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FSC SUPPORT TO RESPECT FOR HUMAN RIGHTS

The big picture

FSC certification is a good tool to ensure respect for relevant human rights in the forestry and forest industry sector. It focuses on labour rights at all levels and at the forest management level it has specific requirements regarding customary, community, and Indigenous Peoples' rights. The impact of FSC is due to the combination of four elements:

- requirements in its standards for certificate holders;
- third-party verification of performance against these standards;
- stakeholder engagement in standard setting, performance evaluations, and complaints procedures;
- its *Policy for Association*, which extends its impact beyond certified operations.

As FSC sets requirements for organizations (public or private companies, cooperatives, etc.) and not for governments, this paper presents evidence for the FSC claim that it supports human rights, through the lens of the United Nations *Guiding Principles on Business and Human Rights* (2011).

Human rights are supported as a consequence of the FSC mission to promote responsible forest management explicitly in social, environmental, and economic terms. Research shows that the social impact of FSC goes beyond avoidance of violations of human rights, rather fostering additional social and economic benefits for the workers involved, as well as local communities and Indigenous Peoples affected by FSC-certified forest operations.

Introduction

In this paper we explain how FSC certification assists the forest sector in respecting and applying human rights, as laid down in the United Nations Universal Declaration of Human Rights and other related agreements.

FSC's role is to guide actors in the forest sector towards sustainable forest management practices – environmentally, socially, and economically – and therefore it makes more sense to compare its requirements and implementation practices with the United Nations *Guiding Principles on Business and Human Rights* (2011),¹ which can be seen as an interpretation of the Universal Declaration of Human Rights for economic actors. For FSC, this does not mean private sector actors only, as 70 per cent of the world's forests are publicly owned and a substantial proportion of those are managed by state/public agencies.

More specifically, we focus on Parts II and III of the Guiding Principles – 'The corporate responsibility to respect human rights' and 'Access to remedy' – because Part I specifically addresses states. While FSC implicitly supports states in their efforts to uphold human rights, it cannot give instructions to states on legislation and enforcement.

How FSC works

In the last 25 years, FSC certification has become the most trusted tool for promoting sustainable forest management globally. Its widespread international success rests on more than two decades of work with foresters, the processing industry, environmental and social organizations, and Indigenous Peoples. In 2019, some 200 million hectares of natural, semi-natural, and plantation forests, in 85 countries, are FSC certified. FSC estimates that these forests produce more than 23 per cent of all industrial roundwood harvested in the world.

Mobilization of market actors – both retailers and consumers – has also been an important part of the success of FSC. Companies, public procurers, and individual consumers are interested in products from sustainably managed forests and express their preference for products made using FSC materials. The FSC chain of custody certification² ensures that these materials are identified and tracked from the forest to the consumer, either as 100% pure, or mixed in a verified and transparent way with 'controlled' or recycled materials.

FSC is recognized for its unique governance system, in which environmental, social, and economic actors work together in a balanced multi-stakeholder system to define responsible forest management and to control products from it. In addition, for Indigenous Peoples and local communities that are (potentially) affected by certified forest operations, FSC requires the facilitation of meaningful engagement, including through free, prior, and informed consent.

FSC requirements are most detailed for forest management units. Specific requirements are also formulated for companies that process and/or trade FSC-certified forest materials. Any company that is working with FSC certificates has to sign up to the *Policy for Association*,³ which includes respect for human rights.

The credibility and transparency of FSC is maintained by third-party certification bodies – accredited by a specialized international accreditation organization (Assurance Services International) – which grant FSC forest management and chain of custody certificates, control and monitor performance, demand corrective actions where necessary, and withdraw certificates when companies no longer comply with certification requirements.

1 Business & Human Rights Resource Centre (2019) UN Guiding Principles. London. <https://www.business-humanrights.org/en/un-guiding-principles> (accessed 1 July 2019).

2 FSC STD-40-004 V3-0 *Chain of Custody Certification*.

3 FSC-POL-01-004 V2-0 *Policy for the Association of Organizations with FSC*.

The human rights dimension of the FSC scheme

In certified forest management units

The FSC *Principles and Criteria for Forest Stewardship*⁴ form the basis for the FSC scheme. For human rights, the following are particularly relevant:

- **Principle 1:** Compliance with laws
- **Principle 2:** Workers' rights and employment conditions
- **Principle 3:** Indigenous Peoples' rights
- **Principle 4:** Community relations
- **Principle 9:** High conservation values.

For ensuring that the requirements are properly applied, the following are also relevant:

- **Principle 7:** Management planning
- **Principle 8:** Monitoring and assessment.

FSC does not use the broad term 'human rights' in its Principles and Criteria (P&C). As an organization focusing on forestry, it specifically addresses workers', customary, community, and Indigenous Peoples' rights. These four specifications of human rights concepts are the ones that can be affected by forest management interventions, and are therefore the areas in which FSC can make a difference with its standards and verification mechanisms.

Note: The principles mentioned above are part of Version 5 of the FSC P&C. They were adopted in 2012 and further elaborated in 2015 in *International Generic Indicators*.⁵ In several countries, the national FSC standards are still based on Version 4 of the P&C. Version 4 essentially included the same requirements related to human rights.

These principles are elaborated further in the globally applicable criteria and the international generic indicators. These indicators have to be transposed into FSC National Forest Stewardship Standards. Independent, accredited certification bodies determine certification of individual forest management units and apply annual field audits to verify whether the requirements continue to be properly implemented. Public, as well as expert, consultations and interviews are elements of the work of the auditors of these certification bodies, to get indications about potential risk areas and relevant conflicts. Such consultations include members of workers' organizations as well as representatives of local and, where present, Indigenous Peoples communities.

The relevant parts of FSC forest management requirements are presented in the Annex.

Chain of custody, controlled wood, Policy for Association

To prevent abuse of the FSC claims and labels, FSC has set up a chain of custody system whereby every company in a supply chain has to follow certain requirements, which are, as with the forest managers, verified by accredited certification bodies.

4 FSC-STD-10-001 V5-2 *FSC Principles and Criteria for Forest Stewardship*.

5 FSC-STD-60-004 V2-0 *International Generic Indicators*.

One obligation for FSC-certified chain of custody companies is that they commit themselves (through self-declaration) to not being directly or indirectly involved in six specific activities, including:

- a. illegal logging or the trade in illegal wood or forest products
- b. violation of traditional and human rights in forestry operations
- c. destruction of high conservation values in forestry operations
- f. violation of any of the ILO [International Labour Organization] Core Conventions, as defined in the ILO Declaration on Fundamental Principles and Rights at Work, 1998.⁶

Moreover, FSC allows such FSC-certified processing industries to mix certified materials with (recycled materials and) 'controlled wood'. Controlled wood comes from countries, regions, and/or forest management units that have been assessed as 'low risk' against five criteria. These include the prevention of:

1. illegally harvested wood
2. wood harvested in violation of traditional and human rights
3. wood from forests in which high conservation values are threatened by management activities.⁷

And finally, any company that has any type of FSC affiliation (certificate holder, certification body, partner, member) can be excluded from such affiliation if it is proven to be involved in any of six unacceptable activities, including:

- a. illegal logging or the trade in illegal wood or forest practices
- b. violation of traditional and human rights in forestry operations
- c. destruction of high conservation values in forestry operations ...
- f. violation of any of the ILO Core Conventions.⁸

The relevance of these four categories for human rights is explained in the Annex, because while the Annex is a compilation of quotes from the *International Generic Indicators* for forest stewardship, FSC uses the same explanations for legality, rights, conservation values, and ILO Core Conventions for application of the standards for chain of custody and controlled wood and for its *Policy for Association*.

The action required directly in the chain of custody (including the controlled wood risk assessments) is limited to workers' rights (laid down in ILO Core Conventions), but the companies involved should also avoid indirect violation of rights of local communities and Indigenous Peoples at the forest level. In the rest of this document we focus on the forest level.

Third-party verification

As mentioned above, FSC certificate holders are subject to annual audits by certification bodies that are accredited to work for FSC. The auditors verify whether the forest manager, trading or processing company complies with the FSC requirements. In case of noncompliance, companies are given an opportunity to apply corrective actions within a specified time period. In relevant cases, a certificate can be suspended so that no actions can take place with FSC claims. In case of failure to move into compliance, a certificate will be withdrawn.

FSC has obligatory standards and procedures with minimum requirements for the qualifications and activities of certification bodies.⁹

6 *Chain of Custody Certification.*

7 FSC STD-40-005 V3-1 *Requirements for Sourcing FSC® Controlled Wood.*

8 *Policy for Association.*

9 FSC-STD-20-001 V4-0 *General Requirements for FSC Accredited Certification Bodies*;
FSC-PRO-20-001 V1-1 *Evaluation of the Organization's Commitment to FSC Values and Occupational Health and Safety in the Chain of Custody*;
FSC-STD-20-006 V3-0 *Stakeholder Consultation for Forest Evaluations*;
FSC-STD-20-007 V3-0 *Forest Management Evaluations* [+ Addendums on reporting];
FSC-STD-20-011 V4-0 *Chain of Custody Evaluations*;
FSC-STD -20-012 V1-1 *Standard for Evaluation of FSC Controlled Wood in Forest Management Enterprises.*

When there are doubts about the reliability of the trading of certified goods between companies in an FSC supply chain, the international oversight body, Assurance Services International, can set up a special transaction verification procedure.

The systematic third-party verification does not cover the *Policy for Association*. That is triggered by complaints from stakeholders, and investigations and decisions are taken by FSC International directly.

How do the FSC forest management requirements fulfil the United Nations *Guiding Principles on Business and Human Rights*?

Note: The relevant principles from the Guidelines are shown in bold.

Corporate responsibility to respect human rights (Guiding Principles section II)

Foundational principles

- 11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.**

FSC specifies respect for the human rights of workers, communities, and Indigenous Peoples, and specifies the relevance of customary rights beyond the law. The FSC national standards contain a multitude of requirements to identify and respect such rights in procedures where these ‘affected stakeholders’ are involved. The precautionary approach and the free, prior, and informed consent obligation are important elements of that, as is the need for “mechanisms for resolving grievances and providing fair compensation”.¹⁰

- 12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.**

The Bill of Human Rights consists of the United Nations Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966). All three consist of obligations with which signatory states must comply. The themes that are relevant to forestry include non-discrimination of any kind; equal rights for men and women; equality before the courts; prevention of torture and proper treatment in case of accusations; freedom of thought, conscience, religion, expression, organization; and choice of work. They include workers’ rights that have been further elaborated in the ILO Core Conventions, the right to an adequate standard of living for everyone, the right to education, and the right to the highest attainable standard of physical and mental health. They also include the requirement for states to provide effective remedies for violations, and compensation.

These legal instruments address states, but companies can contribute to upholding some of these rights in their operations; this is particularly the case for social rights.

The ILO Declaration on Fundamental Principles and Rights at Work (1998) focuses on four principles:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labour;
- the effective abolition of child labour; and
- the elimination of discrimination in respect of employment and occupation.

These four principles are elaborated in the eight ILO Core Conventions. FSC requires forest managers to uphold the rights laid down in the ILO Declaration and in the ILO Core Conventions (see Annex for details, Criterion 2.1).

¹⁰ See Criteria 2.6 and 4.6, *Principles and Criteria*.

Furthermore, processing and trading companies working with FSC-certified materials are also obliged to commit themselves to these conventions. As mentioned above, any company can have its FSC certificate, trademark licence, and/or FSC membership suspended or cancelled if it is proven that it is responsible, anywhere in its company or subsidiary companies, for violation of these ILO Core Conventions and Fundamental Principles (FSC *Policy for Association*).

13. The responsibility to respect human rights requires that business enterprises:

- a. **avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;**
- b. **seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.**

As detailed in the Annex, FSC has a multitude of specific requirements focused on workers, communities, and Indigenous Peoples – all ‘affected stakeholders’ – to which forest managers have obligations of respect, consultation, and agreement, with the aim to prevent violation of any relevant right. The precautionary approach and the free, prior, and informed consent obligation are important elements of that, as is the need for “mechanisms for resolving grievances and providing fair compensation”.

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts.

FSC recognizes that “scale, intensity and risk of management activities”¹¹ play a role in determining health and practices – the ILO code of practice on *Safety and Health in Forestry Work*¹² forms the bottom line. Proportionality can also be found in several other requirements, such as support for local communities. In general, however, proportionality is more commonly addressed in requirements regarding environmental issues and management practices than in relation to rights of affected stakeholders.

15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- a. **a policy commitment to meet their responsibility to respect human rights;**
- b. **a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;**
- c. **processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.**

All these elements are addressed in the FSC standards for forest management, controlled wood, and chain of custody, and in its *Policy for Association*, all in relation to human rights at the forest level.

Operational principles

Policy commitment

16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- a. **is approved at the most senior level of the business enterprise;**
- b. **is informed by relevant internal and/or external expertise;**
- c. **stipulates the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;**

¹¹ Criterion 2.3 and others, *Principles and Criteria*.

¹² International Labour Organization (1998) *Safety and Health in Forestry Work, An ILO Code of Practice*. Geneva.

- d. **is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;**
- e. **is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.**

A statement is not required by FSC. The FSC requirements for management plans, transparency, engagement with affected stakeholders, and the specific rights-oriented components, together form an adequate response to the spirit of this principle.

Human rights due diligence

17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.

Human rights due diligence:

- a. **should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;**
- b. **will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;**
- c. **should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.**

18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

- a. **draw on internal and/or independent external human rights expertise;**
- b. **involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.**

The due diligence that FSC requires is built on three components:

- the requirement to comply with national law and ratified international agreements, including on third parties' rights;
- the specific rights that are defined in the FSC P&C and indicators;
- the obligations for stakeholder consultation and engagement.

19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.

a. Effective integration requires that:

- i. **responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;**
- ii. **internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.**

b. Appropriate action will vary according to:

- i. **whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;**
- ii. **the extent of its leverage in addressing the adverse impact.**

In the FSC context, impact assessment findings are integrated into the management plan and actioned in its implementation.

20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

- a. be based on appropriate qualitative and quantitative indicators**
- b. draw on feedback from both internal and external sources, including affected stakeholders.**

FSC Principle 8 is entirely dedicated to monitoring. It includes specific indicators and subjects for monitoring (for more information see the Annex).

Monitoring is based on the management plan, which has to include verifiable targets (Criterion 7.3). Foresters need to have a 'tracking and tracing system' for their management activities (proportionate to scale, intensity, and risk).

21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- a. be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;**
- b. provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;**
- c. in turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.**

Foresters are obliged to make a summary of their management plans available (Criterion 7.5). Confidential information can be excluded. The results of monitoring also need to be published (Criterion 8.4).

Remediation

22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

The FSC rules for forest management include requirements for "resolving grievances and providing fair compensation".

Issues of context

23. In all contexts, business enterprises should:

- a. comply with all applicable laws and respect internationally recognized human rights, wherever they operate;**
- b. seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;**
- c. treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.**

FSC Principle 1 is compliance with laws and international agreements, including third parties' rights. Beyond legal obligations, FSC requires respect for 'customary rights', the ILO Core Conventions (irrespective of whether they are ratified by the country concerned), and it has a range of specific requirements for workers, communities, and Indigenous Peoples, which in many cases may go beyond the law (see the Annex for details).

24. Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

FSC underlines the need to act in proportion of scale, intensity, and risk, and in certain cases it sets specific requirements, such as indicator 4.5.4, which tells operators to cease operations in areas when disputes are of substantial magnitude, substantial duration, or involve a significant number of interests.

Access to remedy (Guiding Principles section III)

Operational principles

Non-state-based grievance mechanisms

29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

The FSC requirements on workers' rights and employment conditions (Principle 2) include a specific criterion (2.6) and indicators to ensure that:

- the organization has proper dispute resolution processes in place, “developed through culturally appropriate engagement with workers”;
- workers' grievances are identified and responded to, and either resolved directly or made subject to the dispute-resolution process;
- up-to-date records of workers' grievances are maintained;
- fair compensation is provided to workers for work-related loss or damage of property and occupational disease or injury.

Moreover, FSC requires grievance-resolving mechanisms for local communities, to ensure fair compensation to local communities and individuals in relation to the impacts of the management activities of the organization. The processes have to be publicly available and ensure culturally appropriate engagement of the affected communities; issues are to be resolved in a timely manner and records need to be kept.

Importantly, a dispute-resolution process may lead to prevention or modification of certain operations (see Annex for more details: indicator 3.2.4 for Indigenous Peoples and indicator 4.2.4 for local communities).

30. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.

FSC expects stakeholders who have an issue with a certificate holder to seek a solution with that manager/owner first. If that does not work, the stakeholder can approach the certification body that is responsible for auditing that certificate holder. The identity of that body is available on the public database of FSC certificates. Certification bodies have specific instructions from FSC on how and within what time limits to investigate and respond to complaints. They are also obliged to register such complaints with FSC International (for details, see FSC STD-20-001 V4-0 *General Requirements for FSC Accredited Certification Bodies*). If a complainant is not satisfied with the response from and actions of a certification body, it can appeal to Assurance Services International, and finally to FSC International.

For violations of the *Policy for Association*, stakeholders can go directly to FSC International. Such complaints are addressed via a specific procedure in which the Board of FSC International appoints a three-person investigation team, representing the three main interests ('chambers') in FSC (economic, environmental, and social). This team reports to the Board, which takes the final decision about disassociation and, if the organization is interested, conditions and a roadmap to end disassociation.

31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- a. Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;**
- b. Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;**
- c. Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;**
- d. Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;**
- e. Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;**
- f. Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;**
- g. A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;**

Operational-level mechanisms should also be:

- h. Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.**

The following indicates how the FSC system applies at each point.

- (a) FSC requires certification bodies to annually review the performance of certified organizations against the indicators, and these reviews must include interviews with relevant stakeholders. Moreover, FSC has established complaints procedures that can be used to object to non/poor implementation of certain requirements. Indigenous Peoples', local communities', and workers' issues have been subject to such complaints, indicating that the system works.¹³
- (b and h) Regarding accessibility, FSC differentiates two types of complaints.
 - For violation of specific certification requirements: organizations need to make sure that affected stakeholders are familiar with the procedures of engagement and complaints (see Annex). The first, logical, step is that a complainant approaches the company itself. If they are familiar with the FSC system, they can find information about standard requirements as well as grievance procedures in the national forest management standard and/or in the FSC international standards (international generic indicators, chain of custody). However, these exist in English and Spanish only.
 - For violations against the FSC *Policy for Association*: a stakeholder can find all necessary information on the FSC website: <https://ic.fsc.org/en/what-is-fsc/what-we-do/dispute-resolution> (but this is also only in English and Spanish).
- (c, d, and e) The procedures are clearly described in the above-mentioned standards, which include rules about transparency.
- (f) Rights compatibility results from the standards FSC applies, with a strong focus on, as a minimum, compliance with relevant laws and other regulations.

¹³ See list of standards for certification bodies, including on stakeholder consultation, in footnote 9.

- (g) FSC has no mechanism for continuous learning in this field, but it updates its standards frequently with advisory notes (similar to amendments) and less frequently with complete revisions.

While the United Nations *Guiding Principles on Business and Human Rights* do not explicitly mention it, language is important. FSC requires certificate holders to practise “culturally appropriate engagement” with Indigenous Peoples and with local communities¹⁴ and, while this is not mentioned, language is an obvious part of that approach. In dealing with complaints at the international level, FSC is formally required to work in English or Spanish only; in practice, however, FSC accommodates working in other languages where possible and reasonable.

¹⁴ Indicators 3.2.1 and 4.2.1, *International Generic Indicators*.

ANNEX

Human rights-relevant FSC requirements for forest management

Note: In FSC standards, the actor is always referred to as the 'Organization'. This can relate to a commercial company, a state forest agency, a smallholder, or a community. Some 25 per cent of the 1,500 FSC forest certificates in the world are in fact 'group certificates', bringing together some 165,000 foresters who share the responsibility for keeping in line with FSC requirements.

Note: The quotations below are a selection. For the full picture you are advised to read FSC-STD-60-004 V2-0 *International Generic Indicators*.

Principle 1: Compliance with laws

Directly relevant for human rights is:

Criterion 1.3 The Organization ... shall comply with the associated legal obligations in applicable national and local laws and regulations and administrative requirements.

The Annex to this criterion, the 'Minimum list of applicable laws, regulations and nationally-ratified international treaties, conventions and agreements', includes legislations on 'third parties' rights', including legislation:

covering customary rights relevant to forest harvesting activities including requirements covering the sharing of benefits and indigenous rights;

covering 'free prior and informed consent' in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation;

that regulates the rights of indigenous people as far as it's related to forestry activities. Possible aspects to consider are land tenure, and rights to use certain forest related resources or practice traditional activities, which may involve forest lands.¹⁵

Criterion 1.6 The Organization shall identify, prevent and resolve disputes over issues of statutory or customary law, which can be settled out of court in a timely manner, through engagement with affected stakeholders.

The indicators associated with this criterion emphasize that there should be "culturally appropriate engagement" with stakeholders to resolve disputes.

Beyond compliance with legislation, FSC has its own requirements, which can go beyond legality, as shown below.

Principle 2: Workers' rights and employment conditions

The Organization shall maintain or enhance the social and economic wellbeing of workers.

Criterion 2.1 The Organization shall uphold the principles and rights at work as defined in the ILO Declaration on Fundamental Principles and Rights at Work (1998) based on the eight ILO Core Conventions.

The indicators under this criterion further specify the requirements to:

not use child labour

eliminate all forms of forced and compulsory labour

ensure that there is no discrimination in employment and occupation

respect freedom of association and the right to collective bargaining.

¹⁵ ADVICE-20-007-17 (contained in FSC-DIR-20-007).

Criterion 2.2 The Organization shall promote gender equality in employment practices, training opportunities, awarding of contracts, processes of engagement and management activities.

This is further specified in nine indicators which, beyond the issues mentioned in the criterion itself, mention equal pay, maternity and paternity leave availability, composition of management committees, and that “confidential and effective mechanisms exist for reporting and eliminating cases of sexual harassment and discrimination based on gender, marital status, parenthood or sexual orientation.”

Criterion 2.3 The Organization shall implement health and safety practices to protect workers from occupational safety and health hazards. These practices shall, proportionate to scale, intensity and risk of management activities, meet or exceed the recommendations of the ILO Code of Practice on Safety and Health in Forestry Work.

In the indicators, there is specific attention to personal protective equipment, record-keeping, and a performance obligation that “the frequency and severity of accidents are consistently low compared to national forest industry averages.”

Criterion 2.6 The Organization through engagement with workers shall have mechanisms for resolving grievances and for providing fair compensation to workers for loss or damage to property, occupational diseases, or occupational injuries sustained while working for The Organization.

The other criteria under Principle 2 focus on wages, training, and supervision.

Principle 3: Indigenous Peoples' rights

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

The term “legal and customary” means that the organization has to identify and respect rights that are not secured by law but that carry the same weight. FSC defines customary rights as: “Rights which result from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit.”¹⁶

Criterion 3.1 The Organization shall identify the Indigenous Peoples that exist within the Management Unit or those that are affected by management activities. The Organization shall then, through engagement with these Indigenous Peoples, identify their rights of tenure, their rights of access to and use of forest resources and ecosystem services, their customary rights and legal rights and obligations, that apply within the Management Unit. The Organization shall also identify areas where these rights are contested.

To consider the local context of forest operations and to clarify the need to adhere to the indicators for this criterion, the concept of ‘culturally appropriate engagement’ is introduced again.

Criterion 3.2 The Organization shall recognize and uphold the legal and customary rights of Indigenous Peoples to maintain control over management activities within or related to the Management Unit to the extent necessary to protect their rights, resources and lands and territories. Delegation by Indigenous Peoples of control over management activities to third parties requires Free, Prior and Informed Consent.

Free, prior, and informed consent is an important component of the FSC engagement requirements. FSC defines it as:

A legal condition whereby a person or community can be said to have given consent to an action prior to its commencement, based upon a clear appreciation and understanding of the facts, implications and future consequences of that action, and the possession of all relevant facts at the time when consent is given. Free, prior and informed consent includes the right to grant, modify, withhold or withdraw approval.¹⁷

¹⁶ Glossary of Terms, *International Generic Indicators*.

¹⁷ Glossary of Terms, *International Generic Indicators*. The definition is based on a United Nations definition.

FSC describes a process for this, which includes (indicator 3.2.4):

Free, prior and informed consent is granted by Indigenous Peoples prior to management activities that affect their identified rights through a process that includes:

1. ensuring Indigenous Peoples know their rights and obligations regarding the resource;
2. informing the Indigenous Peoples of the value of the resource, in economic, social and environmental terms;
3. informing the Indigenous Peoples of their right to withhold or modify consent to the proposed management activities to the extent necessary to protect their rights, resources, lands and territories; and
4. informing the Indigenous Peoples of the current and future planned forest management activities.

Criterion 3.4 The Organization shall recognize and uphold the rights, customs and culture of Indigenous Peoples as defined in the United Nations Declaration on the Rights of Indigenous Peoples (2007) and ILO Convention 169 (1989).

Criterion 3.5 The Organization, through engagement with Indigenous Peoples, shall identify sites which are of special cultural, ecological, economic, religious or spiritual significance and for which these Indigenous Peoples hold legal or customary rights. These sites shall be recognized by The Organization and their management, and/or protection shall be agreed through engagement with these Indigenous Peoples.

The indicators for this criterion add that: “measures to protect such sites are agreed, documented and implemented through culturally appropriate engagement with Indigenous Peoples.”

Criterion 3.6 The Organization shall uphold the right of Indigenous Peoples to protect and utilize their traditional knowledge and shall compensate local communities for the utilization of such knowledge and their intellectual property. A binding agreement as per Criterion 3.3.¹⁸ shall be concluded between The Organization and the Indigenous Peoples for such utilization through Free, Prior and Informed Consent before utilization takes place, and shall be consistent with the protection of intellectual property rights.

Principle 4: Community relations

The Organization shall contribute to maintaining or enhancing the social and economic wellbeing of local communities.

This principle is elaborated in criteria and indicators that are partly identical to those for Indigenous Peoples. The distinction between ‘legal’ and ‘customary’ rights is made here in the same way, and free, prior, and informed consent is introduced in exactly the same way. Criteria 4.1 and 4.2 are identical to the above-quoted Criteria 3.1 and 3.2, and Criteria 4.7 and 4.8 are identical to Criteria 3.5 and 3.6 (in each case, replacing “Indigenous Peoples” with “local communities”).

Additional criteria and indicators are set regarding the provision of opportunities for employment, training, and other services (Criterion 4.3), and additional activities to contribute to local communities’ social and economic development (Criterion 4.4).

With regards to human rights, two criteria are of specific importance.

Criterion 4.5 The Organization, through engagement with local communities, shall take action to identify, avoid and mitigate significant negative social, environmental and economic impacts of its management activities on affected communities. The action taken shall be proportionate to the scale, intensity and risk of those activities and negative impacts.

¹⁸ Criterion 3.3: “In the event of delegation of control over management activities, a binding agreement between The Organization and the Indigenous Peoples shall be concluded through Free, Prior and Informed Consent. The agreement shall define its duration, provisions for renegotiation, renewal, termination, economic conditions and other terms and conditions. The agreement shall make provision for monitoring by Indigenous Peoples of The Organization’s compliance with its terms and conditions.”

Criterion 4.6 The Organization, through engagement with local communities, shall have mechanisms for resolving grievances and providing fair compensation to local communities and individuals with regard to the impacts of management activities of The Organization.

While this is not said, it is clear that the definition of ‘local communities’ is so broad that Indigenous Peoples, provided they are ‘local’, can insist, in relevant cases, on the application of these development-oriented rights as well.

Principle 9: High [community and cultural] conservation values

Principle 9 covers high conservation values (HCVs). Whereas HCVs are usually understood as environmental assets, in the FSC scheme two of the six HCVs relate to rights of local communities and Indigenous Peoples:

HCV 5 – Community needs. Sites and resources fundamental for satisfying the basic necessities of local communities or Indigenous Peoples (for livelihoods, health, nutrition, water, etc.), 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.

Principle 9 requires the ‘precautionary approach’ in maintaining and/or enhancing the HCVs.

Criterion 9.2 The Organization shall develop effective strategies that maintain and/or enhance the identified High Conservation Values, through engagement with affected stakeholders, interested stakeholders and experts.

Management planning and implementation

Principles 7, 8, and 10 describe how management plans have to be developed, implemented, monitored, and reviewed. Rights of workers, communities, and Indigenous Peoples are dealt with under Principles 7 and 8 only.

‘Affected stakeholders’ is a target group referred to throughout the criteria and indicators for these principles.

Criterion 7.6 The Organization shall, proportionate to scale, intensity and risk of management activities, proactively and transparently engage affected stakeholders in its management planning and monitoring processes, and shall engage interested stakeholders on request.

One indicator refers to the need for “culturally appropriate engagement”, and identifies specific issues for which such engagement is required (indicator 7.6.1; also mentioned in other parts of the Principles and Criteria):

1. dispute resolution processes;
2. definition of Living wages;
3. identification of rights ... and impacts;
4. local communities’ socio-economic development activities; and
5. high conservation value assessment, management and monitoring.

Indicator 7.6.2 specifies that ‘culturally appropriate engagement’ is to be used to:

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

Other criteria and indicators refer to affected stakeholders in ways that strengthen Criterion 7.6, including on transparency (Criteria 7.1 and 7.4) and on having ‘verifiable targets’ (Criterion 7.3), for example: “stakeholder satisfaction with engagement” and “benefits of management operations provided to local communities”.

Criterion 8.2 The Organization shall monitor and evaluate the environmental and social impacts of the activities carried out in the Management Unit, and changes in its environmental condition.

The Annex to Principle 8, ‘Monitoring requirements’, includes 23 specific requirements for monitoring of social obligations as presented under Principles 1, 2, and 3, including:

- ii. **compliance with applicable laws, local laws, ratified international conventions and obligatory codes of practice;**
- iii. **resolution of disputes and grievances;**
- iv. **programs and activities regarding workers’ rights;**
- v. **gender equality, sexual harassment and gender discrimination;**
- vi. **programs and activities regarding occupational health and safety;**
- vii. **payment of wages;**
- viii. **workers’ training;**
- ix. **where pesticides are used, the health of workers exposed to pesticides;**
- x. **the identification of Indigenous Peoples and local communities and their legal and customary rights;**
- xi. **full implementation of the terms in binding agreements;**
- xii. **Indigenous Peoples and community relations;**
- xiii. **protection of sites of special cultural, ecological, economic, religious or spiritual significance to Indigenous Peoples and local communities;**
- xiv. **the persistence of Indigenous cultural landscapes and associated values of significance to Indigenous Peoples;**
- xv. **the use of traditional knowledge and intellectual property;**
- xvi. **local economic and social development.**