



Forest Stewardship Council®



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

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Guideline

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Preamble

Glossary terms

For a definition of terms, see the FSC Glossary, available at <https://ic.fsc.org/en/document-center/id/60>.

Note on terminology

Affected rights holders vs. Rights holders	The FPIC process involves the identification of all IPTPLCs with and without rights in the management unit (Step 1). However, an FPIC agreement is only negotiated with IPTPLCs affected by proposed management activities – i.e. affected rights holders or affected IPTPLCs.
Certificate holder vs. The Organization	While ‘The Organization’ is the term used in normative documents, this guidance uses certificate holder (CH) to emphasize the role of forest managers responsible for meeting the obligations of the FSC certificate. Note: This may change in subsequent drafts to be consistent with normative documents.
Indigenous Peoples, traditional peoples and local communities or IPTPLCs	The term ‘communities’ is by necessity broadly defined in the FSC Glossary. However, in the context of FPIC, every effort has been made to avoid using it to prevent confusion. Instead, IPTPLCs has been used to ensure readers are clear on the applicability of FPIC according to normative requirements.

Abbreviations

FPIC	free, prior, and informed consent
FSC	Forest Stewardship Council
FSC P&C	FSC Principles and Criteria for Forest Stewardship: FSC-STD-01-001 V5-0 D5-0 EN
HCV	high conservation value
IFL	intact forest landscape
IGI	international generic indicator
ILO	International Labour Organization
IPTPLC	Indigenous Peoples, traditional peoples and local communities
MU	management unit
NGO	nongovernmental organization
PIPC	FSC Permanent Indigenous Peoples Committee
SDG	standard development group
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

Part I: Introduction to free, prior, and informed consent (FPIC)

Background

The right to free, prior, and informed consent

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

- 2 The approval of the FSC international generic indicators (IGIs) in 2015 (FSC-STD-60-004 V1-1) resulted in several advancements in relation to the recognition of protection of the rights of Indigenous Peoples, traditional peoples, and local communities (IPTPLCs). Several significant elements have been added to improve the understanding and implementation of the right to FPIC. Most notably are the need for the organization to:
 - develop and implement culturally appropriate engagement processes;
 - recognize and protect the rights, customs, and culture of Indigenous Peoples as defined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007 and the International Labour Organization Indigenous and Tribal Peoples Convention (ILO 169) of 1989; and
 - obtain free, prior, and informed consent from affected rights holders.

- 3 The right to FPIC can be described as:

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

- 4 This background section will introduce the origin and elements of FPIC, the significant differences between Indigenous Peoples (or traditional peoples) and local

communities to the right to FPIC, and general benefits and risks to its application in the context of FSC certification.

The four elements of FPIC: free, prior, informed, consent

Free

- 5 'Free' refers to a process that is self-directed by the community from which consent is being sought, and one that is unencumbered by coercion, manipulation, or externally imposed timelines. Rights holders agree with the process and decision-making structure and have been informed of their right to say 'no', be represented by institutions of their own choosing, and to negotiate conditions. The organization clearly expresses its commitment not to proceed without consent at all stages of management planning where FPIC is required.

Prior

- 6 An important temporal aspect of decision-making is introduced by the element 'prior'. In the context of forest management, 'prior' infers no adverse impact on the legal or customary rights of IPTPLCs before making a negotiated consent agreement. Ideally, consent is obtained before any permits, licences, or titles governing forest management are granted, or even before designating a forest area. However, in practice, concessions are more often granted by governments before FPIC has been granted. Therefore, rights holders (IPTPLCs) should feel that they are able to influence decision-making on proposed and future management activities.

Informed

- 7 Forest management planning generates significant amounts of technical information that is inaccessible in its raw form to most people outside the forestry profession. The 'informed' element of FPIC refers to the type and format of information that should be provided by the certificate holder (CH) to support community decision-making processes. It is important that the CH confirms that the IPTPLCs have a clear understanding of the proposed management activities and are aware of the specific activities they are being asked to consent to.

Consent

- 8 The final and distinguishing element of FPIC is the 'consent' decision. It refers to the decision made by affected rights holders and reached through a process of dialogue, deliberation, and community decision-making (by consensus, majority,

etc.). The decision involves saying ‘yes’, ‘no’, or ‘not at this time’ to a proposed management plan. It may include options to apply conditions that, if met, would lead to consent being granted.

Who has the right to FPIC?

- 9 In the context of Principle 3 – Indigenous Peoples’ Rights, and Principle 4 – Community Values of the FSC Forest Management Standard, Indigenous Peoples and local communities have the right to FPIC to the extent necessary to protect their rights, resources, lands, and territories (FSC, 2012). However, there can be significant challenges to defining ‘Indigenous Peoples’ and ‘local communities’ in some regions of the world, particularly where Indigenous Peoples continue to be persecuted.
- 10 Best practice at the international level is to avoid the application of a universal definition. Instead, the approach adopted has been to provide guidance to identify the peoples concerned in any given country. This is particularly important as Principles 3 and 4 require the identification and engagement of Indigenous Peoples and local communities in the determination of legal and customary rights.
- 11 According to international human rights law, FPIC begins, at a minimum, with **good faith**, informed consultations with all affected persons, including women and those particularly vulnerable, with full respect for human rights (UNHRC, 2007: annex 1, paras 38–39). This is based on:
 - the right to meaningful participation in environmental decision-making (UNEP, 1992);
 - the right to control access to their lands and resources (Inter-American Court of Human Rights, 2005);
 - contemporary standards of public participation as a hallmark of legitimate governance;
 - basic principles of equity and justice (WRI et al., 2005: 72); and
 - the UN Declaration on the Right to Development: “Everyone has the right to development” (Hill et al., 2010: 4).

12 **Good faith**, in the context of FSC certification, implies that the parties to the FPIC process make every effort to reach an agreement, conduct genuine and constructive negotiations, avoid unnecessary delays in negotiations, respect concluded agreements, and give sufficient time to discuss and settle disputes.

Indigenous Peoples' rights to FPIC

- 13 The importance of consent as the basis for relations between states and Indigenous Peoples can be traced back to early colonization, when it was observed that entry into the territory of Indigenous Peoples required their freely informed consent, evidenced by an agreement (ICJ, 1975; Janis, 1976). In addition to the universally accepted human rights principles and international instruments mentioned above, the right of Indigenous Peoples to FPIC is based on:
- ILO Convention 169 (1989);
 - the Convention on Biological Diversity (1992), Article 8(j) in particular; and
 - UNDRIP (2007).

Traditional peoples

- 14 There are social groups or peoples who do not self-identify as 'Indigenous' but may affirm rights to lands, forests, and other resources based on long established custom or traditional occupation and use, and self-identify as 'traditional people' (FSC, 2011b).
- 15 Consistent with ILO Convention 169 on tribal and Indigenous Peoples (ILO, 1989), the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights, most traditional peoples should be considered Indigenous Peoples, in which case FSC Principle 3 applies.
- 16 In some cases, groups who identify as 'traditional' may also be considered 'Indigenous' according to FSC guidance (see Glossary). However, regional political and legal frameworks either fail to recognize or discriminate against self-identified 'Indigenous Peoples'; therefore, the term is avoided by those who would be persecuted if they adopted the classification.

Local communities' rights to FPIC (Non-Indigenous)

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

PUBLIC CONSULTATION QUESTION #1 (Reference Paragraphs 9-17):

Is there adequate information to support the identification/distinction of IP, TP, and LCs? Are there specific regional circumstances that should be noted in the Guideline to support this process? Explain.

Scope of rights subject to FPIC

- 18 The scope of the FPIC process is determined by “three interrelated and cumulative rights: the right to be consulted; the right to participate; and the right to their lands, territories and resources... [According to UNDRIP,] free, prior and informed consent cannot be achieved if one of these components is missing” (EMRIP, 2018: 5). National offices and Standard Development Groups (SDGs) have an important role to play in ensuring that the interpretation of global standards (i.e. IIGs) in national contexts reflects these foundational rights.
- 19 This Guideline does not identify specific rights that may be included in an FPIC process, but instead outlines a process that empowers FPIC rights holders, CHs, and others to engage in respectful dialogue and negotiations. The aim is to avoid conflict and enable a coexistence that upholds the rights and interests of local and regional IPTPLCs while providing benefits for the global population.
- 20 Table 1 provides an expanded understanding of important concepts related to Indigenous rights that may need further clarification during an FPIC process. Each concept is paired with relevant articles in UNDRIP and ILO Convention 169. This table may be useful for:
- setting a culturally appropriate foundation for dialogue leading into an FPIC process;
 - SDGs seeking descriptions relevant for adapting international concepts to regional languages and practices; and
 - The Organizations and Indigenous Peoples addressing Principle 3 requirements, particularly the implementation of Criterion 3.4.

Table 1. Important concepts used in the negotiation of an FPIC process

Concept	Description*	UNDRIP and ILO reference
Territory	Rights extend beyond the land directly occupied/cultivated/inhabited to the broader territory that includes total environments (or landscapes) inclusive of natural resources and water sources	UNDRIP art. 26 ILO 169 art. 13.2
Collective rights	Land rights have individual and collective aspects; communities may have customary ways of recognizing land and resource rights of individual members, households, or families; collective rights are connected to their collective rights to self-determination, non-discrimination, cultural identify, and development as distinct peoples	UNDRIP preamble, art. 25 ILO 169 art. 13.1
Traditional occupation, ownership, or use	Traditional occupation and use is the foundation for establishing land rights, not state recognition or registration of that ownership	UNDRIP art. 25, 26.1, 26.2 ILO 169 art. 14.1
Natural resources	The right to ownership and use of lands and territories extends to natural resources, including the right to own, use, develop, and control those resources	UNDRIP art. 26 ILO 169 art. 15.1
Non-exclusive occupation of lands	Traditional use and occupation may not have resulted in exclusionary infrastructure commonly recognized in modern property law; however, customary laws govern the use and occupation of territories	ILO 169 art. 14
Cross-border kinship and cooperation	The establishment of state boundaries, including forest-concession boundaries, involuntarily separated Indigenous Peoples; culturally appropriate engagement should recognize that kinship and cooperative relationships may still exist across these boundaries	UNDRIP art. 36 ILO 169 art. 32

Source: Adapted from Feiring (2013)

* If the organization alters the definition of a term used in the FSC Glossary of Terms (FSC, 2017) to facilitate culturally appropriate engagement, it should be documented as a mutually agreed definition and made available at the time of audit.

Principle 3 and Principle 4 FPIC processes

- 21 The scope of rights covered in an FPIC process differs for Indigenous Peoples and traditional peoples (IPTP) (Principle 3) and local communities (Principle 4). IPTP

rights under Principle 3 are not limited to the Management Unit (MU) in the same way that local community rights are under Principle 4. There is also a requirement for broader consideration for IPTP rights (i.e. landscape-level rights and ecosystem services) within and around the MU.

- 22 The pattern of (historical) use and occupation of lands and resources (e.g. illegally granted concessions, protected area designation, and historical resource use) may give rise to the existence of overlapping or parallel rights being identified in an MU. For example, a CH may be granted a forest concession or acquired private land ownership rights many years before seeking FSC certification. The organization is likely aware of the legal rights (e.g. resource use rights, easements, and covenants) that affect their MU, but knowledge of the historical transactions that enabled the transfer of these rights without the FPIC of IPTPLCs may not be. An FPIC process may be the first opportunity, or the only venue, for IPTPLCs to discuss with other rights holders the nature and scope of their IPTPLC rights.

Overlapping and parallel rights claims

- 23 The right of local communities to FPIC (Principle 4) can still be controversial in situations where recognition of their rights could undermine the rights of Indigenous Peoples (Principle 3). The requirement of the CH to uphold the articles of UNDRIP and ILO 169, however, creates a hierarchy of rights that must be considered when determining who has FPIC rights. Below are a few examples to illustrate this reality, with suggested pathways for action based on the FSC Principles and Criteria (P&C):
- 24 Example 1: Local rights are claimed over lands that are also claimed by Indigenous Peoples
- In some countries, occupation for a specific number of years is enough to obtain land rights from the state. However, this land right may create a conflict with local Indigenous Peoples who have been using that same place longer but whose rights are not recognized by the state.
 - In several African countries where land is nationalized, the state allows private ownership or issues long-term leases on land that may still be claimed by Indigenous Peoples or local communities.
 - *Recommended pathway:* State recognition is not a prerequisite for identifying Indigenous Peoples. Indigenous Peoples' rights are inherent rights that flow from a long, established use of lands, territory, and resources. While these rights may be denied by the state, Principle 3 requires that the CH upholds ILO 169 and UNDRIP, which calls for the restoration of traditional lands and resources to Indigenous Peoples. Therefore, if

Principle 4 (local community) rights are claimed over existing claims of Indigenous land and resource rights, then the FPIC process cannot put Indigenous Peoples at a disadvantage.

- 25 Example 2: Multiple ethnic groups in one village each claim FPIC rights
- In villages with mixed ethnic groups, it may be impossible, too complicated, or too resource intensive to separate land rights and then set up a different FPIC process with each ethnic group.
 - *Recommended pathway:* The intent of an FPIC process is to safeguard the collective rights of IPTPLCs to their traditional lands, territories, and resources. While the village may support different ethnic groups, the lands from which they originate and the resources upon which they are dependent may be outside the village boundaries. Or the various groups may have agreed through cultural norms to share and delegate governance authority for the collective to village leadership. In either case, the most appropriate course of action for the CH may be to suggest negotiating with the village as one entity and enter into FPIC negotiations as a collective rights holder under Principle 4. If this is unacceptable to the village groups, then the CH should use the precautionary approach and begin sharing information relevant to the requirements of FSC, in particular the expectations for identifying and upholding IPTP rights according to ILO 169 and UNDRIP.
- 26 FSC does not expect certification or this Guidance to solve governance issues. The FSC requirements for FPIC are based on international law and agreement among FSC members that communities' rights to land, resources, and territories need to be recognized and protected, even in situations where these rights are not legally recognized. Cases of potential conflict between the FSC FPIC requirement and the requirement to follow all laws (in Principle 1) should be brought to the attention of the certification body (CB) to be evaluated on a case-by-case basis, in arrangement with involved or affected parties (see FSC-STD-20-00, paras 8.20 and 8.21).

PUBLIC CONSULTATION QUESTION #2 (Reference Paragraphs 1-26):

What additional information and clarification is needed to improve guidance for the identification of rights holders and the scope of rights to be considered within an FSC FPIC process?

Benefits and risks of consent-based engagement

- 27 Applying FPIC in a meaningful way clearly contributes to building an open, ongoing, and equitable relationship between stakeholders and rights holders. When implemented properly, it will ensure resources are shared fairly, forests are managed equitably and sustainably, and communities are offered an opportunity for fair compensation, sustainable access to resources, and, if they wish, a role in forest management. However, even a well-designed FPIC process cannot fully address power imbalances between rights holders and organizations, but it can create mutually beneficial coexistence and cooperation.
- 28 Implementing FPIC is not without risk. A lack of appreciation of Indigenous decision-making, purposeful manipulation of Indigenous institutions, manipulation of decision-making by Indigenous elites, misunderstanding, and a lack of awareness by Indigenous Peoples of the legal, social, and economic implications of projects diminish the value of decision-making by Indigenous leaders (FPP, 2007).
- 29 In addition, there is a significant risk to the success of the organization's attempts to reach an FPIC agreement if there is a lack of community capacity to take up and transform the FPIC framework into culturally relevant scenarios for use in community-based discussions and negotiations. While there is no normative requirement to provide support (financial or otherwise) to IPTPLCs, the organization should consider the benefits of such action.
- 30 Organizations may regard FPIC as too difficult or too poorly defined to implement effectively. This Guideline is meant to address substantive questions on the subject, recognizing that each context, country, and IPTPLC will require a unique engagement approach. Some may also consider that the FSC interpretation of FPIC is inconsistent with their host country preferences or policies and, therefore, puts their operation in conflict with legal requirements. If this is the case, the organization should review the general requirements of Principle 1 and note that, should this scenario arise, it may apply to FSC for an interpretation and guidance on the matter.
- 31 Finally, the risks of **not** applying FPIC properly may be underestimated. The cost of conflict, prolonged direct action (protest), or legal action are well documented and monitored by international organizations such as Oxfam and Amnesty International. On the other hand, recognizing the right to FPIC and implementing an FPIC process can support the organization's social licence to operate and reduce legal, financial,

and reputational risks resulting from such conflicts. It is, therefore, likely to create a better and safer working environment for all involved in management activities.

Operational concepts

Culturally appropriate engagement

- 32 It is important to realize that cultures of IPTP may be seriously eroded due to external pressure and impacts. Organizations are, therefore, advised to engage with local experts about the customs, values, sensitivities, and ways of life of the communities involved. The instructions for SDGs contained in Criterion 7.6 further clarify that culturally appropriate processes consider cultural differences, such as:
- preferences for direct or indirect negotiation;
 - attitudes towards competition, cooperation, and conflict;
 - the desire to preserve relationships among complainants;
 - authority, social rank, and status; ways of understanding and interpreting the world;
 - concepts of time management;
 - attitudes towards third parties; and
 - the broader social and institutional environment in which forestry activities occur.

Binding agreements

- 33 A 'binding agreement' is ratified by the IPTPLC rights holders and documented in a written agreement or in another format that is culturally appropriate. In the context of FPIC and IPTPLC rights, any agreement reached should remain valid and subject to a continuous process of dialogue and negotiation.
- 34 However, a consent decision is not permanent. It may be reversed and can be revisited by rights holders as local situations change. Once consent is given and documented through an agreement, the community cannot withdraw it arbitrarily – it is 'binding' on both parties. If consent is withdrawn or granted, the CH should determine and document the reason for the change. Otherwise, if the conditions upon which the original consent was based are being met, and to the satisfaction of the affected rights holders, ongoing consent is implied.
- 35 The FSC P&C (Criterion 3.3) require that a binding agreement shall include a specified duration; make provision for renegotiation, renewal, or termination; specify economic conditions (e.g. benefit-sharing, compensation, legal fees); and

make provision for participatory monitoring. The FSC P&C also require provision for ‘other terms and conditions’, which include the elements that are important for negotiation.

- 36 Legal and judicial obstacles can arise, however, when Indigenous Peoples’ institutions lack legal standing in national law, or Indigenous Peoples are not recognized or registered as citizens. This reinforces the importance of respecting customary laws and honouring customary systems for maintaining agreements. Should a binding agreement be perceived by IPTPLC rights holders as a threat to their legal standing, a clause may be included in the agreement to allow the IPTPLCs to accept the temporary presence of the CH **without prejudice** to their claims for legal recognition of the underlying customary right.

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

Disputes and dispute resolution with certificate holders

- 38 A dispute-resolution procedure should be viewed as a proactive measure to prevent the breakdown of negotiations. Third-party assistance – legal or otherwise – should be made available to affected IPTPLC rights holders to provide additional sources of information, mediate resolutions, or strengthen the position of the rights holders.
- 39 *Incorporate communities’ own systems for dispute resolution:* IPTPLCs may have their own conflict-resolving mechanisms that should be considered when agreeing how to resolve disputes with the CH. The grievance mechanism should include how to address potential internal conflicts that can affect the agreement. It is important to distinguish between issues that can be dealt with and those that cannot.
- 40 *Try to keep it simple:* Arrangements should not be too rigid or any more complicated than necessary. Ensure the CH is easily accessible and will receive grievances at an early stage to avoid escalation. In the early stages, grievance mechanisms may be less formalized.

- 41 General rules for grievance and dispute-resolution mechanisms:
- The grievance or dispute-resolution mechanisms themselves should be mutually agreed.
 - Fairness is subjective, and a neutral third party may be required for mediation.
 - In many cases, mediation would be a better solution than arbitration. The latter can be used if mediation fails.
 - Lawsuits should be used only as a last resort.
- 42 All parties negotiating an FPIC agreement can make use of the agreed dispute-resolution mechanism. That is, the affected rights holders, as a group or as individuals, may have complaints about the CH, or a CH may have a grievance against the affected IPTPLC rights holders. For example, if the CH fails to uphold the process agreement, or and the IPTPLC rights holder obstructs the agreed management activities – in either case, the dispute-resolution mechanism should be able to accommodate both circumstances.
- 43 There have been some challenges to the notion of ‘collective agreement’, as it implies that IPTPLCs are homogeneous and without diverse roles, responsibilities, or experience. While the intent of FPIC is to recognize and uphold the right to self-determination, there are documented instances of traditional governance and decision-making processes that violate individual human rights. There are also cases of ongoing and sometimes violent disputes within IPTPLCs regarding legitimate decision-makers. To ensure engagement does not exacerbate existing inequalities and conflict, the FPIC process must include mechanisms to monitor the broader impact of management activities on community health and well-being.
- 44 If it becomes clear that a grievance cannot be resolved within the annual audit cycle, the parties may consider adopting a modified (or interim) process agreement that outlines the conditions of continued management activities on the lands and territories of affected IPTPLCs. It would outline where, why, and how management activities will be avoided, based on the best available information and a preliminary assessment of rights. If IPTPLCs have made their rights known to the CH but have not engaged in an FPIC process agreement, or have not yet concluded one, the CH and the CB should ensure that identified rights have been upheld.
- 45 FSC P&C and IGIs relevant to identifying and addressing grievances and disputes:
- C3.3, IGI 3.3.3,
 - C7.6, IGI 7.6.1, 7.6.3,

- C8.2, IGI 8.2.1, C8.3, IGI 8.3.1, 8.3.2, Annex G to P8, and
- C9.4, IGI 9.4.1, 9.4.2, 9.4.3 and 9.4.4

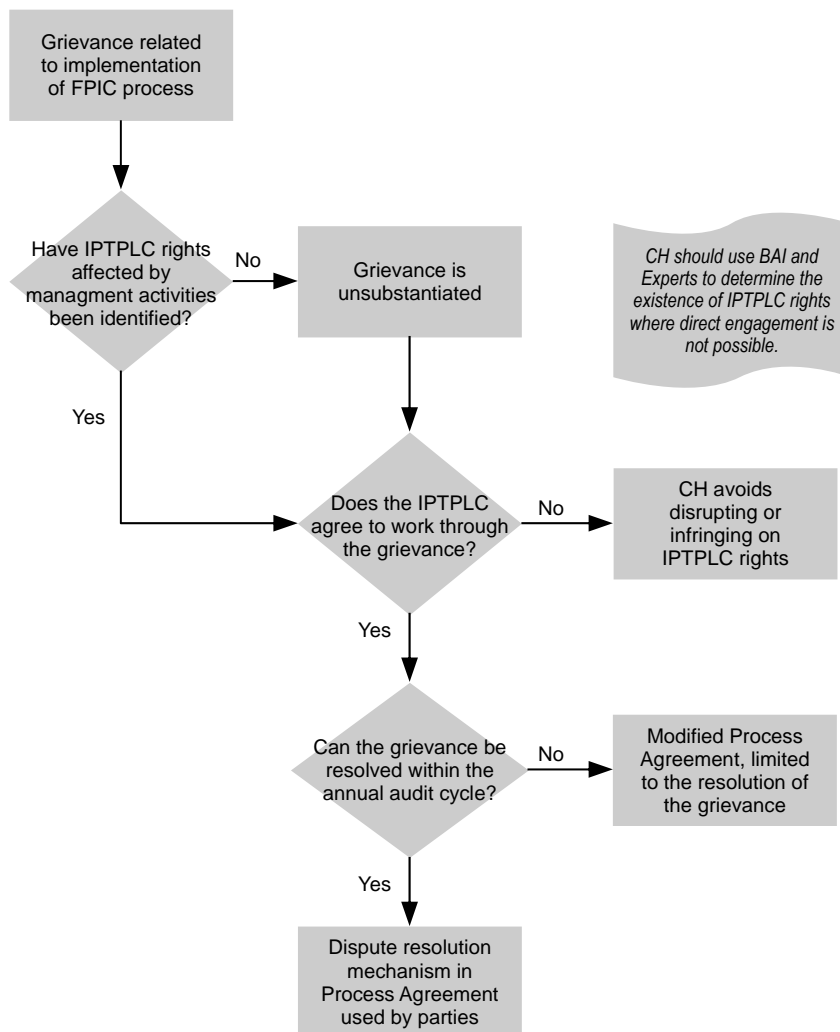


Figure 1: Dispute resolution flow chart

Disputes with audit or certifying body

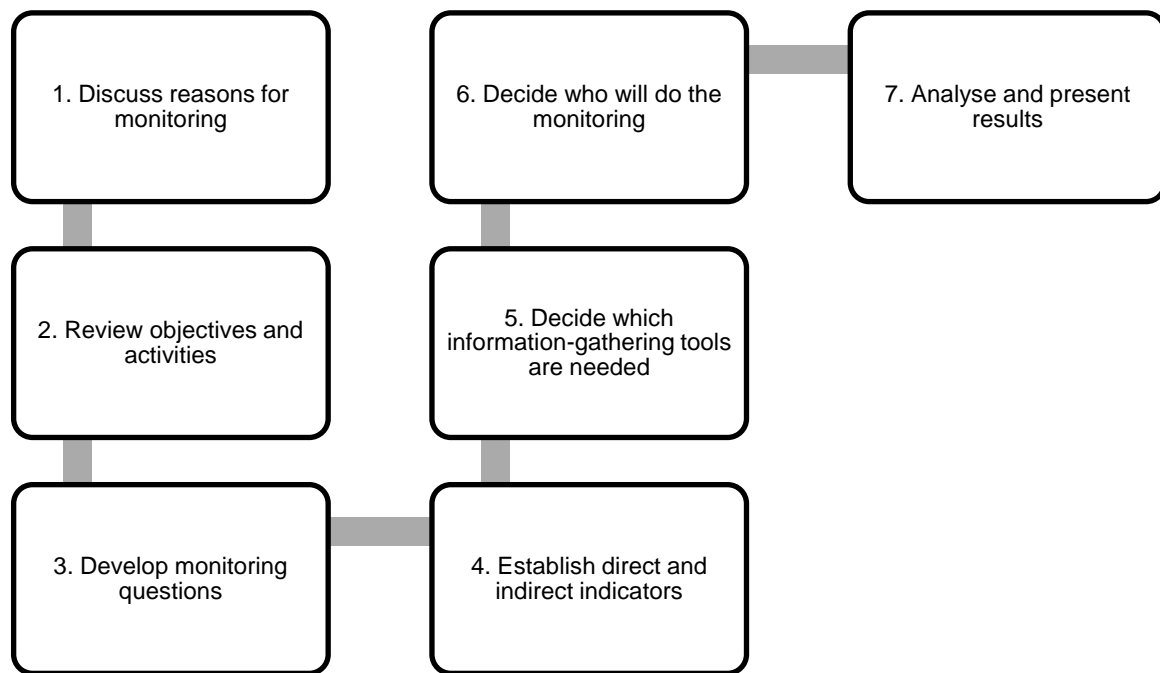
46 There may also be a dispute/grievance with the conduct of an audit by a CB. In this case, the CH or IPTPLC should contact the CB directly to register a complaint. Each CB will have a complaints process that is unique to its organization. The CH and the IPTPLC affected by management activities should be aware of the CB complaints process. National offices and SDGs should ensure CBs operating in the region have made their complaints process publicly available.

47 **NOTE:** The FPIC process is a burden on IPTPLCs. It is important to realize that they are not seeking certification and that the FPIC process can be a significant burden on their time and resources. They may also be involved in other consultation processes with state authorities or the private sector on developments affecting their rights. They may also be involved in interventions with nongovernmental organizations or studies with universities. Therefore, it is recommended that FPIC-related activities be fitted into the community's regular day-to-day activities.

PUBLIC CONSULTATION QUESTION #3 (Reference paragraphs 38 to 47):
Dispute resolution is an important concept relevant to many of the FSC P&C. Does the flow chart in Figure 1 provide adequate information for the design and implementation of local grievance/dispute resolution process? What challenges exist related to dispute resolution in your region?

Monitoring

- 48 Monitoring should focus on ensuring that the FPIC agreement and associated management and mitigation plans are implemented correctly during forest management activities. Participatory monitoring can be introduced at any stage of the FPIC process; however, it is best introduced early, before activities are implemented ('prior').
- 49 Preparations for monitoring include deciding who will do the data collection, and how, and when the periodic analysis will take place. After implementation, when the management activities have begun, the recording begins. At set periods, which can be either daily, weekly, monthly, or seasonally, the information that is being recorded is analysed. The process diagram below outlines the basic steps of a participatory monitoring process.



Source: Adapted from <http://www.fao.org/docrep/x5307e/x5307e05.htm>.

Iterative decision-making

- 50 In the event of a change in the proposed activities or the emergence of new information, the community may reconsider its decision – in other words, a decision may change. The community has the right to define its own decision-making process, but it is also important for the organization to determine and document whether the decision-making process intentionally excludes individuals or groups within the community.
- 51 In this context, it is important to be aware that the decision-making timeline established by the IPTPLC must be respected. Adequate time must be granted to understand, access, and analyse all the relevant information on the proposed activity, including potential impacts on rights holders. The risk of investing in management options that will adversely impact affected rights holders is minimized the earlier an FPIC process agreement is established.

Equitable benefit-sharing

- 52 It is critical that the CH evaluates how the planned management activities build long-lasting and mutually beneficial relationships, including equitable benefits for the affected IPTPLCs. This is the best guarantee for obtaining and maintaining FPIC. Benefit-sharing can include, for example, joint ventures,

profit-sharing, provision of goods and services (e.g. roads, clinics, housing, and schools), preferential employment, training, and contributions to community-development funds, including for culturally appropriate purposes. Sometimes provision of such benefits is required by national law.

- 53 In situations where rights of ownership and use of lands, territories, and resources is contested, a discussion of benefit-sharing may be difficult or unlikely. If contestation exists between the IPTPLC and the state, or between the IPTPLC and the CH, the CH should first ensure the requirements of Principle 1 (Compliance with Laws) are met, and then attempt to build an agreement on a modified scope for the FPIC process. It is important to note, however, that if there is a substantial and ongoing challenge by IPTPLCs to the use and ownership rights of the state to grant concessions, the management activities may not be FSC certifiable.
- 54 Regarding compensation or benefit-sharing for the utilization of traditional knowledge, the CH should take note of concerns and guidance expressed by the Indigenous Peoples Council on Biocolonialism (Harry and Kanehe, 2005). These include an Indigenous critique of an example of a traditional knowledge benefit-sharing agreement and some considerations for Indigenous Peoples before entering benefit-sharing agreements. The organization should inform the communities about these sources of concern and guidance as part of the FPIC process.

Resolution of past grievances

- 55 Communities may wish to address grievances from the past as a condition for reaching consent on future forest management activities. For IPTP specifically, Criterion 3.4 requires the CH to uphold UNDRIP, which stipulates:

Indigenous Peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their Free, Prior and Informed Consent (United Nations, 2008: Article 28).

- 56 A critical aspect of this topic that should be addressed early in the process is the question of time frame. How far into the history of land tenure should a CH be

held responsible for redress? There is no specific formula for this determination, as the context (legislated and legal) of the MU is a determining factor. For example, a concession may be granted subject to the fulfilment of specific requirements that may be considered redress. However, as general guidance, it may be reasonable to assume that compensation for historical actions by the state remains the responsibility of the state. The CH may be held responsible for its own management actions that resulted in the lands, territories, and resources which the IPTP have traditionally owned or otherwise occupied or used being confiscated, taken, occupied, used, or damaged by the CH without the FPIC of IPTP rights holders on the MU prior to seeking FSC certification.

- 57 Negotiations on existing and unresolved conflicts can be undertaken with the understanding that the CH has limited influence. Depending on the context of the MU, options for redress may include:
- return of land to the communities (may be specific to an MU on private lands);
 - rehabilitation of affected lands and forests;
 - compensation for the relinquishment of rights;
 - compensation for losses and damages; and
 - improved benefits in participatory forest management arrangements or for workers.
- 58 If any of these options go beyond the competence or the economic viability of the CH because of the legislative enabling environment of the forestry sector of the country in which the CH operates, the CH may adopt an advocacy role and encourage and/or facilitate dialogue between the competent state authorities and the affected communities aiming for redress and settlement of past grievances.

PUBLIC CONSULTATION QUESTION #4 (Reference paragraphs 32 to 58):
Provide general comments on the relevance and application of the operational concepts presented in this section, i.e. culturally appropriate engagement, binding agreements, monitoring, iterative decision-making, equitable benefit-sharing and resolution of past grievances (Note: dispute resolution is covered in Q#3).

High conservation values

- 59 High conservation values (HCVs) are biological, ecological, social, and cultural values which are outstandingly significant or critically important at the national,

regional, or global level. National offices and SDGs are responsible for the development of a National HCV Framework, which is a tool for the identification, management, and monitoring of HCVs in the country. Further to this, SDGs must clarify in the National Standard and Interim National Standard how the National HCV Framework should be used by CHs when identifying HCVs in the MU and when developing management strategies to protect these HCVs (FSC 2012, Principle 9).

- 60 SDGs are also responsible for providing the CH with guidance on the best available information for the identification of HCVs under six categories listed below. The best available information used to conduct HCV assessments should also include local IPTPLC experts with historical and cultural knowledge of the use and dependency of these values.

Six categories of HCVs:

- HCV1 – Species diversity: Concentrations of biological diversity including endemic species, and rare, threatened, or endangered species, that are significant at global, regional or national levels
- HCV 2 – Landscape-level ecosystems and mosaics: Intact forest landscapes and large landscape-level ecosystems and ecosystem mosaics that are significant at global, regional, or national levels and that contain viable populations of the great majority of the naturally occurring species in natural patterns of distribution and abundance
- HCV 3 – Ecosystems and habitats: Rare, threatened, or endangered ecosystems, habitats, or refugia
- HCV 4 – Critical ecosystem services: Basic ecosystem services in critical situations, including protection of water catchments and control of erosion of vulnerable soils and slopes
- HCV 5 – Community needs: Sites and resources fundamental for satisfying the basic necessities of local communities or Indigenous Peoples (for example, for livelihoods, health, nutrition, water), identified through engagement with these communities or Indigenous Peoples
- HCV 6 – Cultural values: Sites, resources, habitats, and landscapes of global or national cultural, archaeological, or historical significance, and/or of critical cultural, ecological, economic, or religious/sacred importance for the traditional cultures of local communities or Indigenous Peoples, identified through engagement with these local communities or Indigenous Peoples.

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

PUBLIC CONSULTATION QUESTION #5 (Reference paragraphs 59 to 60):

Separate HCV Guidance has been developed for Forest Managers. Assuming that Guidance document provides the technical information, needed to identify HCVs, what additional guidance is needed to support to the implementation of FPIC in activities related to the identification of HCVs?

PUBLIC CONSULTATION QUESTION #6 (Reference paragraphs 1 to 60):

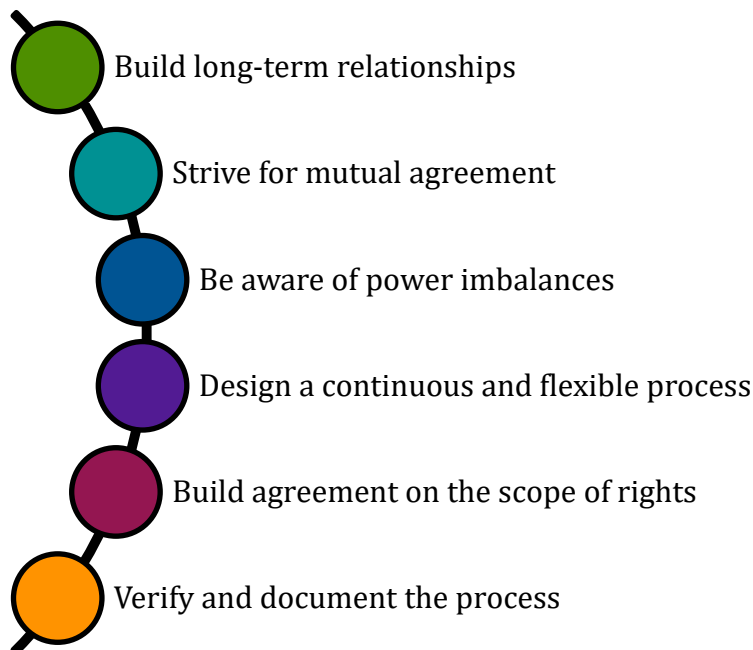
General comment section for Part I of the FPIC Guideline V2.0 – Draft #1. Use reference paragraph numbers in left margin of the page to add greater specificity to your comments.

Part II: Implementing FPIC in FSC

- 61 A step-by-step process for engagement with IPTPLCs with a right to FPIC was developed in Version 1 of the FSC FPIC guidelines (FSC, 2012). While the process steps remain the same, lessons learnt through field-testing and implementation of previous FSC P&C have been incorporated. Each step is presented in detail below.

Preparation for FPIC implementation success

- 62 Organizations are responsible for obtaining the FPIC of affected rights holders that may or may not have a vested interest in FSC certification. Each circumstance will be unique, and there will be no guarantee of successful engagement. The following six recommendations for preparing for an FPIC process are based on experience and field-testing that demonstrated that advanced preparation and respect for the governance authority and knowledge of communities would increase the likelihood of reaching a mutually agreed FPIC process.



Build long-term relationships

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

Be aware of power imbalances

- 64 In most cases there is an imbalance of power, knowledge, and resources between affected rights holders and the organization. Although the right to participate in and decide freely on a development project is empowering, the starting positions are not equal. There may be a need to build the capacities of affected rights holders related to the practice of forest management.

- 65 At the same time, it should be noted that there may also be power imbalances within IPTPLCs that may result in unintended consequences should an FPIC process proceed without this awareness. Human rights instruments such as UNDRIP and ILO 169 provide clear guidance that third parties should not proceed with development activities that exacerbate internal conflict or discrimination or cause harm to the more vulnerable sectors of a community (e.g. women, children, elders, and people with disabilities).

Strive for mutual agreement

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

Design a continuous and flexible process

- 67 Field-testing highlighted the value of the step-by-step approach in planning the way forward and as a tool to measure improvements in relationships with

IPTPLCs. At the same time, it demonstrated that a flexible approach is the key to success. While field-testing established the value of all the elements described in the seven steps, in practice it is not necessary to stick rigidly to the order in which they are presented.

Build agreement on the scope of rights

- 68 The FPIC process may take considerable time and can be complicated; therefore, flexibility is needed when setting benchmarks and timescales to define the scope of rights for the process. There should be a possibility to reach an agreement with affected IPTPLCs on an iterative FPIC process that begins with an initially agreed scope of rights. Concurrent efforts can also be made to negotiate a roadmap towards consent on a wider scope of rights that have not been assessed. This could be helpful in a situation where defining and agreeing on the scope of legal and customary rights still requires considerable research and dialogue, or these rights are subject to negotiation and/or litigation between communities and the state.

Verify and document the FPIC process

- 69 The third-party CB has the responsibility to verify that affected IPTPLC consent is given freely, prior to any impacts by the organization on their legal and customary rights, and with full information in appropriate formats and languages. If the FPIC agreement has not yet been made, the CB will assess whether the agreed FPIC process is progressing meaningfully and to the satisfaction of all parties. Involving an independent verifier in the FPIC process can also be useful to help deliver early evidence needed by the CB and assess whether the CH is fulfilling its requirements. A well-documented process is important for independent verification and general accountability. CHs, affected rights holders, and CBs all play an important role in maintaining accurate records of the FPIC process and outcomes.

PUBLIC CONSULTATION QUESTION #7 (Reference paragraphs 61 to 69):

Six fundamental practices are introduced to support the development and implementation of engagement processes based on FPIC: build long-term relationships; be aware of power imbalances; strive for mutual agreement; design a continuous and flexible process; build agreement on the scope of rights; and verify and document the FPIC process. General comments and questions are encouraged.

Common pitfalls of FPIC processes

70

- Negotiating with representatives who are not recognized by the community or in a way that leaves out the interests of important parts of the community
- Thinking that initial consent to discuss a plan means willingness to negotiate or even consent to other parts
- Not allowing sufficient time for a community to discuss the development or obtain independent information and advice
- Representatives and delegations may abuse their power and impose inappropriate or unrealistic demands
- ‘Sharp practice’ (as referred to by lawyers) is not helpful on either side; FPIC in FSC potentially delivers mutual benefits and carries obligations for constructive engagement on both sides.

The seven-step FPIC process

STEP 1: Identify rights holders and their rights through engagement

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

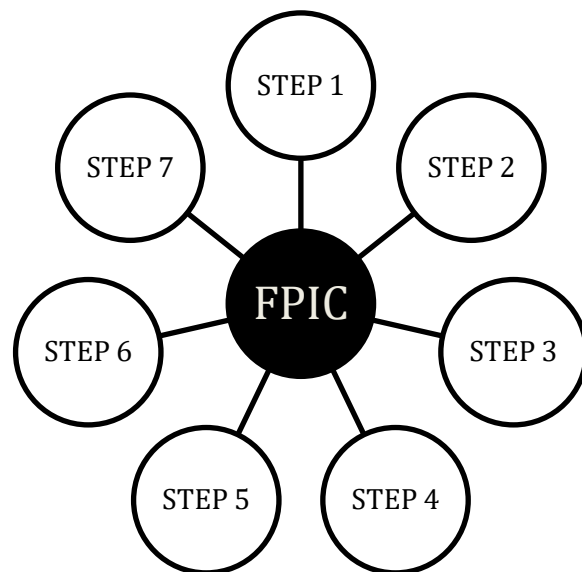
STEP 3: Undertake participatory mapping and impact assessments

STEP 4: Management activities revised, and affected rights holders informed

STEP 5: Negotiate an agreement with rights holders on FPIC proposal

STEP 6: Verify and formalize the FPIC agreement

STEP 7: Implement and monitor the FPIC agreement



Upholding the right to FPIC through continuous and iterative processes

- 71 The granting or withholding of consent by IPTPLCs is not a one-off process. IPTPLCs should be informed at the onset of engagement that they have the right to give or withhold their consent to various stages of the FPIC process. The right to FPIC is ongoing throughout the life of the certificate and should be based on an ongoing relationship of trust and agreement between the stakeholders.

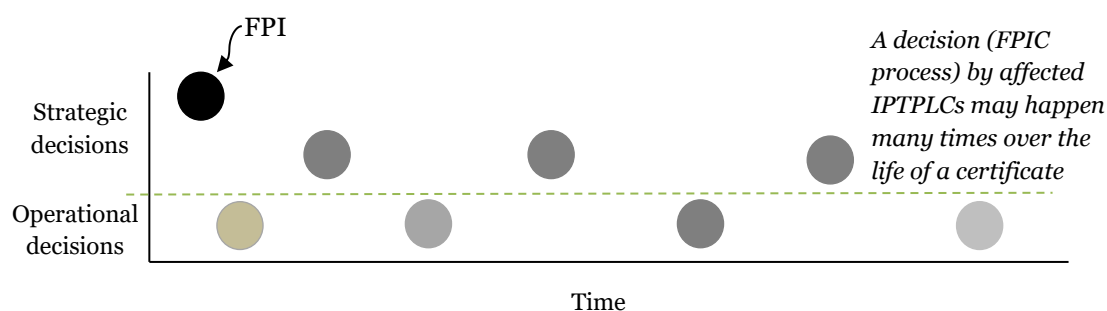


Figure 2. FPIC process decisions over time and at different levels of management planning (strategic and operational)

- 72 Affected IPTPLCs may decide to reject the management plan or accept only certain parts of it. These decisions should be respected, and the CH should not try to renegotiate the deal immediately without some attempt to understand the conditions required to revisit the proposal. Once the affected IPTPLC explains why they withheld/withdrew consent, it may be possible to revise the management plan and render it acceptable.
- 73 If the CH decides to restart the negotiations based on a revised management plan, and the communities agree to renegotiate, then it is probably not necessary to repeat the whole FPIC process. A large number of achievements from the previous FPIC process may still be valid.
- 74 For those affected IPTPLCs that do not give their consent, the lands, territories, and resources to which they have identified legal and customary rights should not be included in the proposed management activities, and they should refrain from any activities that could have an impact on the rights, resources, or lands of those communities that withhold their consent. See section 1.5 for more details and recommendations.

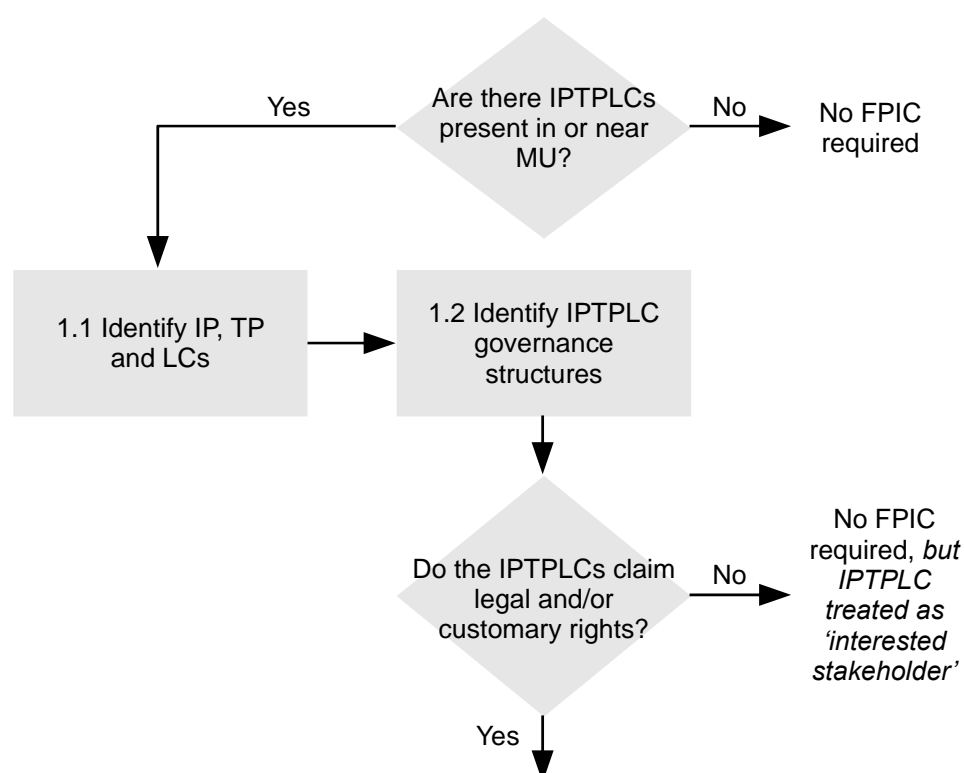
PUBLIC CONSULTATION QUESTION #8 (Reference paragraphs 71-74):

An engagement process based on FPIC evolves over time. CH must ensure the affected rights holder is informed of their right to grant, withhold and withdraw a consent decision. The CH should honour the decision of the affected rights holder. Figure 2 attempts to show that FPIC decisions happen at different levels of management planning over a long period of time. What additional information/guidance would improve the clarity of this section?

STEP 1: Identify rights holders and their rights through culturally appropriate engagement

Elements of Step 1:

- 1.1 Identify rights holders (IPTPLCs)
- 1.2 Identify IPTPLC governance structures
- 1.3 Inform IPTPLCs of proposed management activities
- 1.4 Identify claims (assertions) and rights of IPTPLCs
- 1.5 Identify whether the IPTPLCs will consider the proposed management activities and further negotiation on the FPIC process



1.1 Identify rights holders (IPTPLCs)

75 The first step in an FPIC process is to identify the IPTPLCs and their legal and customary rights, resources, lands, or territories in or around the management unit that may be affected by the planned or ongoing forestry activities.¹ This defines the **initial scope of the FPIC process**.

¹ The identification of IPTPLCs does not depend on the legal recognition by a state government. Readers are encouraged to become familiar with the definitions of 'Indigenous Peoples', 'traditional

- 76 The focus of these efforts should begin with IPTPLC themselves. The CH should determine if there are local experts available to:
- provide guidance on cultural norms and protocols of the local IPTPLCs;
 - facilitate engagement;
 - assist with negotiations; and/or
 - act as a facilitator throughout the FPIC process.
- 77 It should also be kept in mind that some peoples (IPTP) may not be aware of their right to self-identify as Indigenous Peoples. Flexibility, additional training and capacity-building for both the CH and IPTPLCs may, therefore, be required to ensure that identification is comprehensive and accurate. Extensive research on the people who may be affected by forest operations is also recommended. Depending on the organization’s knowledge of the country and the specific area, it may be necessary for it to begin building its capacity by consulting national, regional, or local experts as well as nongovernmental or civil society organizations.

RECOMMENDED ACTIONS:

- 78 CH
- Prepare a preliminary overview of IPTPLCs that **may** have rights within and adjacent to the MU
 - Identify capacity-building needs of the organization
- 79 IPTPLC
- Has the community been approached in a culturally appropriate way?
 - Does the community have a protocol for consultation and engagement, and has it been used by the CH?

1.2 Identify IPTPLC governance structures

- 80 Organizations are required to engage with communities in a culturally appropriate way and to recognize and uphold the rights of Indigenous Peoples, as described in UNDRIP and ILO Convention 169. Communities must be represented by institutions of their own choosing; consequently, the organization

peoples’, and ‘local communities’ provided in the Glossary of this Guidance, keeping in mind that IPTPLCs may use different terms to describe or identify themselves.

can only secure a community's consent if it is aware of its decision-making process.

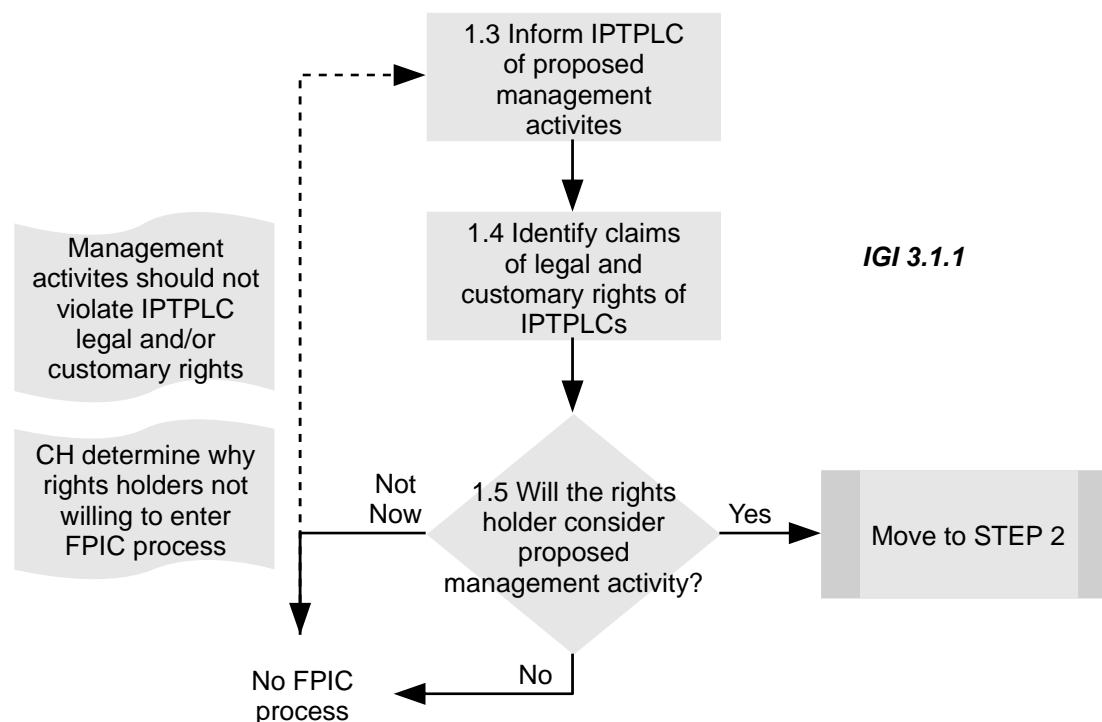
- 81 The representative institutions of IPTPLCs may be their own customary institutions, institutions that have been imposed by the state but later accepted by the IPTPLC, and/or institutions set up by the IPTPLCs themselves to deal specifically with outsiders. There is no judgement implied in these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

RECOMMENDED ACTIONS:

- 82 CH
- Examine and document how IPTPLCs take decisions:
 - Document the type of governance system used (i.e. traditional/customary, state-legislated/imposed or other)
 - Document the role of women, youth and elders, keeping in mind UNDRIP and ILO 169
 - Identify the individuals chosen by the IPTPLCs to represent them at the various stages of the FPIC process
 - Describe each of the steps where they think IPTPLC consent will be needed before the planning or implementation proceeds to the next step
 - A list of key questions and considerations could be developed with the IPTPLCS and used as a guide to review the design of each stage in relation to FPIC
- 83 IPTPLC
- Make known to the CH the legal and customary rights of access, use, tenure, and obligations that apply
 - Prepare an internally agreed decision-making protocol and share it with the CH
 - If there is an ongoing dispute on representation, try to set this dispute aside and make an agreement with the CH to explore potential benefits of the FSC system
 - Identify a cultural facilitator to work with the CH to navigate culturally appropriate protocols
 - Identify important indicators of community satisfaction with an engagement process

PUBLIC CONSULTATION QUESTION #9 (Reference paragraphs 75 to 83):

Actions related to elements 1.1 and 1.2 relate to the identification of IPTPLCs within and near the MU and their governance structures (i.e. how IPTPLC decisions are made). Comments and questions are encouraged to support the clarification of associated flow charts and recommended actions. Use reference paragraph numbers found in the left margin of the page when addressing specific sections.



1.3 Inform IPTPLCs of proposed management activities

- 84 At this stage, there should be greater clarity on: (a) IPTPLCs will be affected by the proposed management activities; (b) the rights that may be affected; and (c) IPTPLC governance mechanisms for taking decisions on behalf of the collective. The CH should then inform the IPTPLCs rights holders about the main features of the proposed management activities, without being too technical or detailed.
- 85 Information should be sufficient for the representative institutions to take an informed decision as to whether they are willing to consider the forest operation (management activities) in or near their territories, and whether they are interested in continuing engagement with the CH. The IPTPLC rights holders should be made aware of the rights specifically affected by management

activities. IPTPLC rights holders are informed that they have the right to modify or withhold their consent to the proposal for further engagement.

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

RECOMMENDED ACTIONS:

- 87 CH
- Provide information that is a fair reflection of what can be expected from the proposed management activity, and do not exaggerate the potential benefits or hide the risks
 - Provide information in a language and format that is clear and appropriate to IPTPLC rights holders
 - Verify that the information was understood
- 88 IPTPLC
- Communicate to the CH the appropriate way of sharing information within communities
 - Check that the IPTPLCs, hired staff, and representatives understand what is being proposed by the CH
 - Discuss the costs and benefits of the engagement process
 - Identify potential impacts of the certification process/system on rights holders
 - Discuss the immediate and ongoing financial commitment required to be engaged in the FPIC process

1.4 Identify claims (assertions) of legal and customary rights

- 89 It is a common misperception that the right to FPIC applies only when IPTPLCs have legally recognized rights, when in fact it is important to realize that, in line with international law, FSC P&C also recognize customary and tenure rights. FSC definitions of customary rights and tenure are, therefore, very important in this context.
- 90 The next task is to identify claims (or assertions) of legal and customary rights by the identified IPTPLCs. These must be fair and legitimate claims to rights, resources, lands, and territories in or near the MU, based on long-established use.

RECOMMENDED ACTIONS:

91 CH

- Document all existing claims of rights identified through research and engagement, whether they are affirmed or not

1.5 Identify whether the IPTPLC rights holders will consider the proposed management activities

92 The representative institutions of the IPTPLCs should be given sufficient time to discuss the information provided among themselves and, if desired, with their community members. They should also be given the opportunity to ask further questions, and it should be obvious that they are free to consider the forest management activities. If they want to consider them, the organization can begin to prepare for further engagement. If not, their decision must be respected, and there can be no forest management activities in their territories that impact their legal and customary rights.

93 *Scenarios* – If IPTPLC rights holders decide:

1. **NO**: As rights holders, they do not want any further engagement on the subject of forest operations on their identified lands and territories; or
2. **NOT NOW**: The IPTPLC rights holders may not be in a position to engage to the extent required to provide their FPIC, but they are not opposed to entering discussions at a later date.

RECOMMENDED ACTIONS:

94 CH

- The CH communicates its understanding of the IPTPLC rights holders' decision not to engage in a full FPIC process
 - Alternative engagement processes may be discussed
- The CH continues to engage the IPTPLC rights holders, keeping in mind that rights have been identified that may be impacted by management activities
 - Ensure that no IPTPLC rights are violated by management activities
- If a decision has not been taken by the IPTPLC rights holders, indicate that the process is ongoing
 - Demonstrate that the ongoing process is satisfactory to the IPTPLC rights holders

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- Communicate the reasons for not entering into a full FPIC process
 - Indicate whether future discussions on forestry would be considered

- Investigate the CH and obtain a copy of any corporate policy related to the recognition of IPTPLC rights
- Check the reputation of the CB, noting that the CB is hired by the CH
- Consider carefully the benefits/risks and costs of a full FPIC process
- Consider the use of a facilitator that is respected by the IPTPLC to gain a better understanding of the process, including auditing by CBs

PUBLIC CONSULTATION QUESTION #10 (Reference paragraphs 84 to 95):

Actions related to elements 1.3 to 1.5 relate to the identification of potential rights holders and their rights. Element 1.5 is the first decision by potentially affected rights holders on whether they will consider engagement on forest management activities. Comments and questions are encouraged to support the clarification of associated flow charts and recommended actions. Use reference paragraph numbers found in the left margin of the page when addressing specific sections.

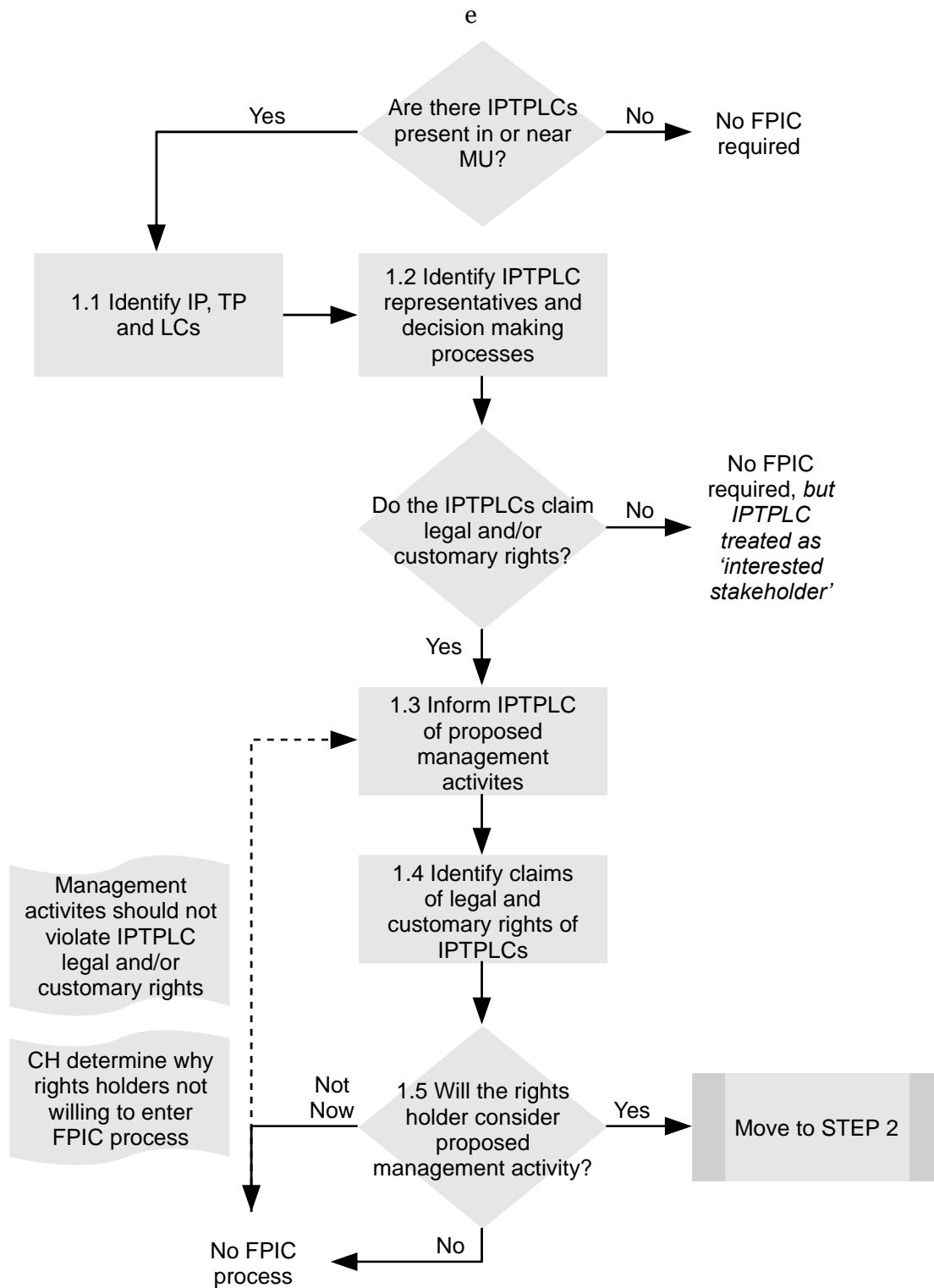
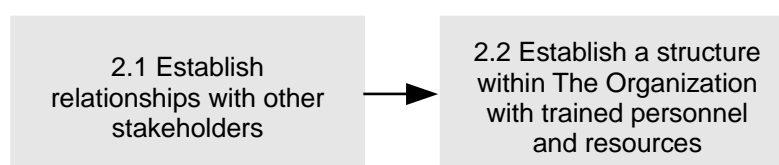


Figure 3. Decision chart for Step 1 actions of CHs

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

Elements of Step 2:

- 2.1 Establish relationships with other stakeholders
- 2.2 Establish a structure within the organization with trained personnel and resources
- 2.3 Develop appropriate communication and information strategies
- 2.4 Explore host-state approaches to FPIC
- 2.5 Engage with IPTPLC rights holders and develop an FPIC process agreement that is realistic and inclusive of timelines and budgets
- 2.6 Further define management activities likely to affect IPTPLC rights holders



2.1 *Establish relationships with other stakeholders*

- 96 Some stakeholders, such as government institutions, nongovernmental organizations, and scientific institutions, could play a beneficial role in the FPIC process. In addition, Criterion 7.6 of the FSC P&C requires the CH to engage with interested stakeholders at their request. This means that the CH should consider engagement with other actors in addition to IPTPLC rights holders.
- 97 The CH can work with stakeholders in separate relationships or, if all parties agree it is useful, in a multi-stakeholder working group. However, this should not replace the FPIC process between the CH and the IPTPLCs directly. The aims are to support the implementation of the FPIC process, generate broader backing for the outcomes process among the various stakeholders, and promote better relationships among stakeholders.

2.2 Establish a structure within the organization with trained personnel and resources

- 98 When establishing a social team,² it is important to ensure that it has appropriate staff with suitable capacities, and that it undertakes the correct tasks. The leader of the social team should be an expert in social forestry and local society and culture who is able to build cross-cultural communication channels. The size of the team should be proportional to the difficulty of the task, the size of the population, and the size of the operation (scale, intensity, and risk – or SIR). The social team should also include staff members who are women and members of ethnic groups represented in the local population.
- 99 The team should:
- receive comprehensive orientation on the culture of the IPTPLCs and FPIC;
 - be trained in recognizing and respecting the protocols and values of IPTP, and in effective communication and translation of complex legal issues; and
 - be encouraged to involve additional expertise from others.

RECOMMENDED ACTIONS:

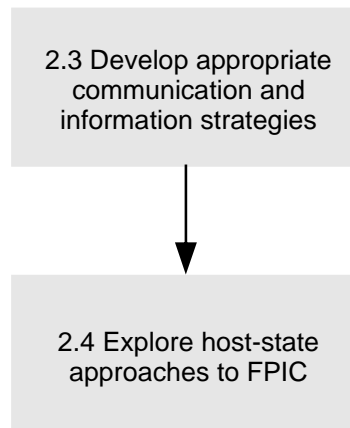
- 100 CH
- Establish an internal social team to deal explicitly with IPTPLCs
 - Dedicate sufficient human resources and operational funds to ensure that the social team is able to fulfil its tasks
 - Ensure the social team can intervene directly in the decision-making bodies of the organization (e.g. board, management, council)
 - Ensure the team has dedicated materials and equipment
 - Ensure good coordination with forestry workers and management within the organization to avoid misunderstandings

PUBLIC CONSULTATION QUESTION #11 (Reference paragraphs 96 to 100):

Actions related to Step 2 relate to establishing a broader understanding of the forest management working environment of CHs, rights holders and other interested

² For some small-scale, low-intensity, and low-risk management activities, this element may be needed only to a limited extent or not at all.

stakeholders. Elements 2.1 and 2.2. are specifically related to recommendations to engage with experts (including IPTPLCs) and assess The Organizations capacity for FPIC-based engagement. Comments and questions are encouraged to support the clarification of associated flow charts and recommended actions. Use reference paragraph numbers found in the left margin of the page when addressing specific sections.



2.3 Develop appropriate communication and information strategies

101 The required form, content, and intensity of the communication depends on local circumstances, but the most important aspect is to establish a relationship based on trust and learning. This can be achieved through mutual exchange of information and views on an ongoing basis with all segments of the IPTPLCs.

102 A communication plan helps ensure that all aspects of the consent process are communicated to IPTPLC rights holders and other interested parties. Generally, the CH would take the lead when designing the communication plan, but it should work closely with the IPTPLC representatives.

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

RECOMMENDED ACTIONS:

- 104 CH
- Present information that is complete as early as possible

- Use direct communication (face-to-face) as the default method unless high levels of literacy are apparent
- Use a combination of small-group and community-wide sessions to share information
- Co-design a participatory mapping and impact assessment as an effective way to combine informing the IPTPLCs with the process of building a relationship based on trust

2.4 Explore host-state approaches to FPIC

- 105 The CH should explore host-state approaches to the right to FPIC, to find out whether the laws or policies also require FPIC or conflict with the FSC FPIC requirement. If the government has already obtained consent (e.g. before it issues a licence), it is important to check whether the consent was obtained freely and through an informed, participatory process. The CH should follow any national laws that stipulate how it should consult or seek consent from IPTPLCs that are affected rights holders, while at the same time fulfilling the requirements of the FSC standard.
- 106 *Scenario:* In a situation where the authorities of a state would make it impossible to apply FPIC – for instance, by blocking the CH’s access to IPTPLCs, forbidding the CH from carrying out a consent process, or forcibly resettling IPTPLCs after giving the CH the concession – the CH may be unable to obtain consent from the IPTPLCs and so be unable to fulfil the FSC P&C. The organization is then advised to enter discussions with the competent authorities and the CB to seek a solution. FSC has determined that the CB shall evaluate any conflicts between laws or regulations and certification requirements of the applicable FSC standard on a case-by-case basis, in collaboration with involved or affected parties (FSC, 2009: section 8.20). If no solution can be found, the CB can refer the issue to FSC.

RECOMMENDED ACTIONS:

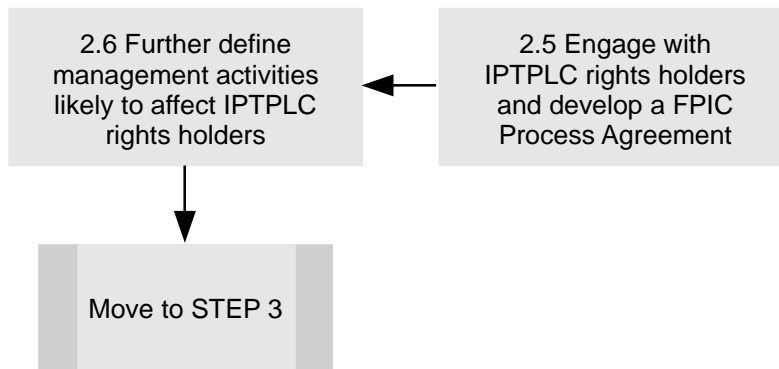
- 107 CH
- Check whether the host state has obtained consent freely and through an informed, participatory process
 - Using the best available information, determine whether the laws and policies of the host state require FPIC, or conflict with the FSC FPIC requirement.
 - If there are processes in place that support FPIC or related consultation and accommodation processes, check whether they fulfil the FPIC requirements of the FSC P&C (gap analysis)

- *Collaboration opportunity*: CHs within a region or state may collaborate to conduct regional gap analysis

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- Communities may conduct regional gap analysis on the approach of state governments and the FSC system
 - Consider taking a regional, rather than local, approach, keeping in mind the context of forest management

PUBLIC CONSULTATION QUESTION #12 (Reference paragraphs 101 to 108):
 Actions related to elements 2.3 and 2.4 relate to the development of appropriate internal and external communication strategies and regional policy assessments related to FPIC. Comments and questions are encouraged to support the clarification of associated flow charts and recommended actions. Use reference paragraph numbers found in the left margin of the page when addressing specific sections.



2.5 Engage with IPTPLC rights holders and develop an FPIC process agreement that is realistic and inclusive of timelines and budgets

109 To achieve a climate of confidence and mutual respect, the FPIC process itself should be a product of agreement (i.e. process agreement). The right to grant FPIC is accorded to IPTPLCs as collectives. It is important that IPTPLC rights holders decide and express when and how to give their consent. A consent decision may be expressed by IPTPLCs as a documented resolution, decrees, or formal agreements, or it may also be provided using more culturally appropriate means that enable community witnessing (e.g. oral testimony or ceremony).

110 The effort, cost, and complexity of an FPIC process is determined by the cumulative results of answers to the following questions: *Who are the rights*

holders? What specific rights will be impacted? Where are they impacted on the MU? Furthermore, identifying the scope of an FPIC process may be further complicated by the following conditions:

- the presence of multiple and overlapping claims (e.g. private land owners, protected area designations governed by state regulations, nomadic IPTP and other forest resource users);
- Indigenous Peoples and the local community are living in mixed communities; and/or
- the state does not recognize the existence of IPTP.

111 The decision-making timeline established by IPTPLCs must be respected, since it reflects the time they need to understand, analyse, and evaluate the activities under consideration. Some IPTPLCs may want to have multiple gatherings to discuss the proposal, allowing time between meetings to analyse the information. Others may need to wait for the right moment to consult their elders or shamans. Some communities make big decisions only after house-to-house consultations. There may be cases of unexpected deaths or illnesses in the village, which keep people preoccupied. It may be the planting or harvesting season, when everyone is in the fields, or people may be away for weeks or even months engaging in a way of life very different from a corporate or urban environment.

RECOMMENDED ACTIONS:

112 CH

- Ensure there is mutual understanding and agreement on the requirements of IPTPLC decision-making processes on the development of the FPIC process agreement
- CHs are advised to consider the involvement of an independent verifier and/or observer in the early stages of the process
- Ensure the FPIC process agreement includes:
 - an agreed scope of the FPIC process;
 - representation of IPTPLCs in the FPIC process;
 - frequency and location of meetings that will take place, and how decisions will be made;
 - clear phasing of the FPIC process, in line with continuous and iterative decision-making;
 - terms of verification and observation of the FPIC process;
 - financial commitments of FPIC process;
 - use of advisors, facilitators, and observers;
 - capacity-building strategy;

- mechanism for monitoring the FPIC process; and
- dispute-resolution process

113 IPTPLC

- Assess community capacity for participation in the negotiation process in collaboration with the CH
 - Capacity includes more than financial resources; it might also include:
 - technical knowledge, networks, and time; and
 - access to decision-making tools used by the CH
- Community engagement plans should be prepared and mutually agreed with the CH

2.6 Further define management activities likely to affect IPTPLC rights holders

- 114 Once the CH has identified the potentially affected IPTPLCs and their rights, it can define more precisely the activities (e.g. including harvesting, road construction, transportation, operation of bush camps, and silviculture) that are likely to affect their rights. Effective participatory mapping and assessments will be needed in which affected IPTPLCs are fully engaged. These will provide further information and help the CH further define and amend the management plan before entering into negotiations.

Scenario: When the scope of the FPIC process is not agreed

- 115 When consent is not granted, the timescale to the next opportunity for decision-making is mutually agreed, as well as the conditions under which decisions may be changed.
- 116 When there is disagreement with the affected communities on the recognition of the claimed legal and customary rights to be included in the scope of the FPIC process, a plan should be agreed to guide conflict/dispute resolution. The longer-term outcome of the plan is an agreed scope of FPIC-related rights. Meanwhile, the CH and affected communities can continue to work through an FPIC process on the agreed rights and activities.
- 117 The FSC P&C require the legal and customary rights of IPTPLCs to be upheld. Therefore, when IPTPLCs claim these rights, the CH takes a risk if it fails to acknowledge these claims without any justification. When claims to rights are made, it is recommended that the CH apply the precautionary approach: until it is mutually agreed, or it can be proven that they do not have the customary rights in question, treat the claimants as if they have these rights.

RECOMMENDED ACTIONS:

118 CH

- Include members of the IPTPLCs who have knowledge on the worldviews and traditional global visions relevant to the identification and understanding of customary rights (i.e. Community Facilitator)
- Engage an external advisor who is respected and trusted by the IPTPLCs to assist in this process
- Include the FSC national office and state authorities to establish a culturally appropriate dialogue and engagement platform
- Full content of the proposed management activities (draft plan) should be provided to affected IPTPLCs
 - Describe to IPTPLCs how wood is used by the CH and the type of benefits they might receive as a result of their management role (e.g. management costs, value added, etc.)
- Determine the need for participatory mapping and impact assessment in cooperation with affected IPTPLCs
- Acknowledge cumulative development impacts on rights holders, their lands, resources, and territories
- Consider requirements of Principle 7 that are relevant to the implementation of the FPIC process (see C7.2, C7.3, C7.4, C7.5, and Annex E to P7: Elements of the Management Plan)

119 IPTPLC

- Determine capacity needs to ensure effective participation in mapping and impact assessment
- Provide information about other competing lands interests within their lands and territories (e.g. mining, energy developments, etc.)
- Become familiar with other Principles within the standard that require IPTP engagement

PUBLIC CONSULTATION QUESTION #13 (Reference paragraphs 109 to 119):

Actions related to elements 2.5 and 2.6 relate to the identification of affected rights holders and management activities likely to affect their rights. Comments and questions are encouraged to support the clarification of associated flow charts and recommended actions. Use reference paragraph numbers found in the left margin of the page when addressing specific sections.

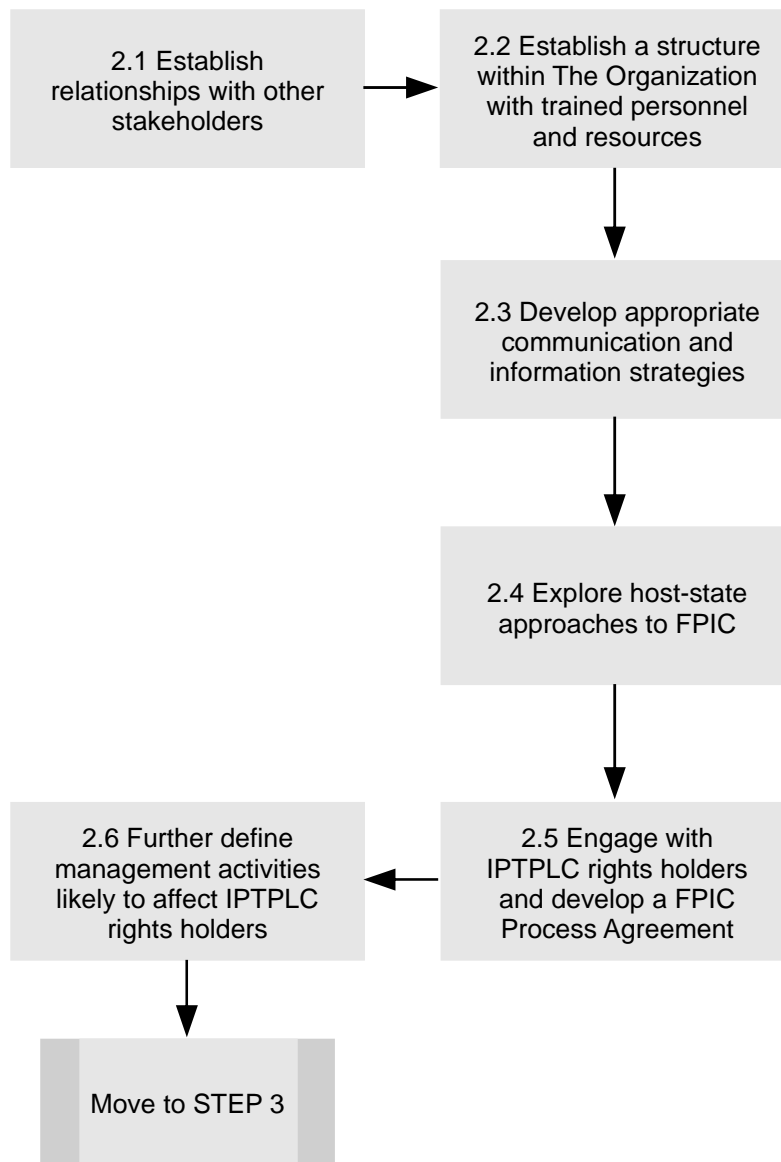
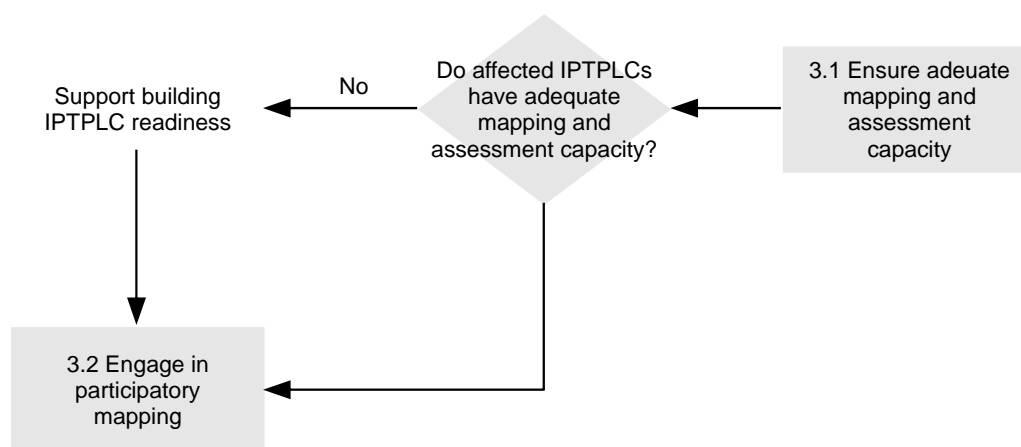


Figure 4. Summary of Step 2 processes

STEP 3: Participatory mapping and impact assessments

Elements of Step 3:

- 3.1 Ensure sufficient community capacity for mapping and assessments
- 3.2 Participatory mapping
- 3.3 Facilitation of conflicting claims between communities
- 3.4 Redefine proposed management activities and engage in participatory impact assessments



3.1 *Ensure sufficient community capacity for mapping and assessments*

- 120 The CH should address the imbalance of power by supporting IPTPLCs to access financial, technical, and other assistance they need, without influencing their positions in the consultations. An earlier step in this process (Step 2.2) addressed the capacity-building requirements for the CH. This step addresses the need to support the capacity-building efforts of the IPTPLC rights holders.

RECOMMENDED ACTIONS:

- 121 CH
- Prior to management activities, capacity needs assessment for mapping and assessments is conducted, and people are trained
 - Review the process agreement for expectations on mapping and assessments
 - Support the building of community readiness:

- Encourage IPTPLCs to identify individuals to carry out the mapping/assessments
- Acknowledge that different bodies of knowledge (ways of knowing and understanding the world) exist within different groups, and respect the local and traditional knowledge of IPTPLCs

122 IPTPLC

- Assess readiness:
 - Identify members to carry out the mapping/assessments – acknowledging that different bodies of knowledge exist within different groups within the community (e.g. youth, elders, women)
- Identify need for external support and ensure there is a clear plan for putting it in place

3.2 Participatory mapping

123 Participatory mapping is the creation of maps by local communities, often with the support of external partners, for the purposes of the decision-making. They provide a visual representation of what the IPTPLCs consider their lands, territories, and resources, and their significant features. Since land claims based on customary rights are often not formally recognized in law, they need to be mapped to document community-recognized rights.

124 The overview of claims (assertions) and rights of IPTPLCs identified in Step 1.2 gives a good indication of what needs to be mapped. Participatory mapping involves the CH working with IPTPLC rights holders to identify and record on a map, baseline elements that are relevant to the FPIC process, including other activities that IPTPLCs deem to have an impact on their rights, such as mining and tourism. Table 2 provides some examples of information that may be collected during a mapping process, and the relevant IGIs.

Table 2. IPTPLC Information to be mapped through a participatory process

Example of IPTPLC information to be mapped	Relevant IGIs
Legal and customary rights of tenure	3.1.2, 3.4.1, 4.1.2
Legal and customary access to, and use rights of, the forest resources and ecosystem services	1.3.1, 3.1.2, 3.4.1, 4.1.2
Areas where rights are contested	1.6.1, 3.1.2, 4.1.2

Example of IPTPLC information to be mapped	Relevant IGIs
Sites where IPTPLC claim their rights are being violated	3.2.2, 3.2.3, 3.4.1
Large landscape features (areas of protection from all development, Indigenous cultural landscapes – or ICLs)	3.1.2, 3.4.1
HCVs: <ul style="list-style-type: none"> • Rare and endangered species and habitats upon which the IPTPLCs rely • Ecosystem services (e.g. water sources, critical shade trees) • Culturally significant sites and landscapes 	3.4.1, 3.5.1, 4.7.1, 6.4.1, 9.1.1
Hunting, fishing, trapping, collecting, and settlement sites	1.4.1, 3.4.1
Harvesting permits	Principle 1, Annex A
Nationally and regionally protected sites with IPTPLC agreements	Principle 1, Annex A
Environment values outside the MU	6.1.1
Identification of native ecosystems	6.5.1
Elements of the management plan	Principle 7, Annex E
Areas of natural hazards (e.g. landslides, flooding)	Principle 8, Annex G
Invasive species	Principle 8, Annex G
IPTPLC priority uses of core areas in Intact Forest Landscapes (IFLs)	Principle 9, Annex H

Note: Specific guidance for forest managers on IFLs and HCVs will be available at the FSC Document Center at <https://ic.fsc.org/en/document-center>.

- 125 Initial maps created through a community-based mapping exercise will establish a shared understanding between the CH and IPTPLCs of baseline ecological, social, and cultural conditions of traditional lands, territories, and resources. Baseline measures allow for the monitoring of the impacts of management activities over time. Participatory mapping may be integrated with impact assessment.

126 In many circumstances the best available information on the local ecological, social, and cultural conditions will be held by IPTPLCs located in or adjacent to the MU. As Table 2 demonstrates, there are many areas of the FSC P&C that require IPTPLC rights holders and/or interests to be taken into consideration during mapping and assessments outside Principle 3 requirements.

127 NOTE: Each group has different values, uses, and resources to include in the maps. The participation of neighbouring communities is essential to confirm boundaries and ensure all access and use rights are noted to avoid creating conflicts.

RECOMMENDED ACTIONS:

128 CH

- Prepare a map and/or alternative overview showing all land claims and land usage, all HCVs relevant to affected IPTPLCs, and the rights of the identified communities
- Consider IPTPLCs' 'works in progress' on mapping and assessments (for other sectors of development or for governance purposes) on lands and territories under proposed development in the FSC process
- Respect the choice of IPTPLCs to share, under specified conditions, confidential information related to traditional knowledge, land, and territorial uses
- Ensure a mechanism is in place to enable the inclusion of all new information in maps and assessment reports as it becomes available

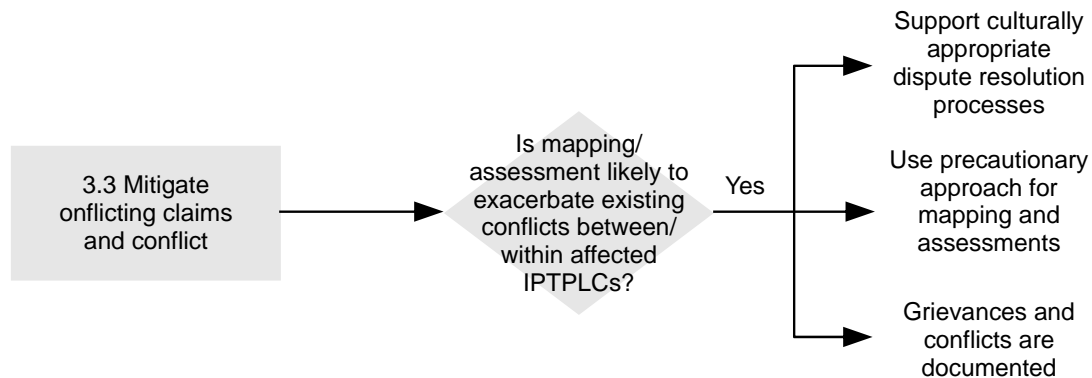
129 IPTPLC

- Use relevant 'works in progress' on mapping and assessments (for other sectors of development or for governance purposes) on lands and territories that may be used in the FSC process – i.e. limit duplication of effort
- Negotiate a confidentiality agreement, or protocol, to address information-sharing; this should be included in the process agreement
- Provide new information to the CH as it becomes available

PUBLIC CONSULTATION QUESTION #14 (Reference paragraphs 120 to 129):

Actions related to Step 3 address participatory mapping and assessment requirements. Many of the actions associated with this step are also found in Principles 6, 8 and 9. Elements 3.1 and 3.2 relate to the preparation and

implementation for participatory mapping with potential rights holders. Comments and questions are encouraged to support the clarification of associated flow charts and recommended actions. Use reference paragraph numbers found in the left margin of the page when addressing specific sections.



3.3 **Conflicting claims between communities**

130 Creating maps and images (including **sketch maps**, geographic information system (GIS) maps overlaid on topographic maps, satellite images, and aerial photographs) can spark latent conflict or re-open boundary discussions. Boundaries between IPTPLCs and between IPTPLCs and other settlement groups are often vague, overlapping, or otherwise disputed. Mapping for the purposes of implementing FPIC may give forests, particularly remote forests, a new value unfamiliar to IPTPLCs. Seeking to establish clear boundaries may, therefore, result in tensions and conflicts. Mechanisms for conflict management and resolution should be planned for in advance for the following scenarios:

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

- 132 **B) Rights of communities are contested or cannot be identified clearly:** The CH should include information such as the factual situation regarding legal and customary rights, the current use of the land and resources, the tenure of the rights being contested, and the positions of the parties involved. Such recording should be undertaken through engagement with the communities involved.
- 133 **C) Multiple communities have different claims to land and resources:** The CH may decide to prioritize the FPIC processes, starting with those having the most recognized customary or legally supported claim or those most directly affected by management activities. This also requires a process of consultation with those who have interests but who lack recognized legal or customary rights and who are not directly affected. Best practices indicate, however, that it is sensible to devise an extensive engagement process and develop an agreement with each of the affected IPTPLC rights holders involved, to prevent competition and resentment among them.

- 134 Note: Affected rights are subject to the scale, intensity, and risk of an operation. The CH may be able to avoid contested areas of an MU or reduce impact through mitigation. However, there may also be circumstances where the only option for the CH is to provide support to the affected rights holders to self-determine their own dispute resolution process.
- 135 **Sketch map:** an outline map drawn from observation rather than from exact survey measurements and showing only the main features of the area.

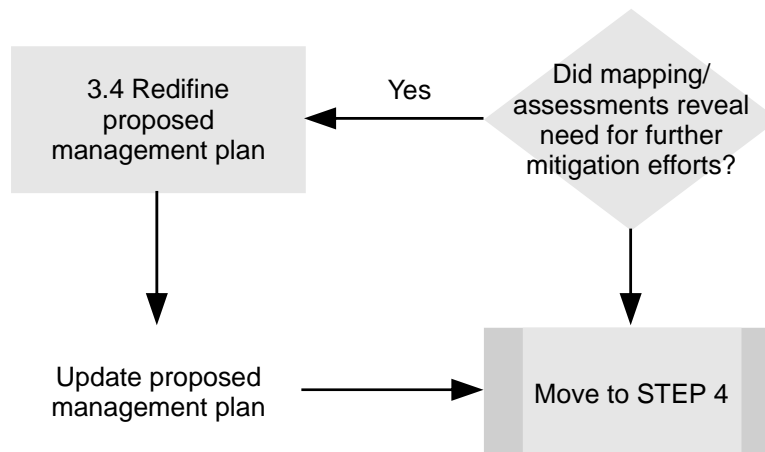
RECOMMENDED ACTIONS:

- 136 CH
- Make dispute resolution support available for affected IPTPLCs
 - Consider mapping ‘usage zones’ rather than customary lands if there are boundary conflicts
 - Observe and record boundary discrepancies for the purposes of audit
 - Avoid instigating conflict where none existed prior to the mapping exercise
 - Review conflict resolution mechanisms agreed to in the process agreement
 - Explain the role of the CH – i.e. its responsibility to discuss with **all** IPTPLCs impacted within the MU as per the requirements of the standard
 - Refer to claims identified in Step 1 (Element 1.2) as a preliminary baseline – and refine when necessary
 - Develop an understanding of IPTPLC land stewardship responsibilities

- Document informed objections to the FPIC process and/or planned forest activity
 - Investigate the nature and scope of the conflict and the role of forest activities in the conflict

137 IPTPLC

- Develop mutually agreeable conflict resolution mechanisms (see the process agreement)
- Seek dialogue and resolution of the conflict, and consider requesting support for this process from the CH or others – perhaps applying customary procedures for conflict resolution



3.4 Redefine proposed management activities and engage in participatory impact assessments

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

Redefine proposed forest management activities

139 Based on the participatory mapping, the CH may need to redefine the proposed management activities and adapt the draft management plan. This should be done before the CH engages in participatory impact assessments, because the impacts will depend on the planned activities. The affected IPTPLCs should be informed, using culturally appropriate methods, about how the outcomes of the

participatory mapping influenced the development of the management plan. This information will be the basis for the impact assessments.

Participatory impact assessment

- 140 An assessment of direct, indirect, and cumulative impacts of multiple-sector development with full respect for traditional, cultural, and social aspects is key. Impact assessments that are part of an FPIC process should be participatory, first, to ensure a continuation of the process of informing the communities of the likely impacts and benefits of the proposed or planned forest management activities. And, second, to guarantee that the assessments include the issues that concern the affected stakeholders. Participation is also helpful to build trust in the relationship and agree on the outcomes of the impact assessment. Since different segments of the affected IPTPLCs may use resources differently, it is important that assessments and baseline studies ensure the participation of all.
- 141 Most impact assessments include mitigation plans, benefit-sharing arrangements, and compensation provisions, but these may be negotiated further at a later stage (see Step 5.2). In cases of co-management or joint venture arrangements between the CH and affected IPTPLC rights holders, more detailed information should be shared (e.g. financial arrangements, profitability of production, pricing mechanisms, loans and debt repayment, and financial risks). Participatory impact assessments are also required to ensure that forest management activities do not negatively affect HCVs (Principle 9).

RECOMMENDED ACTIONS:

- 142 CH
- Inform IPTPLCs of the value – in economic, social, and environmental terms – of the forest resources
 - Determine whether the IPTPLCs have their own forest management plans
 - Agree on the scope and outcomes of the participatory mapping and impact assessments
 - Consider requirements for HCVs in Principle 9
 - Determine whether there is there a need to change the management plan based on input from the impact assessment
 - If a change is necessary, provide an update of the plan to the affected IPTPLCs
 - All changes to be communicated to IPTPLCs in advance of the negotiation phase

143 IPTPLC

- Become familiar with potential positive and negative impacts of forestry operations
- Make IPTPLC forest management plans available to the CH
- Prepare a list of HCV 5 and 6 values (Principle 9) important to the community, being sure to specify what can be shared and what is confidential

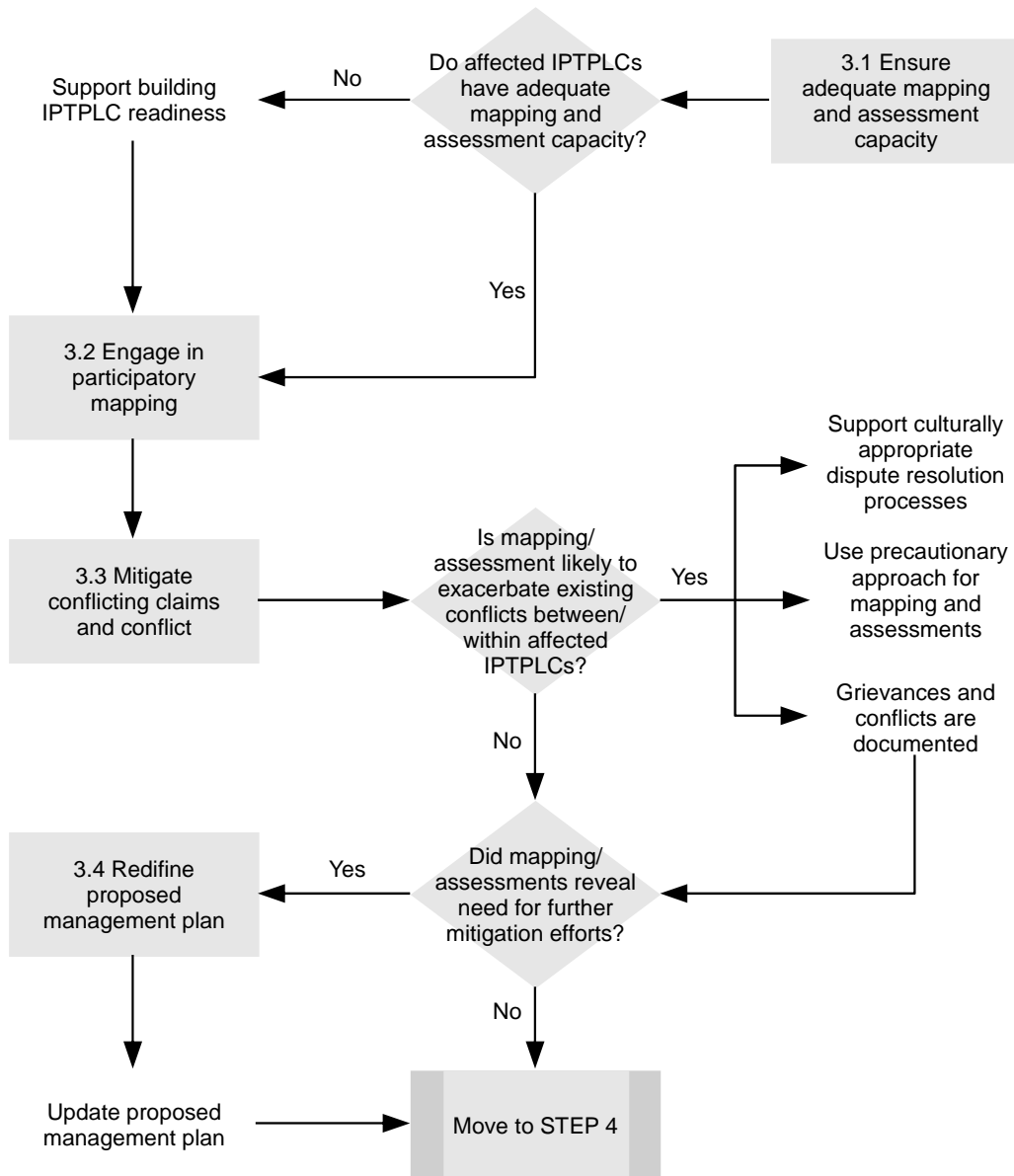


Figure 5. Process elements for Step 3

PUBLIC CONSULTATION QUESTION #15 (Reference paragraphs 130 to 143):

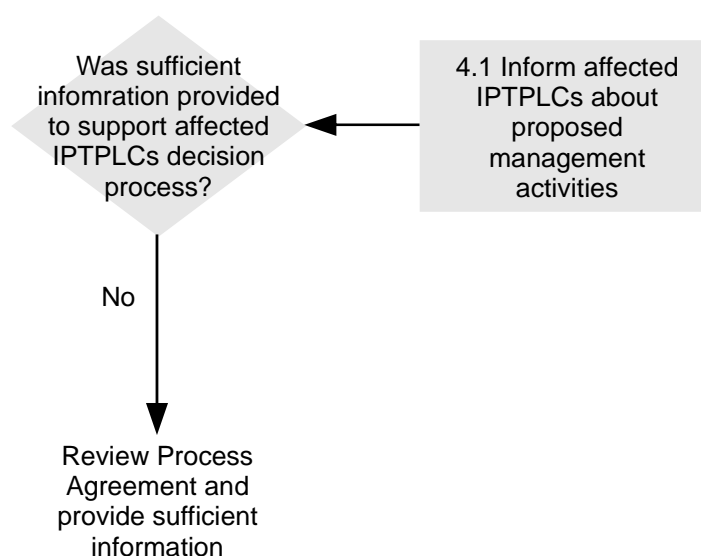
Actions related to Step 3 address participatory mapping and assessment requirements. Element 3.3 focus on identifying lands, territories and resources impacted by proposed management activities, including overlapping and conflicting rights. Element 3.4 addresses the alternation of management activities based on mapping results and impact assessments. Comments and questions are encouraged to support the clarification of associated flow charts and recommended actions. Use reference paragraph numbers found in the left margin of the page when addressing specific sections.

STEP 4: Inform affected rights holders

Elements of Step 4:

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

4.2 The communities decide whether they want to enter into negotiations



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

- 144 Given the outcomes from the participatory impact assessments (see Step 3.4), the organization may need to redefine the proposed activities and adapt the draft forest management plan. This should be done before presenting the draft plan to the communities, since the plan is subject to their consent, given that it affects their rights, lands, and resources. In practice, the participatory mapping, impact assessment, and redefining of the management plan should be an integrated process.
- 145 To build trust, it is crucial that the organization itself always informs the communities fully and transparently, in a timely and unbiased way. It will need to engage the communities in an iterative and inclusive information-sharing process to ensure that their knowledge base expands sufficiently to understand

the technical information and interpret the outcomes of the impact assessments. If the community asks for specific additional information, this should be provided as soon as possible. Reports of the consultations must reflect all opinions.

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

147 **Information on planned or proposed management activities:**

- The purpose, scope, reversibility, size, nature, and duration of the forest operation
- The areas that will be affected
- The outcomes of the participatory mapping
- Alternatives to the project and outcomes of different scenarios
- The benefits and profits the company can expect to make from using the community land

148 There are forest managers that do not use the wood themselves but benefit only from the management fees charged to a remote CH. When a CH is involved in management planning, harvesting, and production, there is a longer line for benefits to contribute to profits. There may be a difference in approach between public and private lands; public lands may be willing to share gross revenue, whereas private landowners may not.

149 **Information on potential impacts and safeguards:**

- The outcomes of the participatory impact assessments and HCV assessment
- Safeguards and measures to identify, assess, analyse, prevent, avoid, mitigate, and remedy actual and potentially negative social, human rights, economic, environmental, and heritage impacts, and a strategy to optimize positive impacts (including sharing of benefits)
- Programmes and activities regarding workers' rights, occupational health and safety, gender equality, IPTPLC relations, local economic and social development, land acquisition (if applicable), stakeholder engagement, and

resolution of grievances, in line with the organization's policies and objectives for socially beneficial management

- The existing legal framework (e.g. forestry laws) and the rights of the community, and how these rights are affected by the planned forestry operation, such as surrendering of land rights
- The different kinds of benefits and payments foreseen for the community

150 **Information on management practices:**

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

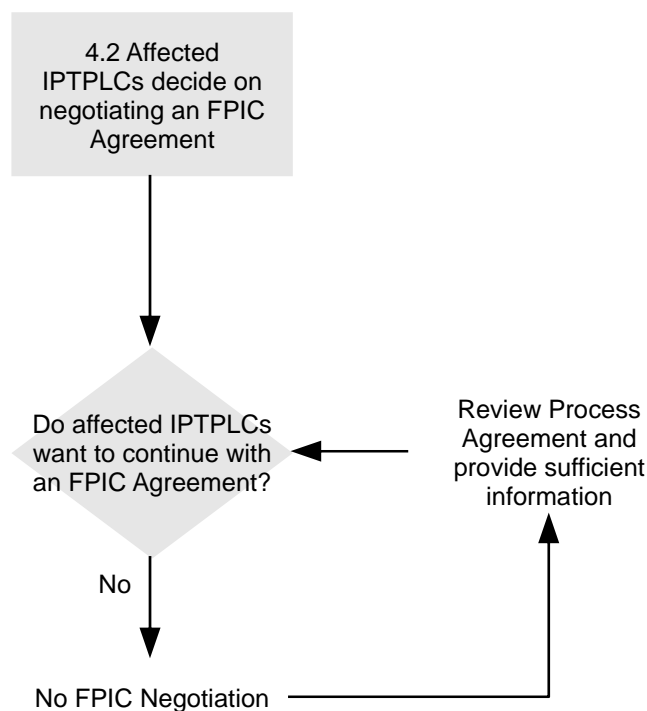
RECOMMENDED ACTIONS:

151 CH

- Redefine management activities and adapt the draft management plan; in some cases, this may be integrated with participatory mapping and impact assessments (integrated processes) in Step 3
- Requirements under P2 and P5 may fulfil some of the needs and concerns of IPTPLCs

152 IPTPLC

- Be prepared to review the revised activities/plan provided by the CH based on data and information provided
- Ensure information-sharing is governed by the process agreement and confidentiality clauses
- Review the information package to determine whether the benefits and risks are proportional to the overall operation
- Make best efforts to inform the community of the effects (environmental, social, economic, and cultural) of the revised management activities
- Consider collective/collaborative approaches to negotiation within the MU (e.g. regional approach between multiple IPTPLCs)



4.2 The communities decide whether they want to enter negotiations

- 153 Once the CH has presented its draft final proposal regarding the planned management activities, the affected IPTPLC rights holders are given time to decide whether they want to enter into negotiations on the final consent agreement. This is, therefore, one of the most important steps in the iterative FPIC process.
- 154 An FPIC agreement is central to the successful implementation of Principle 3, and while the objective of Criteria 3.2 and 3.3 is for the CH to engage in an FPIC process with the explicit intent of obtaining consent for management activities, there are other Criteria within the FSC P&C that require the CH to avoid and mitigate impacts on IPTPLC rights (e.g. Criteria 1.6, 3.4, 7.6, and Principle 9), regardless of the outcome of an FPIC process. Therefore, significant benefit is gained if the CH properly engages in and allocates resources to an FPIC process.
- 155 If the affected IPTPLC rights holders decide not to engage in negotiations, the proposed activities affecting their rights, resources, lands, or territories must be modified or cancelled to avoid any impacts on their rights. The CH may consider continuing its engagement with the affected rights holders if they agree. The CH

may revisit the consent question at a later stage but must ensure that the process remains 'free'. If all agree, the communities and the CH can begin formal negotiations.

RECOMMENDED ACTIONS:

156 CH

- Ensure all members of the certification team understand the benefit of culturally appropriate engagement with IPTPCL rights holders in all aspects of FSC P&C implementation
- Present draft final proposal for consideration (negotiation) towards a final consent agreement
- Decision is taken freely in accordance with the process
- If the community decides not to engage in negotiations:
 - proposed activities affecting their rights, resources, lands, or territories must be modified or cancelled to avoid any impacts on their rights.
 - consider continuing engagement with affected IPTPLCs
- CH acknowledges and supports the affected IPTPLC decision-making process

157 IPTPLC

- Communicate the decision-making process
- Ensure decisions are taken freely, and in accordance with the protocols and process agreement
- Provide a rationale for decisions (e.g. yes, no, not yet) and present them to the CH and the community
- The benefit to explaining the decision (especially if it is 'no') is to allow the CH to enter a problem-solving process, if it decides to try and further accommodate affected rights holders

PUBLIC CONSULTATION QUESTION #16 (Reference paragraphs 144 to 157):

Actions related to Step 4 ensure CH and affected rights holders are engaged in an on-going dialogue related to management activities (Element 4.1). The final element of this stage (4.2) is the second decision-making opportunity of the affected IPTPLC –i.e. a decision is made regarding further negotiation efforts. Comments and questions are encouraged to support the clarification of associated flow charts and recommended actions. Use reference paragraph numbers found in the left margin of the page when addressing specific sections.

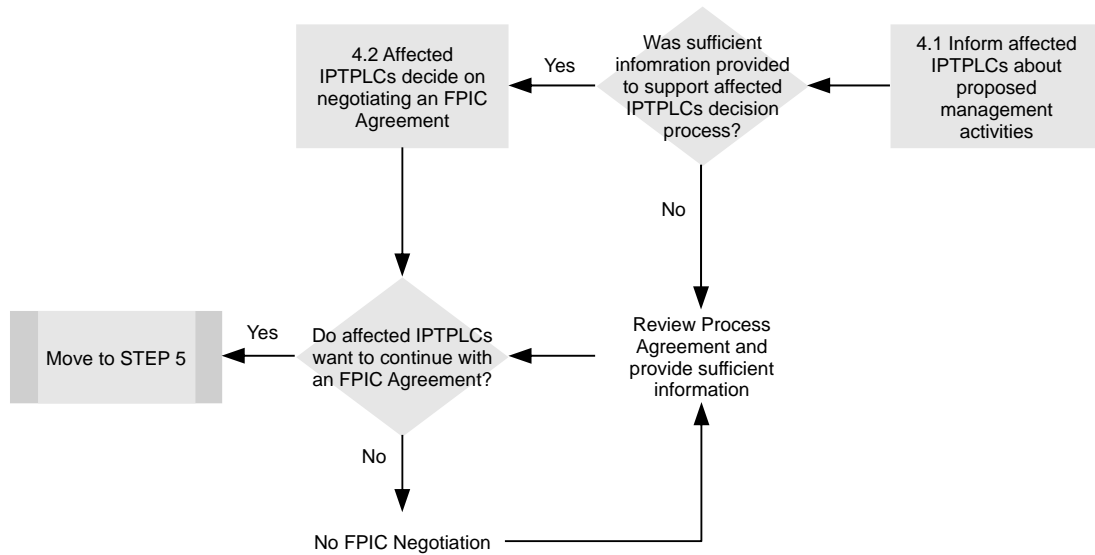
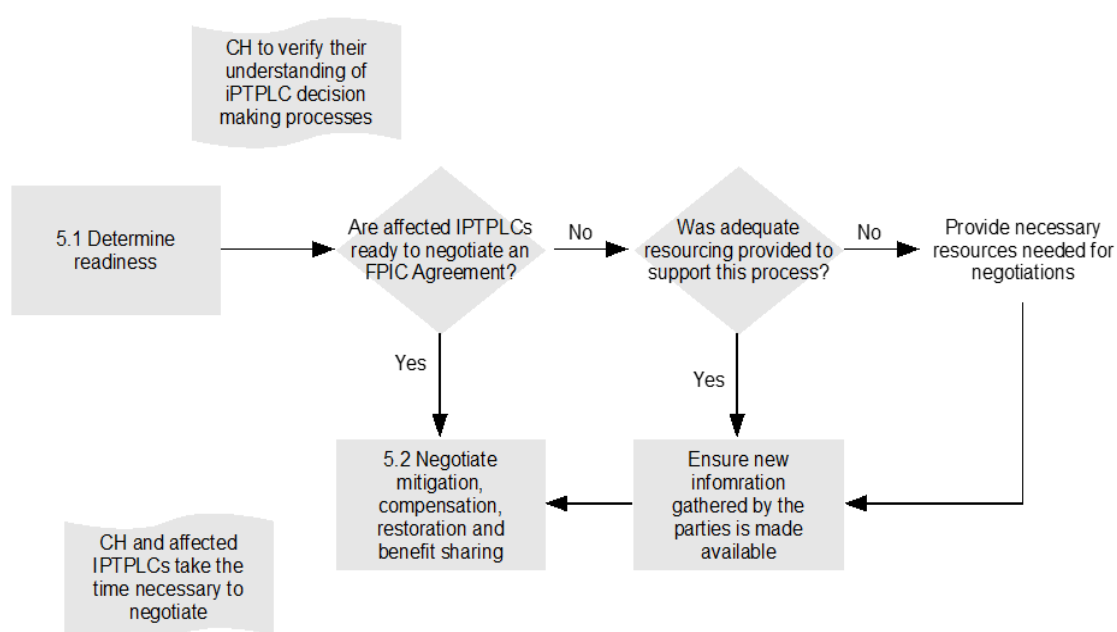


Figure 5. Process elements for Step 4

STEP 5: Negotiate and rights holders decide on the FPIC proposal

Elements of Step 5:

- 5.1 Determine readiness of IPTPLCs
- 5.2 Negotiate mitigation, compensation, restoration, and benefit-sharing
- 5.3 Establish arrangements for resolving complaints, disputes, and conflicts
- 5.4 Set up a participatory monitoring model
- 5.5 The community decides freely on the proposal



5.1 Determine readiness of IPTPLCs

158 Further capacity-building may be needed at this stage to ensure that IPTPLC rights holders are ready for negotiations. Capacity-building needs should be discussed, and an agreement made on delivering this support. At this stage, capacity-building may include:

- conflict management, negotiation and mediation skills, and advocacy techniques;
- monitoring and reporting skills;

- training in effective participation in forest management partnerships (if applicable);
- transparent and accountable book-keeping and financial management; and
- negotiating mitigation, compensation, restoration, and benefit-sharing.

RECOMMENDED ACTIONS:

159 CH

- Review all parties' obligations and targets established through the process agreement with IPTPLCs
- Verify that the CH understands the IPTPLC decision-making process (i.e. who has authority to represent and conclude negotiations)
- Ensure negotiators are fully resourced to enter into negotiations with IPTPLCs
- Confirm negotiation readiness:
 - Confirm affected IPTPLC decision-making process (see the process agreement)
 - Assess and address capacity needs to enter into the negotiation stage
 - Confirm who within the IPTPLC is responsible for conducting and concluding negotiations
- Document the fulfilment of benchmarks of community capacity readiness

160 IPTPLC

- Assess negotiation capacity needs:
 - Technical aspects of forestry operations
 - Conflict management, negotiation and mediation skills, advocacy techniques, monitoring and reporting skills, and transportation needs
 - Training in effective participation in forest management partnerships (if applicable)
 - Transparent and accountable book-keeping and fund management for the benefit of the collective
- Determine who is going to negotiate or assist negotiations and how information will be shared
- Communities prepare expectations of restoration objectives/actions for past grievances (which may not have been caused by the CH but have been inherited by the CH) and include parameters in the process agreement

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

161 Negotiation consists of dialogue on proposals, interests, and concerns. Periods of negotiation and interactive dialogue are likely to be integrated into the process,³ with time allowed for community leaders and members to freely discuss their concerns and proposals among themselves.

162 Several criteria in the FSC P&C (in addition to P3 and P4) can be addressed in a comprehensive negotiation, including:

- C1.4: protect against unauthorized or illegal settlement or resource use
- C1.6: management of disputes
- C4.3: provide reasonable opportunities for employment, training, and other services
- C4.4: contribute to social and economic development
- C3.2/C4.2 (instructions for standard developers): active engagement and co-management
- C5.1: diversify production to strengthen local economy
- C5.4: use local processing, services, and value-addition facilities
- C6.5: restoration of native ecosystems
- C6.7: protect or restore watercourses
- C9.1: identification of HCVs that are critical to the survival of IPTPLCs
- C9.2: develop management strategies with IPTPLCs where their rights and interests have been identified
- C9.4: participatory management planning and monitoring of HCVs.

RECOMMENDED ACTIONS:

163 CH

- Do not rush the negotiation, and ensure the process agreement is implemented (timeline negotiated between the parties)
- Ensure the scope of negotiations is a true reflection of the impact of new and continued management activities on IPTPLC rights. Consider early discussions on:
 - measures to mitigate the negative and optimize the positive impacts;
 - compensation for past, current, or future losses or damages;

³ Negotiations and the implementation of agreed measures are likely to happen on an ongoing basis and will not be approached as a separate process step as it appears here. As with all steps presented in this process, the intent is to ensure that the activity happens at some point.

- benefit-sharing (revenue, job opportunities, and co-management options);
- the conditions and process for withdrawing consent; and
- a dispute resolution process
- If new ideas arise, then these are brought to the negotiating table for consideration as soon as possible
- New CH and current CH may have different timelines, and this should be addressed in the process agreement
- Recognize that perceptions of impacts may differ from those of IPTPLCs and within IPTPLCs

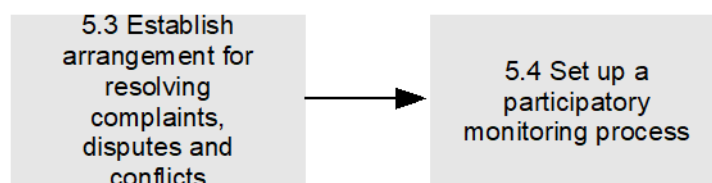
164 IPTPLC

- Take the time needed to negotiate in good faith and to the satisfaction of those affected
- Identify the representative(s) who will negotiate the FPIC process
- Recognize that perceptions of impacts may differ from those of the CH and within IPTPLCs
- Some best practices to consider:
 - Do not rush the negotiation, and ensure the process agreement is implemented (timeline negotiated between the parties)
 - If new ideas arise, then these are brought to the negotiating table for consideration as soon as possible
 - New CH and current CH may have different timelines for implementation, and these conditions should be addressed in the process agreement
 - It is important to have a complete set of records for the negotiation process (e.g. meeting minutes); these documents may be co-developed
 - Check the satisfaction of negotiation results with those affected

165 NOTE: Sections 1.6.5 (Equitable benefit-sharing) and 1.6.6 (Resolution of past grievances) should be reviewed along with this element.

PUBLIC CONSULTATION QUESTION #17 (Reference paragraphs 158 to 165):

Actions related to Step 5 relate to the preparation, readiness and final decision on the FPIC agreement. Elements 5.1 and 5.2 address the question of whether all parties are adequately prepared to enter negotiations. Comments and questions are encouraged to support the clarification of associated flow charts and recommended actions. Use reference paragraph numbers found in the left margin of the page when addressing specific sections.



5.3 Establish arrangements for resolving complaints, disputes, and conflicts

- 166 Both the affected IPTPLC rights holders and the CH should be prepared for unforeseen developments. Despite good intentions and optimal efforts, the parties involved may still raise complaints or grievances that may escalate into disputes or serious conflicts. The inclusion of an arrangement for resolving disputes from either party is a safeguard to maintain a good relationship. In this respect, it is important to resolve any complaints as soon as possible.
- 167 When the dispute-resolution mechanism is mutually agreed, there can be flexibility on how it is designed and implemented. Different mechanisms may be required for different types of disputes or communities.
- 168 Where local or national laws for resolving grievances and compensation exist, implementation of their provisions might suffice to comply with the FSC P&C, provided that the affected IPTPLCs agree that these mechanisms are appropriate.

RECOMMENDED ACTIONS:

- 169 CH
- Affected IPTPLCs should be provided with a contact who is available and able to communicate in their preferred language and format
 - Schedule regular meetings with the affected IPTPLCs so that individuals or the community can raise their concerns
 - If a complaint mechanism has not yet been agreed, this should be addressed in Step 2 (2.5) – the process agreement
- 170 IPTPLC
- Inform the CH about local protocols on dispute resolution
 - Complaints should be identified as early as possible, rather than waiting for an escalation to ‘conflict’ status

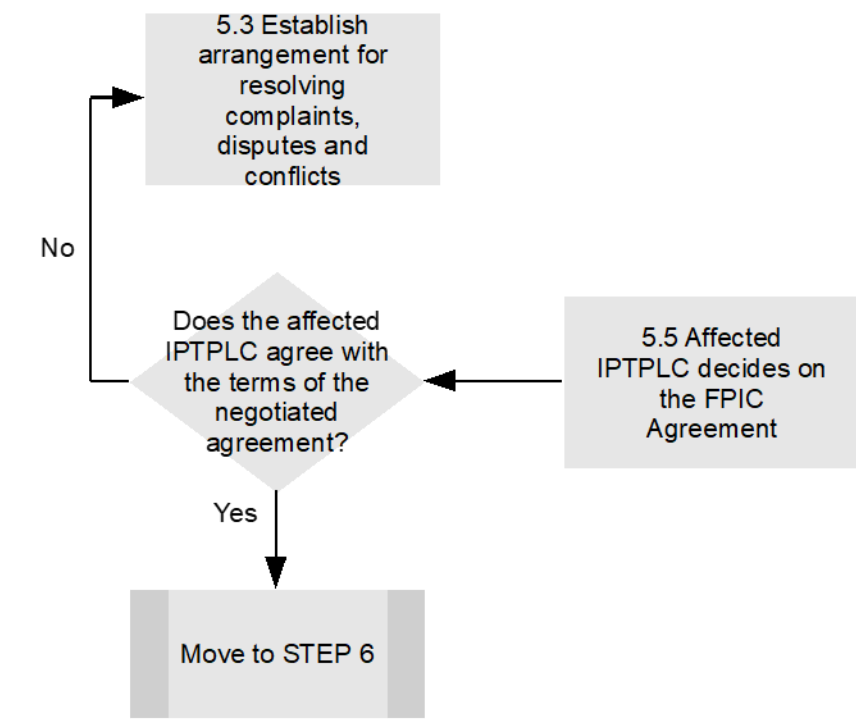
- Note that a complaint process does not remove the right to withhold consent; it provides an opportunity to resolve grievances before they escalate to conflict

5.4 Set up a participatory monitoring model

- 171 Participatory monitoring can be introduced at any stage of the FPIC process, but it is best introduced early so that all parties are aware of ongoing and long-term expectations. The CH should also be aware of monitoring expectations prior to the implementation of management activities. At this process agreement stage (Step 2, 2.5), the CH and affected IPTPLCs should discuss what data will be monitored, who will collect the data and how, and when the periodic analysis will take place.
- 172 When the management activities have begun, the monitoring should begin over set periods – either daily, weekly, monthly, or seasonally. The information that is being recorded is analysed. If the management activities are already ongoing, there are still many benefits to introducing a participatory monitoring process. A basic participatory monitoring process was introduced in Section 1.6.

RECOMMENDED ACTIONS:

- 173 CH
- Ensure that early in the process there is an initial discussion on the desired information and indicators to be monitored
 - Decide on the frequency of data collection, keeping in mind that the affected IPTPLC rights holders may engage in seasonal activities on the MU
 - Ensure the affected IPTPLC rights holders have participated in setting the terms of measurement
 - Consider the benefits of setting up both IPTPLC monitors and CH monitors to collect information that is both useful and meaningful for each party to the FPIC process
- 174 IPTPLC
- Assess whether there is sufficient capacity to participate in monitoring
 - Co-develop priorities for monitoring with the CH
 - If monitoring reveals that the agreement is not being upheld, then consider implementing a penalty clause (e.g. ensuring the problem is resolved in an agreed time frame)
 - Engage supporting experts, or others, to gauge the results of the agreement



5.5 Affected IPTPLCs decide freely on the forest management proposal

175 Decisions on the proposal will be made in accordance with the process agreement. It is, therefore, important to allow time for discussion on interim agreements, ensure freedom and resources for independent counsel, allow enough time for inclusive engagement, and explicitly acknowledge that affected IPTPLCs can still say ‘no’.

RECOMMENDED ACTIONS:

- 176 CH
- Ensure that time and resources are available for the affected IPTPLCs to take a decision according to the terms of the process agreement
- 177 IPTPLC
- The decision is taken according to the process agreement
 - The decision should be shared with the entire community

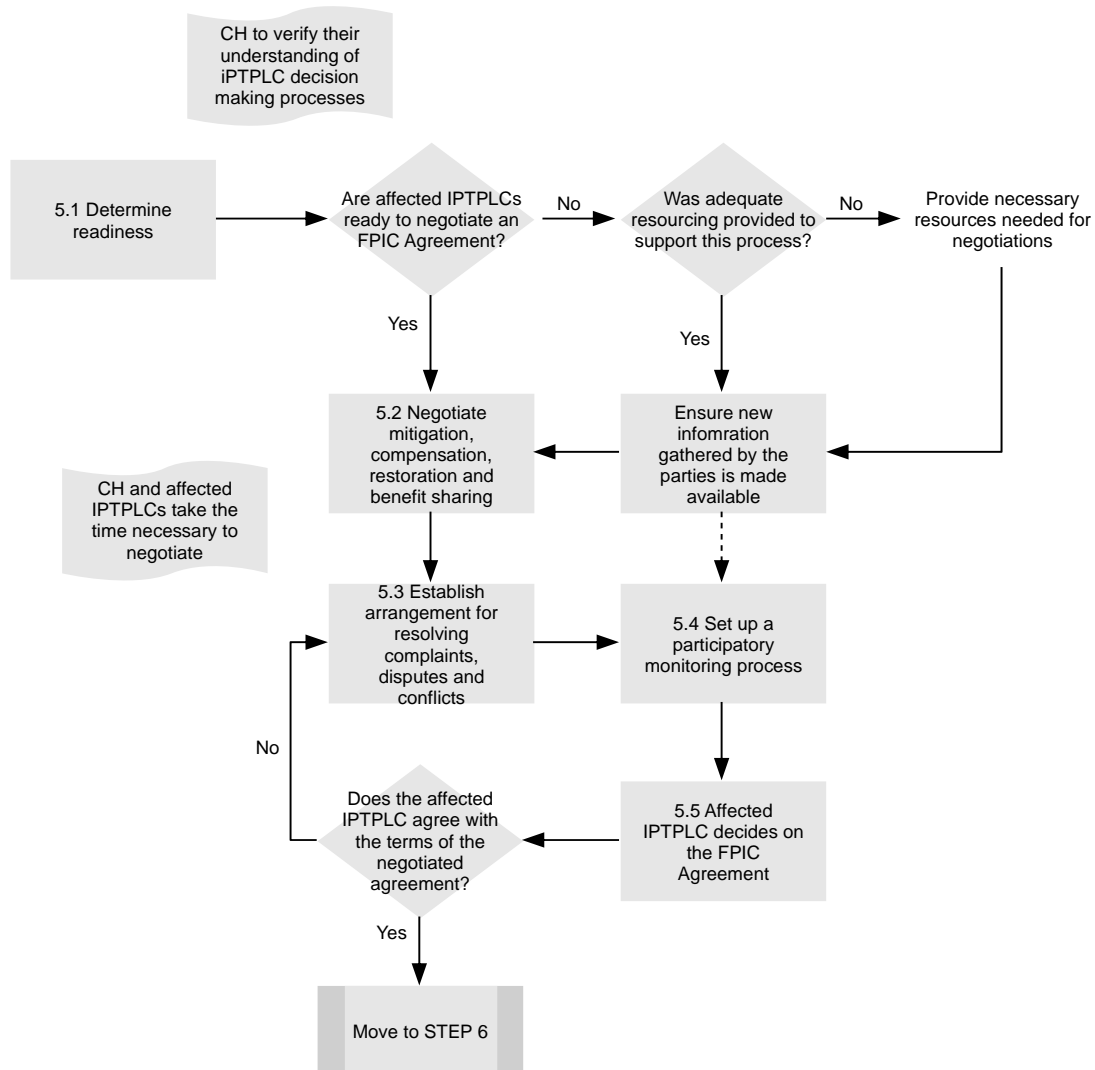


Figure 6. Process elements for Step 5

PUBLIC CONSULTATION QUESTION #18 (Reference paragraphs 166 to 177):

Actions related to Step 5 relate to the preparation, readiness and final decision on the FPIC agreement. Elements 5.3 to 5.5 address important aspects of an FPIC agreement that may be overlooked in other negotiation processes – i.e. dispute resolution and monitoring of the agreement. Comments and questions are encouraged to support the clarification of associated flow charts and recommended actions. Use reference paragraph numbers found in the left margin of the page when addressing specific sections.

STEP 6: Verify and formalize the FPIC agreement

Elements of Step 6:

6.1 Verify the FPIC process

6.2 Formalize the consent agreement

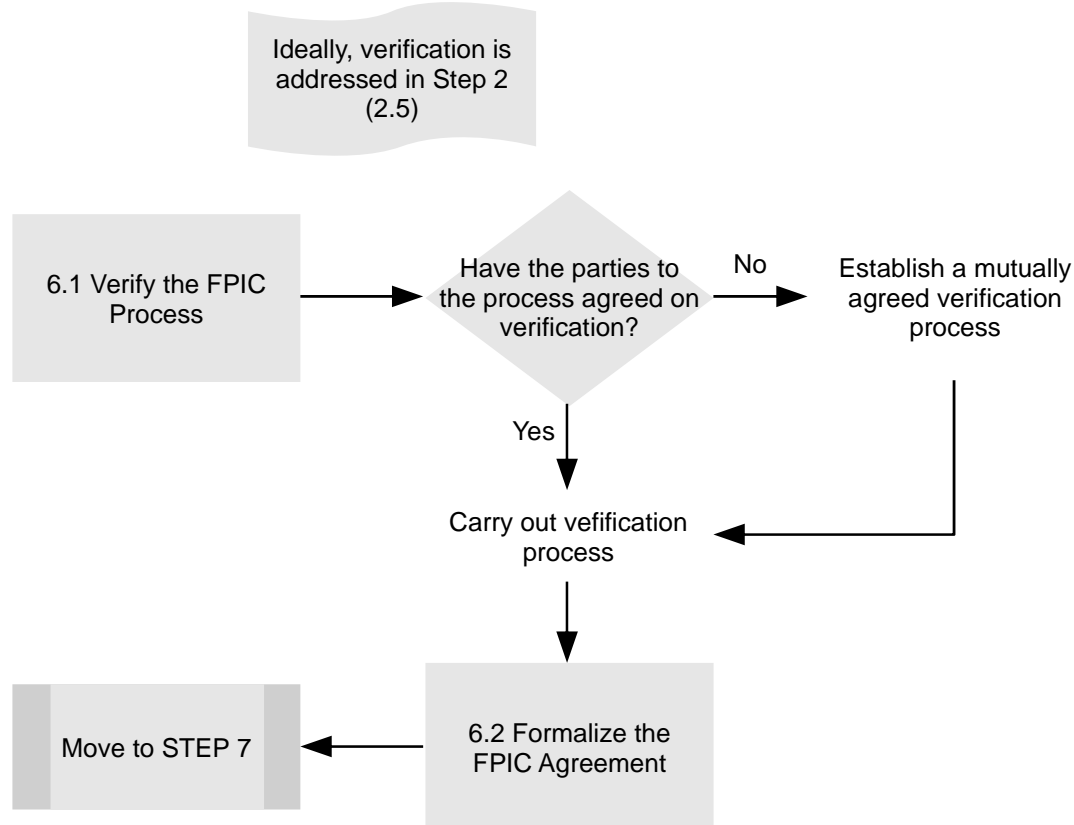


Figure 7. Process elements for Step 6

6.1 Verify the FPIC process

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

179 Verification is a proactive measure to enable early detection of failed or inadequate system design, function, or resourcing. If voluntary verification identifies specific deficiencies in the process or the granting of consent, all parties are able to have an open dialogue to address them. This may result in a request by the affected IPTPLC rights holders to renegotiate a portion of the process agreement.

RECOMMENDED ACTIONS:

180 CH

- Consider the use of independent verification, particularly in complex operating environments
 - Include conditions of verification in the process agreement
 - If an independent observer is used, it should be mutually agreed
- Independent verification should be documented and shared with the affected IPTPLC rights holders as per the process agreement

181 IPTPLC

- Discuss with the CH and support network the value of independent verification
 - Ideally, verification is addressed in the process agreement (Step 2, 2.5)
- If an independent observer is used, it should be mutually agreed with the CH

6.2 Formalize the consent agreement

182 Once the CH and the affected IPTPLCs formalize the FPIC agreement, they are bound by it. The monitoring mechanism should ensure the parties adhere to the agreed activities. If they do not, or if information becomes available that gives good reason to reconsider or renegotiate the FPIC agreement, the parties can make use of the complaint or grievance mechanisms established in the process agreement.

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

RECOMMENDED ACTIONS:

184 CH

- Work to reach mutual agreement on the content and format of the binding agreement
- Maintain appropriate records of all agreements, including written accounts and audio or film records
 - Make records available to IPTPLCs in their preferred language and/or media formats
- Monitor the agreement and make records available to the CB
- Maintain relationships in good faith, understanding that at any time an affected IPTPLC rights holder may give reason to withdraw consent

185 IPTPLC

- Work to reach mutual agreement on the content and format of the binding agreement
- Identify possible reasons for the community to withhold/withdraw consent, and ensure they are discussed with the CH and included in the agreement

PUBLIC CONSULTATION QUESTION #19 (Reference paragraphs 178 to 185):

Actions related to Step 6 relate to the voluntary process of verification of the FPIC process and the formalization of the FPIC agreement. Comments and questions are encouraged to support the clarification of associated flow charts and recommended actions. Use reference paragraph numbers found in the left margin of the page when addressing specific sections.

STEP 7: Implement and monitor the FPIC agreement

Elements of Step 7:

7.1 Implement and jointly monitor the FPIC agreement

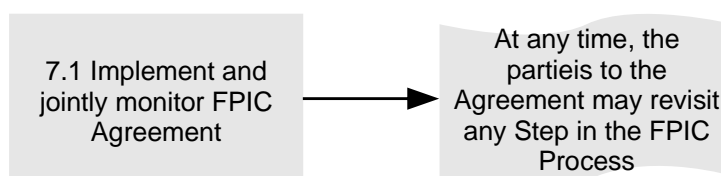


Figure 8. Process elements for Step 7

7.1 Implement and jointly monitor the FPIC agreement

- 186 It is important to be aware that the relationship between the CH and affected IPTPLC rights holders does not end once a consent agreement is reached. All parties should continue to invest in a good relationship by honouring the agreement and applying the tools and knowledge acquired during the FPIC process.
- 187 The agreements reached through an FPIC process are based on trust. This requires that representatives of involved parties must know and respect each other, must be accessible, and must be willing and able to find solutions during and after the initial agreement process. Any important new information or changing circumstances or policies should be shared transparently and discussed if necessary.

RECOMMENDED ACTIONS:

- 188 CH
- Ensure the monitoring is participatory and focuses on whether the FPIC agreement and the associated management plan are being implemented as agreed
 - Remain accessible to the IPTPLCs and open to reviewing the agreement when new information is shared
 - Maintain good relationships
- 189 IPTPLC

- Implement and monitor according to the agreement Maintain good relationships

PUBLIC CONSULTATION QUESTION #20 (Reference paragraphs 186 to 189):

Actions related to Step 7 address the implementation and monitoring of the FPIC Agreement. Comments and questions are encouraged to support the clarification of associated flow charts and recommended actions. Use reference paragraph numbers found in the left margin of the page when addressing specific sections.

PUBLIC CONSULTATION QUESTION #21

How do you rank the presentation and format of the Guideline (Use scale of 1 to 5 (1 being low and 5 being high)? Additional comments?

PUBLIC CONSULTATION QUESTION #22

How useful would it be to include recommended actions for certifying bodies and local communities in Draft 2 of this document (Use scale of 1 to 5 (1 being low and 5 being high)? Additional comments?

PUBLIC CONSULTATION QUESTION #23

Would a table collating the recommended actions of all parties to an FPIC process be a useful (Use scale of 1 to 5 (1 being low and 5 being high)? Additional comments and suggestions?

PUBLIC CONSULTATION QUESTION #24

Commentary on the overall FPIC Guidance. E.g. Missing elements; confusing or conflicting concepts; clarification questions etc.

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