tree Farm Licence (TFL) after the sale. The BC Supreme Court held that Aboriginal rights and title could exist on private land and ordered that Brascan not do anything to change the prior use of its private lands, while the Crown was directed to consult with the Hupacasath. Available at: <http://www.courts.gov.bc.ca/jdb-txt/sc/05/17/2005bcsc1712.htm> (Accessed 18 January 2018)

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ANNEX C: GLOSSARY OF TERMS USED IN THIS GUIDANCE

These terms have been defined in the FSC National Forest Stewardship Standard of Canada and have been included in this Guidance for quick reference. Words with an asterisk (*) are also defined in FSC Canada's Standard, but not included here.

Best Available Information: Data, facts, documents, *expert** opinions, and results of field surveys or consultations with *stakeholders** and *engagement** with *Indigenous Peoples** that are most credible, accurate, complete, and/or pertinent and that can be obtained through *reasonable** effort and cost, subject to the *scale** and *intensity** of the *management activities** and the *Precautionary Approach**. (Source: Adapted from FSC-STD-60-004 V1-0)

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

Binding Agreement: A deal or pact, written or not, which is compulsory to its signatories and enforceable by law. Parties involved in the agreement do so freely and accept it voluntarily. (Source: (FSC-STD-60-004 V1-0)

Collective rights: Shared or joint rights held by a *local community** that are not the mere aggregation of rights held individually by members of the group. (Source: Standard Development Group, based on Stanford Encyclopedia of Philosophy)

Complaint: The expression of dissatisfaction or concern by any person or organization presented to *The Organization**, relating to its *management activities** or its conformity with the *FSC Principles** and *Criteria**, where a response is expected. (Source: Adapted from FSC-STD-60-004 V1-0 definition of dispute and Merriam-Webster)

Culturally appropriate [mechanisms]: Means/approaches for outreach to target groups that are in harmony with the customs, values, sensitivities, and ways of life of the target audience (Source: FSC-STD-60-004 V1-0)

Customary rights: Rights which result from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit. (Source: FSC-STD-01-001 V4-0)

Dispute. Represent a formal disagreement, after the initial attempts to resolve a *complaint** have not been achieved. (Source: FSC Canada, based on Merriam-Webster)

Engagement: The process by which *The Organization** communicates, consults and/or provides for the participation of interested and/or *affected stakeholders** and *Indigenous Peoples**, ensuring that their concerns, desires, expectations, needs, rights and opportunities are considered in the establishment, implementation and updating of the *management plan**. (Source: Adapted from FSC-STD-01-001 V5-0).

Expert: 1. An individual whose knowledge or skill is specialized and profound as the result of much practical or academic experience. 2. A recognized authority on a topic by virtue of the body of

relevant material published on the topic, their stature within the professional community, and the broadly-recognized accumulated related experience. 3. An individual who possess a wealth of experience on a topic such as may be accumulated through practical means including the accumulation of *traditional knowledge**. (Source: FSC Canada National Boreal Standard 2004)

Free, Prior, and Informed Consent (FPIC): A *legal** condition whereby a person or community can be said to have given consent to an action prior to its commencement, based upon a clear appreciation and understanding of the facts, implications and future consequences of that action, and the possession of all relevant facts at the time when consent is given. Free, prior and informed consent includes the right to grant, modify, withhold or withdraw approval. (Source: Based on the Preliminary working paper on the principle of Free, Prior and Informed Consent of Indigenous Peoples (...) (E/CN.4/Sub.2/AC.4/2004/4 8 July 2004) of the 22nd Session of the United Nations Commission on Human Rights, Sub-commission on the Promotion and Protection of Human Rights, Working Group on Indigenous Populations, 19–23 July 2004). (FSC-STD-60-004 V1-0)

Good faith: The principle of good faith implies that the parties make every effort to reach an agreement, conduct genuine and constructive negotiations, avoid delays in negotiations, respect concluded agreements, and give sufficient time to discuss and settle *disputes**. (Source: FSC Policy Motion 40/2017)

Indigenous Peoples/community: The following criteria may be used to identify Indigenous Peoples:

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

Lands and territories: For the purposes of the *Principles** and *Criteria** these are lands or territories that *Indigenous Peoples** or *local communities** have traditionally owned, or customarily used or occupied, and where access to natural resources is vital to the sustainability of their cultures and livelihoods. (Source: Based on World Bank safeguard OP 4.10 Indigenous Peoples, section 16 (a). July 2005.) (FSC-STD-60-004 V1-0)

Legal: In accordance with primary legislation (national or *local laws**) or secondary legislation (subsidiary regulations, decrees, orders, etc.). ‘Legal’ also includes rule-based decisions made by *legally competent** agencies where such decisions flow directly and logically from the laws and regulations. Decisions made by *legally competent** agencies may not be legal if they do not flow directly and logically from the laws and regulations and if they are not rule-based but use administrative discretion. (Source: FSC-STD-01-001 V5-0).

Management activities: Any or all of the operations, processes or procedures associated with managing a *forest**, including, but not limited to: planning, consultation, harvesting, access construction and maintenance, silvicultural activities (planting, site preparation, tending),

monitoring, assessment, and reporting. (Source: FSC Canada National Boreal Standard 2004 - addition)

Management plan: The collection of documents, reports, records and maps that describe, justify and regulate the activities carried out by any manager, staff or organization within or in relation to the *Management Unit**, including statements of *objectives** and policies. (Source: FSC-STD-01-001 V5-0)

Management Unit: A spatial area or areas submitted for FSC certification with clearly defined boundaries managed to a set of explicit *long-term* management objectives** which are expressed in a *management plan**. This area or areas include(s):

- all facilities and area(s) within or adjacent to this spatial area or areas under *legal** title or management control of, or operated by or on behalf of *The Organization**, for the purpose of contributing to the *management objectives**; and
- all facilities and area(s) outside, and not adjacent to this spatial area or areas and operated by or on behalf of *The Organization**, solely for the purpose of contributing to the *management objectives**. (Source: FSC-STD-01-001 V5-0). (FSC-STD-60-004 V1-0)

Mutually Agreed: The parties undertake obligations to each other to do, or not to do, one or more actions to address legitimate concerns of individuals in a group decision-making process. Evidence of a mutual agreement can be oral or put in writing (and may be referred to as a contract). (Source: FSC Canada, based on <https://en.oxforddictionaries.com/definition/mutual> and <https://en.oxforddictionaries.com/definition/agree>)

The Organization: The person or entity holding or applying for certification and therefore responsible for demonstrating compliance with the requirements upon which FSC certification is based. (Source: FSC-STD-01-001 V5-0).

Precautionary approach: An approach requiring that when the available information indicates that *management activities** pose a *threat** of severe or irreversible damage to the environment or a *threat** to human welfare, *The Organization** will take explicit and effective measures to prevent the damage and avoid the *risks** to welfare, even when the scientific information is incomplete or inconclusive, and when the vulnerability and sensitivity of *environmental values** are uncertain. (Source: Based on Principle 15 of Rio Declaration on Environment and Development, 1992, and Wingspread Statement on the Precautionary Principle of the Wingspread Conference, 23–25 January 1998) (FSC-STD-60-004 V1-0)

Private land forest: Any *forest** owned by a private individual, organization, or Indigenous community. (Source: FSC Canada)

Sphere of Influence: Professional associations with colleagues or businesses, agencies and *Indigenous Peoples** with whom individuals or businesses or agencies interact. When required by *Indicators** to work within one's *sphere of influence**, *The Organizations** and forest managers shall interact with their colleagues, other professionals, *Indigenous Peoples**, businesses and agencies, including government Ministries, Departments and other agencies, to achieve the *Indicators'** *objectives**. (Source: FSC Canada Species at Risk Technical Expert Panel)

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. (Source: based on the definition by the World Intellectual Property Organization (WIPO). Glossary definition as provided under Policy / Traditional Knowledge on the WIPO website). (FSC-STD-60-004 V1-0)

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