

**FSC GUIDANCE DOCUMENT  
FSC PRINCIPLES 2 AND 3: GUIDANCE ON  
INTERPRETATION**  
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## FSC Guidance Document

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The Forest Stewardship Council (FSC) is an independent, not for profit, non-government organisation based in Bonn, Germany.

The mission of the Forest Stewardship Council is to support environmentally appropriate, socially beneficial, and economically viable management of the world's forests.

FSC develops, supports and promotes international, national and provincial standards in line with its mission; evaluates, accredits and monitors certification bodies which verify the use of FSC standards; provides training and information; and promotes the use of products that carry the FSC logo.

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## 1 Introduction

In 2003, FSC contracted Russell Collier, a consultant with a broad range of experience in Indigenous Peoples' rights and land tenure conflicts, to analyse and make recommendations to FSC to improve the implementation of FSC Principles 2 and 3<sup>1</sup>. The resulting report was then circulated by FSC for comment. In addition, detailed comments were provided by 3 consultants: Ruth Silva, Angel Manembu and Dominic Mitchell. This Guidance Document aims to build on the earlier analytical work, and to provide a shorter set of clear proposals as a basis for further consultation.

## 2 The Purpose of this Guidance

The overall purpose of this document is to provide guidance to FSC National Initiatives, national or sub-national standard writing groups and certification bodies when developing FSC forest stewardship standards. It is intended to help these groups to develop standards that take account of the interests of forest communities and indigenous peoples and which

<sup>1</sup> It should be noted that some of the elements of Russell's paper e.g. on "intent statements" have been extracted and will be included in more general guidance on the implementation of FSC-STD-20-002 and related documents

use simpler language and specify realistic requirements, whilst retaining the rigour of FSC certification. The principal uses of the document may be summarized as follows:

- As guidance on how to incorporate the needs of forest communities and indigenous peoples in new forest stewardship standards.
- As a tool to guide standards development groups in adapting existing endorsed FSC forest stewardship standards to take better account of the needs of these target groups.
- To assist certification body auditors in their field evaluations.

The FSC Principles and Criteria are not designed for direct implementation in the field. They need to be interpreted first through the development of specific indicators and means of verification. Certification Bodies in the field then evaluate performance in relation to the indicators. Therefore there are two stages at which guidance may be required in order to implement the Principles and Criteria in the forest. Firstly guidance is required for the development of the indicators. Secondly guidance may be required for the correct evaluation of these indicators in the forest. This document aims primarily at the first area of guidance. Its main use is therefore in the development of standards by National Initiatives and Certification Bodies. Secondly, it attempts to provide useful comments and advice where possible to explain how the example indicators might subsequently be implemented.

It should be noted that the document cannot be used as a default standard by certification bodies or national / sub-national standards writing groups. The indicators and verifiers given are examples only, and cannot be used in isolation from the wider context of forest certification and local conditions. The development of FSC standards shall be carried out according to *FSC-STD-20-002 Structure and Content of Forest Stewardship Standards*.

All FSC standards need to comply with:

- *FSC-STD-20-002 Structure and Content of Forest Stewardship Standards.*
- *FSC-STD-20-003 Local adaptation of certification body generic Forest Stewardship Standards*
- *FSC-STD-60-006 (in development) Requirements for procedures for the development of FSC Forest Stewardship Standards.*

### **3. Format of the Document**

This document aims to present a clear and logical scheme for the reader to follow. It deals first with Principle 2 in Section 4, presenting its overall intent and the basic processes required to interpret it when writing standards. The time element is then introduced, setting limits on rectifying minor non-compliance. This is followed by advice on how to incorporate into the standards the basic concepts inherent in the Criteria, including examples of consultation indicators. Finally guidance on the implementation of the criteria is discussed, again from a conceptual standpoint.

Section 5 similarly treats Principle 3. However, to avoid repetition, only those characteristics which differ from Principle 2 are discussed.

Section 6 provides a table of possible indicators and means of verification for national and generic standards to determine compliance with the two Principles and their Criteria. This is the practical part of the document, giving concrete examples of how the particular local circumstances may be reflected through the development of appropriate indicators.

In Annex 1, a suggested glossary is given for terms which subsequently may be incorporated in the FSC Glossary of Terms (see *FSC-STD-01-002*). In Annex 2, an analysis of the structure of the two Principles and their associated Criteria are given to aid understanding of their intent. The table in Annex 2 contains phrase-by-phrase analyses of every statement contained in the two Principles and associated Criteria. Every phrase is considered for meaning and for how it contributes to the understanding of the whole statement.

#### **4. The Interpretation of Principle 2**

##### **FSC Principle 2:**

**Long-term tenure and forest use rights to the land and forest resources shall be clearly defined, documented and legally established.**

Criterion 2.1: Clear long-term tenure and forest use rights to the land (e.g. land title, customary rights, or lease agreements) shall be clearly demonstrated.

Criterion 2.2: Local communities with legal or customary tenure or use rights shall maintain control, to the extent necessary to protect their rights or resources, over forest operations unless they delegate control with free and informed consent to other agencies.

Criterion 2.3: Appropriate mechanisms shall be employed to resolve disputes over tenure claims and use rights. The circumstances and status of any outstanding disputes will be explicitly considered in the certification evaluation. Disputes of substantial magnitude involving a significant number of interests will normally disqualify an operation from being certified.

##### **4.1. The Intent of the Principle**

This document proposes the following “intent statement” as guidance to the implementation of Principle 2: *“while not precluding a community’s right to operate its own forest management unit, this Principle and associated Criteria seek to ensure that the rights of communities are properly recognised and respected by forest managers”*. The intent goes further: where such rights are recognised and respected and control is delegated, the Principle and Criteria provide clear basis to allow managers to fell timber and carry out their management activities accordingly, while retaining the local communities’ rights to the forest resources. In the case of community-based forest operations, Criterion 2.1 must be complied with for certification purposes. In all cases, standards, whether written by a certifying body, or a national, or sub-national, initiative, should make explicit how community rights are to be protected while respecting the rights of the other stakeholders. This should go beyond the basic, and include sufficient local detail and background to allow any reader to understand fundamental assumptions and critical junctures necessary to deciding if the Principle has been met or not. Further guidance on interpreting in detail the structure of Principle 2 and its Criteria is given in Annex 2.

#### **4.2 Expected Conditions for Compliance vs. Exceptions**

Criterion 2.2 contains an expected condition, that locals “shall maintain control”, and an exception, “unless they delegate control”, which needs to be dealt with clearly in Standards and evaluations. Conditions which meet both the expected case as well as permitted exceptions need to be clearly stated.

Similarly Criterion 2.3 contains the expected condition of being “normally disqualified” should outstanding disputes reach critical thresholds. However, the use of the qualifier “normally” implies an exception. As before, conditions meeting the expected case need to be clearly articulated, as do exceptions. Care must be taken in all cases that operations and standards do not manage to the exceptions, but to the expected conditions for compliance with the criterion.

#### **4.3. Mechanisms Needed**

Mechanisms in this sense are consultative processes, reconciliation procedures, protocol agreements, or contractual agreements. They are the rules by which all parties manage their relationships. Standards-writing bodies could choose either of two routes to take, depending on their own circumstances. They could choose:

- to define specific processes, procedures, or agreements, effectively requiring a prescriptive approach; or
- to describe characteristics of good processes, procedures and agreements, and let the parties define their own instead.

As a general rule, where overall trust is low between parties, the greater is the need for a prescriptive process. The greater the trust (or the greater the sophistication), the less is the need for prescription and a consequent greater reliance on descriptive outcomes instead.

There are three types of required mechanisms indicated by Principle 2: an explicitly-required “appropriate mechanism” for settling disputes in Criterion 2.3; a subtler mechanism by which a local community will “maintain control to the extent necessary” to protect their rights in Criterion 2.2; and a mechanism for consultation between forest manager and local community. This last is in addition to stakeholder consultation by the certification body (for this, see *FSC-STD-20-006 Stakeholder consultation for forest evaluation*) and is not part of a stakeholder evaluation in relation to standards setting itself.

#### **4.4. Setting Time Lines for Correcting Minor Non Compliance**

From FSC-STD-20-002, non-compliance is defined as any failure to comply with the requirements of an Indicator. Minor non-compliance is non compliance which is temporary, unusual or non-systematic, limited in the scale of its impact, corrected promptly and which does not fundamentally prejudice the achievement of the objective of the relevant FSC Criterion. The adjustments needed for correction may be time limited, allowing a reasonable time for these to be achieved in consultation with the stakeholders, in particular the community rights holders. Note 13 of FSC-STD-20-002 is specific about the time required to correct non-compliance: “*Action(s) taken to correct a non-compliance may continue over a period of time (normally up to one year, but in exceptional circumstances up to two years). The certification body shall determine whether such action is considered adequate*”.

A distinction needs to be drawn between (a) an indicator which builds in a time factor to achieve full compliance, and (b) time taken to correct a condition which is non-compliant. An example of the first may be where, under Criterion 2.1, time is allowed for necessary documentation to be obtained to demonstrate tenure or use rights. The second may arise from a minor non-compliance with Criterion 2.3, where a forest manager is faced with

outstanding disputes of substantial magnitude and significant numbers. Time to achieve a mutually agreeable solution might be granted. In this case, the certification body could look at initial conditions and then compare those to current conditions to decide if improvements warrant continuing the manager's certification. The indicator for Criterion 2.3, which shall refer to appropriate mechanisms being in place, covers the ongoing process of dispute resolution.

An exception to compliance may occur where a criterion is not applicable. In this case, it shall be clearly stated in the standard why not. FSC-STD-20-002, paragraphs 3.3 and 3.4, is relevant here: "3.3. *The standard shall specify indicators for every criterion included, unless the criterion is considered to be inapplicable within the specified geographical scope to which the standard applies.* 3.4. *An explanation shall be provided in the standard if any FSC Criterion is considered to be inapplicable in a given situation*".

See also Section 6.1. with reference to non compliance.

#### **4.5. Incorporation of Concepts**

All interpreters and drafters of standards should ensure a number of concepts are incorporated as thoroughly as possible.

**4.5.1** The first concept (Criterion 2.1) is that *applicants clearly demonstrate long-term rights to use the forest*. In the case where the tenure is vested in a government and not the community, and the forest is to be managed by a third party, it is open that the government and forest manager jointly apply. However, standards writers should be aware that in some parts of the world this may open the door to bribery of officials against the interests of local peoples, and the protection of local peoples' interests must be made specific in the standard.

**4.5.2** The second concept (Criterion 2.2) is that *local communities with rights to the forest retain oversight of forest operations sufficient to protect their rights or resources*. Even when control of forest operations is delegated, informed consent to this implies that the community is aware of what is taking place in their forest so that consent may be withdrawn if they are dissatisfied.

At this level, several rights of local communities should be assumed to be inherent rights, deriving from the Criterion. Each of these rights should be covered in some way, in an indicator, in a glossary definition, or a verifier. They can also be dealt with (and accounted for) by the manner in which the local people are involved in forestry processes. Nevertheless, these rights of local communities should be made explicit. These are:

- The right to participate in defining, and possibly to define outright, the mechanism whereby the local community can "maintain control", including the right to participate in setting the limits of control;
- The right to "free and informed consent", including the right to grant, withhold or withdraw consent;
- The right to delegate, including the right to set conditions of delegation (e.g., to set performance benchmarks) and the right to revoke delegation (but there may be cost implications in this for compensating the operator) ;
- The right to protect their rights;
- The right to self-define their community and their own forest resource needs.

Because this Criterion deals, in part, with a relationship between forest manager and local community, an additional right to meaningful and effective consultation is implied. Here is an example of characteristics of good consultation defined in a set of Indicators:

- The consultation process is designed with local communities and is agreed to by both forest manager and local community.
- The management plan is developed with the local communities.
- Local communities are satisfied the schedule of consultation is sufficient to provide them with effective involvement in the development and monitoring of the plan.
- Local communities are satisfied their concerns have been appropriately recorded (e.g., in writing, maps, videos) and have been incorporated in the management plan as required.
- Local communities identify the resources and tenure and use rights they require to be protected and indicate their locations on maps where appropriate.
- Strategies and practises are developed and implemented to maintain the resources and tenure and use rights of the local communities.
- Local communities are satisfied the strategies are sufficient to avoid threatening or diminishing their resources and rights of tenure and use.
- In the case of an unanticipated threat or diminishment to resources or tenure and use rights due to management activities, local communities are satisfied appropriate measures are taken to maintain those resources or rights (e.g., stop work, notification, assessment, mapping).
- Financial, technical or logistical capacity-building support, in proportion to the scale and intensity of operations, is available to local communities where required to assist with consultation.

Note that these characteristics could also easily form a definition for a term such as “*effective consultation*”. Embedding them within a Glossary definition has the advantage of bringing brevity to the overall package of Indicators while retaining desirable characteristics.

Care must be taken to ensure that consultation with the community is genuine and that their interests are fully represented. In particular, forest managers should be aware that elites may not represent all the people, nor necessarily reflect majority views. The effective representativity can be gauged by the interest shown by the community in the consultations. It will further help if there are internal community regulations or systems of control which govern the use of the forest and of relations with external organizations. The existence of such regulations may be incorporated in indicators. These may refer to how communities take decisions, how representatives are selected, and the legality and transparency of the negotiating process. with external entities. Also consideration should be given to community deficiencies in negotiating and fully understanding agreements reached in order to avoid subsequent disputes. Facilitation by an appropriate third party in the consultation process could help in this

**4.5.3** The third concept (Criterion 2.3) is that, *recognising that there will arise disputes over forest use rights, “appropriate mechanisms” to resolve these disputes shall be employed.* Content for dealing with disputes should ideally revolve around one of two approaches. Where the general level of trust between forest manager and local community is high, standards-writers and CBs should expect that jointly designed mechanisms would be acceptable, and concentrate on defining effective elements of the mechanism. Where the general level of trust is low, third party mediation mechanisms should be sought, acceptable to all sides. In all cases, it is still useful to mutually define and agree upon characteristics of an effective dispute resolution process.



**4.5.4** The fourth concept (Criterion 2.3) is that *the circumstances and status of any outstanding disputes will be explicitly considered in the certification evaluation*. It should be clear that this statement within Criterion 2.3 is most easily understood as direction to a certifying body, rather than being a requirement of a forest manager. A suggestion is to include the following:

“To assist the mandatory consideration of disputes in the certification assessment of Criterion 2.3, a forest manager should maintain a record of disputes and the status of their resolution, including evidence related to the dispute (whether generated internally, from outside experts or provided by disputants), and documentation of steps taken to resolve the dispute”.

**4.5.5** The fifth concept (Criterion 2.3) is that a threshold for determining a pass or fail for certification has to be somehow set. Again, it should be clear that this statement is an instruction within the Criterion to a CB. As such, a definition or process for determining when outstanding disputes of significant number and substantial magnitude should be determined by both standards-writers and CBs.

## **4.6 Implementation**

All interpreters and drafters of standards should ensure a number of concepts are implemented as clearly as possible.

### **Criterion 2.1**

A problem that could arise is that the legal framework of a country may not lend itself well to establishing that the forest manager’s rights meet the requirements of the Criterion. While FSC (or certifying body) cannot adjudicate the legality of any tenure, nor establish any tenure, nevertheless FSC can provide guidance for evaluation of applications for certification.

Specifically, the assertion that the intent of this Criterion has been met, in some cases, should be accompanied by at least two analyses supporting the assertion:

- Where the legality of the tenures is in some doubt, the certifying body should make extra efforts to ascertain the acceptability of the tenure among local communities. If there is conflict, then certification cannot proceed. If there is doubt but no conflict, then certification can proceed while efforts continue to clarify the legal ownership, without in the mean time imposing any particular version of tenure on the community. The important condition is that the community accepts that management can go ahead and that their use rights and claims to tenure are not compromised.
- Where there is evidence of uncooperative or hostile government agencies, the certifying body should apply the precautionary principle to its own recommendations and not proceed if there is a likelihood of community rights being infringed. This said, in any event if it is likely that community rights be infringed, then a CAR is required independently of the application of the precautionary principle.

### **Criterion 2.2**

Judging when consent given is both free and informed can be difficult. Free and informed consent has two aspects to it: the consent must be freely given, and it must be knowledgeably given. The right to grant, withhold or withdraw consent is one of the “legal or customary rights” referred to in this Criterion. Similarly, judging when *delegated control* is valid can also be troubling. Even so, “delegating control” is an aspect of free and informed consent and those with authority to delegate control retain the right to revoke the delegation.

The right to delegate control in the manner of their choosing is one of the “legal or customary rights” referred to in this Criterion.

### **Criterion 2.3**

It is not intended to discuss dispute resolution mechanisms in this document, suffice it to say that any such mechanism should be developed mutually so all sides feel confident in the process. In identifying outstanding disputes, a CB should normally consider a range of factors in evaluating the circumstances of disputes of substantial magnitude involving a significant number of interests. Note that there are two potential definitions for dispute offered in the Glossary in Annex 1.

Some of these factors might include:

- whether the dispute involves local rights holders, local forest workers, or local residents;
- the legitimacy of the claimant in the dispute;
- whether the dispute involves the legal or customary rights of indigenous peoples or local communities;
- the range of issues and/or interests involved;
- whether the potential impacts on the disputant(s) are irreversible or cannot be mitigated; and /or
- whether the dispute involves issues related to meeting the FSC Standards.

## **5. The Interpretation of Principle 3**

**The legal and customary rights of indigenous peoples to own, use and manage their lands, territories and resources shall be recognised and respected.**

Criterion 3.1: Indigenous peoples shall control forest management on their lands and territories unless they delegate control with free and informed consent to other agencies.

Criterion 3.2: Forest management shall not threaten or diminish, either directly or indirectly, the resources or tenure rights of indigenous peoples.

Criterion 3.3: Sites of special cultural, ecological, economic or religious significance to indigenous peoples shall be clearly identified in cooperation with such peoples, and recognised and protected by forest managers.

Criterion 3.4: Indigenous peoples shall be compensated for the application of their traditional knowledge regarding the use of forest species or management systems in forest operations. This compensation shall be formally agreed upon with their free and informed consent before forest operations commence.

### **5.1 Overview**

Criterion 3.1 refers to the status of indigenous people as owners and users of their own lands and resources, while the content of the other Criteria is about three broad categories of rights requiring “recognition and respect”. They are therefore somewhat different in scope.

### **5.2 The Intent of the Principle**

Principle 3 is a special case of Principle 2. Everything that applies to Principle 2 also applies to Principle 3. Therefore this document proposes the following intent statement for guidance on the implementation of Principle 3: *“given that Principle 2 covers tenure and land use rights in general, the over-riding concern addressed by Principle 3 is that indigenous*

*peoples' specific rights are "recognised and respected"* (for definitions of "recognise" and "respect", see 5.6 below and Annex 1). The language of the Principle and associated Criteria is straightforward and further guidance on interpreting in detail its structure is given in Annex 2. However, the law regarding indigenous peoples internationally is often unclear. Many governments are hostile to their local indigenous peoples, as may be private sector interests, and even where protective laws exist, these may not be enforced. Moreover, in many countries, there is no definition of who is eligible to be considered "indigenous". For the purposes of determining to which groups Principle 3 applies, FSC's approach is to follow the terms of the ILO Convention 169 (see glossary in Annex 1) which states that self-identification is one fundamental criterion, among other criteria, for defining indigenous peoples. Non-recognition (by a government) does not of itself mean that Principle is not applicable.

In every country inhabited by people who are identified or identify themselves as indigenous, standards-writers should draft an intent statement designed to declare how Principle 3 and its Criteria should be interpreted in the local context. This will need to be written in conformity with the FSC Standard FSC-STD-20-002. Paragraph 3.17 of that document requires that *"the standard shall include clear supplementary information as necessary to identify any categories of users to whom special provisions are applicable"*. This is particularly necessary in countries with no National/Regional Standards — FSC-STD-20-003 permits in these areas that certification bodies carry out certification according to their own 'generic' standards, adapted to account for the local conditions in the country or region in which they are to be used with input from local stakeholders. Specifically in paragraph 3.1.3 of this document it states: *"the certification body shall contact at least the following stakeholders in the country concerned, at least one month prior to the evaluation of the forest management unit taking place: (e) Representatives of Indigenous Peoples that are involved or have an interest in forest management either at the national level, or at the sub-national level in the environs of the forest to be evaluated"*.

### **5.3 Expected Conditions for Compliance vs. Exceptions**

As with Principle 2, Principle 3 contains an expected condition for compliance with a specified exception. This is in Criterion 3.1 and states that Indigenous Peoples will control forest operations within their territories. The exception is that they may delegate that control.

As discussed in Principle 2, the expected conditions for compliance and the permitted exceptions need to be clearly articulated in the standards for subsequent effective implementation by the certification bodies.

### **5.4 Mechanisms Needed**

There are three mechanisms needed to satisfy this principle: a mechanism for how the indigenous people will maintain control (Criterion 3.1); a mechanism for meaningful and effective consultation between the forest manager and indigenous peoples (Criterion 3.1); and, potentially, a formal agreement, such as a contract, between the indigenous peoples and the forest manager if traditional knowledge is used in forest management.

### **5.5 Setting Time Lines for correcting Minor Non Compliance**

The same provisions apply here as for Principle 2.

### **5.6 Incorporation of Concepts**

While there is probably general agreement about the meaning of some words and phrases in Principle 2, the meanings of key words and phrases, (such as "recognised and

respected”) in Principle 3 are not always agreed upon. All key words and phrases need to be defined, preferably at the international level, while allowing for local variations. Any such variation would need to be stated and explained in the standard.

The Principle itself contains a critical phrase, “*the legal and customary rights of indigenous peoples ... [are] recognised and respected*”. The standards-writers do not need to define legally such rights and moreover are unlikely to have the authority to do so, therefore a more practical definition for the “how” of it will suffice. It is strongly recommended that some variant of the following interim definition of “recognised and respected” be adopted, to avoid unnecessary arguments over what the term means:

*Without dwelling on legalities, and for purposes of FSC, a legal or customary right is considered to have been recognized and respected when its existence has been acknowledged and damage to it or interference with it is avoided, accommodated or compensated.*

The essence of such an international definition is that it no longer matters how transitory governments might choose to treat its indigenous peoples; under FSC certification, indigenous peoples should expect to receive the same basic level of respect anywhere.

### **Criterion 3.1**

FSC recognises a broad range of rights that indigenous peoples have and these are covered in section 4.5.2 above. This Criterion partly covers a relationship between the forest manager and indigenous peoples, and, as with Principle 2, a right to meaningful and effective consultation is implicitly included. Examples of consultation are given in section 4.5.2. Care should be taken to determine that the authority giving consent in all cases is a legitimate one, representative of and duly recognised by local Indigenous communities. And because the concept of “consent” by indigenous peoples for forestry operations is not only a difficult for some people to accept but also at times the consent itself is hard to identify, special consideration must be given to how the mechanism of consent is expressed.

### **Criteria 3.2, 3.3, and 3.4**

By contrast, the requirements for these three Criteria are much simpler as they deal with, exclusively, area-based rights, point-based rights, and intellectual property-based rights and not relationships.

**Criterion 3.2**, deals with both area-based resource use and the more straightforward tenure rights. As such, it covers ownership and control of land and resources. Resource use rights, for example, to gather food or hunt, are usually handled with indicators that recognise the moveable nature of many of these rights. For example, if there is a hunting right for an area, and the game animals in question are mobile, or migrate, managing them would take into account their foraging needs, seasonal needs (if any), migration routes and core habitats. If, on the other hand, the right is one of harvesting a particular kind of plant, the range of this plant, including the ecosystems required by this plant, would be taken into account in the management plan.

The key here is that area-based resource rights are typically distributed over a range of territory. This is not always so, as there will always be some resources which are only obtainable within very specific locales. But the general rule should hold: resource use rights will generally be distributed, and therefore can tolerate some pressure, so long as their presence and quality can be assured elsewhere. If a prime resource use area is also

targeted as a prime timber area by a logging company with legal rights, the local indigenous people would need assurances they can harvest in other places without undue hardship. On the other hand, if the indigenous people own the land, then this question need not arise as they would be entitled to exercise control to prevent logging, or manage their own timber operation consistent with their subsistence needs, or else negotiate an agreement with a logging company which would satisfy their aspirations to continuing resource use. Any other action by a forest manager would prejudice Criterion 3.2 and certification could not go forward.

**Criterion 3.3**, in contrast, deals with immovable features. These are sites, not areas; point locations of special significance, defined by the Criterion as “sites of special cultural, ecological, economic or religious significance”. The criterion does not elaborate how large a site can be, before it becomes an area. Nevertheless, the fact of its being a point should help both manager and evaluator. It should be noted that such sites may also be of national importance, in which case this interest should be represented in any agreement reached.

Point locations are usually protected with some kind of buffer. The width of buffer depends on the sensitivity of the site. In some cases, local indigenous peoples may not wish to identify precisely on maps the locations of sensitive sites. Reasons will vary. If religious or sacred items are in question, their over-riding concern may be theft or vandalism opportunities created by increased access to their special site. If the concern is economic, a certain plant or fungus is harvested, for example, that earns local families a regular income, identifying the precise location may lead unscrupulous competitors to their special site. A common method of adding protection to a site, which ought not to be precisely identified, is to randomise the centroid of a polygon, which contains the location somewhere within.

**Criterion 3.4** deals with intellectual property rights of indigenous peoples. Knowledge of plants with medicinal, pharmaceutical properties often come to mind with this Criterion, but it could as easily pertain to ecological conditions, and knowledge of how plants and animals handle changes to their habitat. The formal expression of compensation for the use of traditional knowledge will be through a documented agreement.

## **5.7 Implementation**

Because so much of what relates to Principle 2 also applies to Principle 3, it is not intended to repeat everything here. Specifically, the section dealing with *free and informed consent* and *delegated consent* will not be repeated (see 4.5). However, there are a number of points that should be considered:

- International definitions of indigenous peoples and IP rights are changing over time, and are generally becoming wider and deeper.
- FSC sets a higher standard than many national laws in dealing with indigenous peoples.
- Many governments and forest companies are actively hostile to the concept of indigenous peoples’ rights, which may complicate local interpretations.
- It is not necessary to arrive at a conclusive, legalistic interpretation of “legal and customary rights” in order to “recognise and respect” them. Instead, it is possible to describe the desired outcome, and test for that, instead of for legal observances.
- The concept that indigenous peoples are self-defining (as in ILO Convention 169; the relevant part of this, which gives a definition of indigenous peoples, is reproduced in Annex 1)

### **5.7.1 General Ideas for Implementation**

#### **- Indicators to Measure Relationships**

Some example texts are given, taken from a variety of generic, national and sub-national standards. These are additional to those given in Section 6 below on example indicators and are related specifically to the relationship between indigenous people and a forest manager who has their consent to operate on their lands. Standard writers should note that the indicative tense has been used for the verbs but “shall” may equally serve.

#### **Relating to Criterion 3.1:**

- *As appropriate, indigenous peoples are afforded opportunities to participate in management planning, research, and monitoring on forest areas associated with indigenous resources and tenure rights.*
- *The Manager has negotiated a protocol agreement(s) with relevant First Nation(s) that provides for the nature of the relationship between the parties, including:
  - a) *how the parties will establish and conduct their relationship;*
  - b) *the roles and responsibilities of the parties;*
  - c) *the interests of the parties;*
  - d) *a description of appropriate decision-making authorities for all parties; and,*
  - e) *provides the framework for subsequent agreements necessary to give effect to the protocol.**

In this example, a *protocol agreement* is an agreement between forest manager and community that details how the relationship will work.

An indicator related to an indigenous people’s community-based managed resource could be:

- *Indigenous peoples are demonstrating effective control over their land and resources through the implementation of a management plan as in Principle 7. Effectively, compliance with Principle 7 will confirm compliance with Criterion 3.1.*

#### **Relating to Criterion 3.2:**

- Forest managers maintain positive/collaborative working relationships with holders of duly recognized legal or customary tenure or use rights.

#### **Relating to Criterion 3.3:**

- *Management activities with potential impacts to sites of special cultural, ecological, economic or religious significance to indigenous peoples are guided by the precautionary principle.*

This is one of the very few Indicators that specifically associate the precautionary principle with sites of special significance. This means that not only nothing should be done to affect negatively these sites but that adequate preventative measures should be taken to avoid negative impact and to protect the sites.

#### **- Training and Confidentiality**

Several generic or national standards suggest that training for field workers and confidentiality are issues that should be dealt with. Here are sample texts:

*Field workers are appropriately trained in the procedures employed for protecting sites of special significance to indigenous peoples*

*Confidential maps recording the locations of sites of special significance are maintained up-*

*to-date and are used by forest managers and field workers*

## **6. Suggested examples of indicators, with their means of verification, for the Criteria of both principles 2 and 3**

### **6.1. Introduction**

In assessing the development of indicators, it is recommended that reference is made to document *FSC-STD-20-002, the Structure and Content of Forest Stewardship Standards*. This states in its Annex 1 that an indicator is “a quantitative or qualitative variable which can be measured or described, and which provides a means of judging whether a forest management unit complies with the requirements of an FSC Criterion. Indicators and the associated thresholds thereby define the requirements for responsible forest management at the level of the forest management unit and are the primary basis of forest evaluation. See also paragraphs 3.5 to 3.12 of the same document for guidance on the development of indicators.

The compliance with indicators is demonstrated by means of verification which are sources of information/evidence that allow an inspector to evaluate such compliance.

Implementation in the field will be made easier by defining clearly indicators and their means of verification. This may be supplemented by a checklist of questions to help focus understanding. Such indicators are the basis of national standards and certification bodies' generic standards. In particular, the indicators for national standards should reflect local variations for appropriate compliance with the Principles and Criteria, for this reason the indicators given below are for guidance only. Moreover, their status is preliminary and it should be noted that:

- the indicators are draft suggestions;
- they are subject to further review and comments from stakeholders, national initiatives and certification bodies are sought,
- in due course, the revised indicators and their means of verification will be provided by FSC as examples of good practice for consideration by national initiatives and certification bodies in defining national and/or generic standards.

## EXAMPLE INDICATORS

|   | Means of verification   | Intent and Guidance   |
|---|---|---|
| <b>PRINCIPLE 2. Long-term tenure and forest use rights to the land and forest resources shall be clearly defined, documented and legally established.</b>   |   | This Principle and associated Criteria seek to ensure that the rights of communities are properly recognised and respected and that any activity by a forest manager must be based on demonstrable legal rights. Moreover the manager must respect all other rights held by anyone else.  |
| <b>CRITERION 2.1. Clear long-term tenure and forest use rights to the land (e.g. land title, customary rights, or lease agreements) shall be clearly demonstrated.</b>  |   | The intent is that long-term rights over the forest are clearly evident so that whoever seeks to use the resource has clear title to do so, thus providing full control and avoiding conflicts.   |
| <p><b>2.1.1</b> The manager has the right to manage the lands and/or to utilize the forest resources for which certification is sought, in one or more of the following circumstances:</p> <ul style="list-style-type: none"> <li>a) the manager is named on the certificate of title for the area of land for which certification is sought and there are no reservations or charges that would constrain the manager's right to manage the lands and utilize the forest resources for which certification is sought;</li> <li>b) the manager has customary rights (e.g., Indigenous or community) to manage the land and utilize the forest resources in the management unit;</li> <li>c) the manager has a tenure or lease that is legally eligible to be renewed or replaced over a time period sufficient to achieve the long-term management objectives set out in the management; or</li> <li>d) where the manager does not have legal title, the owner, either alone or jointly with the manager, applies for certification of the management unit.</li> <li>e) the owner/government does not impose constraints that prevent the implementation of the FSC Standards or the management plan in the FMU.</li> </ul> | Documents of legal title or lease, community statements as to customary rights, | <p>All three examples of land and resource rights from the Criterion are included. An additional fourth example is included to cover situations where an owner or government has or controls the necessary title. The list itself is potentially longer. These four form a core indicator for Criterion 2.1. Other local variants of rights to the land and its resources that standards-writers consider valid could be added, if none of these at left cover them.</p> <p>Circumstances where long-term use rights cannot be clearly demonstrated should definitely preclude certification.</p> |



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| <p><b>CRITERION 2.2. Local communities with legal or customary tenure or use rights shall maintain control to the extent necessary to protect their rights or resources over forest operations unless they delegate control with free and informed consent to other agencies.</b></p>   |   | <p>The intent is that control is vested with the local communities with rights to the forest, whether or not they have their own operations, so that these rights or resources are sufficiently protected. The term “forest manger” should be construed to include forests managed by the communities themselves but, if it is felt that separate indicators are needed for community-managed forests, the suggested indicators should be adapted accordingly. In this context, it is important that adequate intra-community consultation takes place to comply fully with the Criterion. Delegation of control shall be with full information as to the management of the forest and with the right to withdraw consent.</p> |
| <p>2.2.1. The forest manager has carried on an effective consultation process (see 4.4.2.) to identify the legal title and the agreed customary practices/rights of the local communities (see definition in Annex 1) that could be related to or take place inside the managed forest, involving some or all of its resources.</p>   | <p>Legal documents and agreed declarations of rights, signed by all parties involved. Internal community regulations should exist to support the process.</p>   | <p>This covers the need to recognise customary rights through a proactive process</p>  |
| <p>2.2.1 All legal and/or customary tenure or use rights to the forest resource identified by the local communities are clearly documented, recognised, respected and mapped by the forest managers.</p> <p>2.2.2 All legal or customary tenure or use rights to the forest resource of all local communities are recognised and respected in forest management planning and practise.</p> <p>2.2.3 The rights-holders (or their legitimate representatives) and the managers have identified together the possible impacts of the operation on the rights and resources of the local communities; the rights holders have then given free and informed consent for such activities through documented agreements.</p> <p>2.2.4 Local communities are able to exercise their tenure and use rights to the extent that they choose, compatible with other rights and with all the provisions of the P&amp;C.</p> | <p>Documents, agreed declarations of community rights, maps, social and ecological impact assessments. Free and informed consent should be backed by the existence of internal community control systems.</p> | <p>This package of Indicators satisfies, structurally, all the main parts to this Criterion. These four form the core of Indicators for Criterion 2.2.</p>   |

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| <p><b>CRITERION 2.3. Appropriate mechanisms shall be employed to resolve disputes over tenure claims and use rights. The circumstances and status of any outstanding disputes will be explicitly considered in the certification evaluation. Disputes of substantial magnitude involving a significant number of interests will normally disqualify an operation from being certified.</b></p>  |  | <p>This recognises that disputes over forest uses will arise and effective means to resolve these disputes shall be in place. Further, it requires that disputes be properly identified and evaluated for status and magnitude.</p>   |
| <p>2.3.1. There is a process to resolve disputes related to tenure claims and use rights which has been mutually agreed.<br/>2.3.2. The manager maintains a record of disputes and the status of their resolution, including evidence related to the dispute (whether generated internally, from outside experts or provided by disputants), and documentation of steps taken to resolve the dispute.<br/>2.3.3. The manager is not involved in outstanding disputes of substantial magnitude involving a significant number of interests in relation to the management unit.</p> | <p>Dispute resolution mechanisms documented, register of disputes, indicating process and status, documentary evidence to support process.</p> | <p>There are three statements within Criterion 2.3. These three suggested Indicators should satisfy each of them. If conditions warrant (e.g., history of long-standing disputes) CBs and standards-writers might consider using a pre-defined process instead of 2.3.1.</p>  |
| <p><b>PRINCIPLE 3. The legal and customary rights of indigenous peoples to own, use and manage their lands, territories and resources shall be recognised and respected.</b></p>  |  | <p>The over-riding concern addressed by Principle 3 is that indigenous peoples' specific rights are "recognised and respected"</p>  |
| <p><b>CRITERION 3.1. Indigenous peoples shall control forest management on their lands and territories unless they delegate control with free and informed consent to other agencies</b></p>  |  | <p>The intent of this Criterion is to underline the right of indigenous people to control their own resources. It also covers the relationship between forest manager and indigenous peoples, with delegation of control including meaningful and effective consultation, as well as the right to withdraw consent.</p> |
| <p>3.1.1a Indigenous peoples are demonstrating effective control over their land and resources through the implementation of a management plan as in Principle 7.</p>   | <p>Management plan</p>   | <p>This is the case of community-based forest management</p>  |
| <p>3.1.2a Community management of the forest shall be agreed by consensus of community members.</p>   | <p>Oral or written agreements attesting to this. Internal</p>  | <p>This is to ensure that the management of the forest is not in the hands of unrepresentative cliques or individuals. The</p>  |

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|   | community regulations should exist to support the process.   | indicator does not refer to day-to-day management, rather it refers to who exercises this.  |
| <p>3.1.1b The manager recognizes and respects the legal and customary rights of the Indigenous People over their lands, territories and resources.</p> <p>3.1.1(i) Indigenous Peoples formally indicate, clearly, unambiguously and normally in writing or by traditional means, that their legal and customary rights over their lands, territories and resources have been recognized and respected.</p> <p>3.1.1(ii) Indigenous Peoples interests or concerns are clearly incorporated in the management plan.</p> <p>3.1.2b There is a process to resolve disputes related to tenure claims and use rights which has been mutually agreed.</p>  | Documents attesting to rights recognition, maps, management plan, documentation of dispute resolution. Internal community regulations should exist to support the process. | Without dwelling on legalities, we could say that for purposes of FSC, a legal and customary right is considered to have been recognized and respected when its existence has been acknowledged and damage to it or interference with it is avoided, accommodated or compensated. In the event of disputes, a similar process should be followed as in 2.3.1 and 2.3.2 above. |
| <p>3.1.3 The manager has obtained free and informed consent, normally in writing or by traditional means, for the management plan from the appropriate Indigenous People by either:</p> <p>a) jointly developing the plan according to the process set out in a joint management agreement, or,</p> <p>b) consulting with the Indigenous People on the plan.</p> <p>3.1.4. There exist agreed mechanisms to ensure that Indigenous People participate on an informed basis in planning and decision-making.</p> <p>3.1.5. Conditions under which consent has been given and under which it might be withdrawn, if any, are recorded in the management plan.</p> <p>3.1.6 Where the area being proposed for forestry activities affects more than one Indigenous People, consent from each is ordinarily required.</p> | Written agreements or attested records of such agreement. Internal community regulations should exist to support the process.  | <p>This suite of Indicators is an example of text that satisfies the need for a control mechanism. Compared to the full spectrum of Indicators currently written for Criterion 3.1, these deal with the concept of consent most directly.</p> <p>Note that this example contemplates two ways of satisfying the Criterion: joint management or consultation.</p>              |
| 3.1.7: If they so decide, indigenous people shall manage forest sites or all/some of their resources. It shall be set down in writing that the indigenous peoples have control of the management of   | IP own management plan (see 3.1.1a above) or documentary evidence of   | This sample Indicator also clearly attempts to satisfy all the requisite structural pieces of Criterion 3.1. In the case of own management of community resources, this indicator will  |

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| <p>their own territory. If the indigenous people have delegated this control to other groups, the licensee shall demonstrate that the people concerned have been given sufficient and accurate information.</p>   | <p>provision of management data to IP representatives</p>  | <p>logically be placed before Indicator 3.1.1a.</p>  |
| <p><b>CRITERION 3.2. Forest management shall not threaten or diminish, either directly or indirectly, the resources or tenure rights of indigenous peoples.</b></p>   |  | <p>This deals with all the resources of the indigenous peoples, including land tenure and area-based resource use rights such as food gathering places or hunting areas. The intent is to ensure management does not infringe these rights</p>                   |
| <p>3.2.1 Forest management activities within the management unit are planned and implemented in such a way as to maintain the resources and tenure rights of the Indigenous Peoples.</p>  | <p>Documents and maps, impact assessments. No disputes outstanding.</p>  | <p>This indicator sets out the expected norm, that the resource and tenure rights will be maintained. The incorporation of exceptions here would open the risk that uninformed indigenous people could be deprived of their rights for minimal compensation.</p> |
| <p>3.2.1. adverse impacts of forest management on indigenous communities' resources or tenure rights are identified</p> <p>3.2.2. documented actions are taken to prevent or mitigate adverse impacts</p> <p>3.2.3. the indigenous communities affected do not perceive the organisation as a serious threat to their resources or tenure rights</p>                                      |  | <p>This suite of Indicators also satisfies the core structural pieces of Criterion 3.2.</p>  |
| <p><b>CRITERION 3.3. Sites of special cultural, ecological, economic or religious significance to indigenous peoples shall be clearly identified in cooperation with such peoples, and recognised and protected by forest managers.</b></p>   |  | <p>In contrast to Criterion 3.2, this deals with the protection of immoveable features. These are sites, not areas; point locations of special significance to the indigenous people.</p>  |
| <p>3.3.1 The enterprise makes systematic efforts, in cooperation with local Indigenous Peoples, to identify and protect areas of cultural, historical, or religious, subsistence, or economic significance to those peoples.</p> <p>3.3.2 Local Indigenous Peoples should be employed to identify sites and features.</p> <p>3.3.3 Within the decision-making authority of the timber</p> | <p>Maps and related descriptions of sites available, documentary evidence of cooperation, regulations to restrict public access in existence and enforced, contingency</p> | <p>Complete in its treatment of "sites of special significance", this suite of Indicators provides a thorough coverage of all structural requirements of this Criterion.</p>   |

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| <p>management enterprise, unregulated access to Indigenous Peoples' hunting and gathering areas is discouraged. Where such considerations apply, timber management roads are closed to the public when not in use.</p> <p>3.3.4 The timber management enterprise cooperates with local Indigenous Peoples in educating non-Indigenous People in the care and respect for the forest that is appropriate to the protection of their rights.</p> <p>3.3.5 Areas and evidence of cultural or archaeological significance are carefully managed for and protected in meaningful consultation with local Indigenous People. Wherever cultural or archaeological evidence is observed or discovered, timber management operations cease immediately until direction has been obtained from the Indigenous People.</p> <p>3.3.6 Sites of cultural, religious, ecological, or economic significance are delineated on maps or marked in the field and are known to relevant forest workers. Where such identification of sites would threaten the value or protection of the sites, general descriptions of the areas or site types (e.g. "plant gathering") should still be given, and protection must still be ensured.</p> <p>3.3.7 Using information and directions from Indigenous Peoples consultation and participation, construction project supervisors and earth-moving equipment operators are able to recognize sites of cultural or archaeological significance and so avoid disruption or damage.</p> | <p>or actual plans for management of special sites drawn up, appropriate education programmes in place for public and employees.</p> |  |
| <p><b>Criterion 3.4. Indigenous peoples shall be compensated for the application of their traditional knowledge regarding the use of forest species or management systems in forest operations. This compensation shall be formally agreed upon with their free and informed consent before forest operations commence.</b></p>   |  | <p>The intent is that indigenous peoples' intellectual property rights are protected and they receive fair value when forest management uses this knowledge.</p> |

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| <p>3.4.1 Indigenous Peoples' traditional practices or knowledge that have potential commercial value are recognised and should be documented if feasible.</p> <p>3.4.2 If such traditional knowledge is used by the timber management enterprise or by any other organization under agreement with the timber management enterprise, the relevant Indigenous Peoples are compensated for the fair market value of such knowledge.</p> | <p>Orally verified traditions, documentation of practices and knowledge, written agreements of use and compensation, payment of compensation.</p> | <p>This pair of sample indicators satisfies all structural parts of this Criterion.</p> |
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## ANNEX I : Glossary of Terms

**Note:** Comments are invited on the terms used and the glossary will then be reviewed, revised and incorporated into the official FSC glossary (FSC-STD-01-002).

The terms below marked with a single asterisk (\*) are defined using *The Concise Oxford Dictionary of Current English, Ninth Edition, Clarendon Press, Oxford, 1995*. Terms marked with a double asterisk (\*\*) are defined by FSC-IC itself.

**Appropriate\***: *adj.* **1** suitable or proper.

**Community\***: *n.* **1 a** all the people living in a specific locality. **b** a specific locality, including its inhabitants. **2** a body of people having a religion, a profession, etc. in common.

**Compensate\***: *v.* **1 tr.** recompense (compensate for loss). **2 intr.** make amends. **3 tr.** counterbalance; make up for; make amends for.

**Consent\***: to express willingness; to give permission; to agree. It also means a voluntary agreement; a permission. (See also, "Free and informed consent", Glossary definition.)

**Control\***: *n.* **1** the power of directing, command. **2** the power of restraint, esp. self-restraint. In this sense, control implies being able to determine or restrict the activities which take place in the forest management unit.

**Customary rights\*\***: Rights which result from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit (FSC-AC, February 2000). Most customary rights might not be documented, even if State laws declare to recognize them, but exist only through the practice. These rights are very often collective, vested in the local group, tribe or people as a whole.

**Delegate\***: *v.tr.* **1 a** commit (authority, power, etc.) to an agent or deputy. **b** entrust (a task) to another person. **2** send or authorize (a person) as a representative; depute.

**Note:** *In many cases, local communities and indigenous peoples are not the primary initiators or actors in commercial forest operations. In these cases, there will usually be an element of delegating control of forestry to a forest manager in FSC-certified operations. Implicit in the concept of free and informed consent in this context is the right to set conditions for delegation of control. Conditional delegated control means specific conditions for granting, withholding, or withdrawing consent for delegation of control are set. The conditions could also set benchmarks to be met by the forest manager. Those with authority to delegate control retain the right to revoke the delegation. The right to delegate control in the manner of their choosing is one of the "legal or customary rights" referred to in Principle 2. (See also "free and informed consent", and "customary rights").*

**Dispute\***: *n.* **1** a controversy, a debate. **2** a quarrel. **3** a disagreement between management and employees, esp. one leading to industrial action.

**Note:** *Here is an alternative definition for **Dispute**, which builds upon the dictionary definition, adding much clarity within an FSC context. See also definition for **Outstanding dispute**.*

**Dispute:** A dispute exists when the parties have exhausted consultative avenues to resolve their differences and the following occurs:

- a person or persons whose rights or interests are directly affected by the forest manager's activities gives written notice to the manager, indicating that they wish to pursue a dispute resolution process and specifying which rights or interests are affected, by which management activities, in which location, and what modifications are considered appropriate to avoid or mitigate impacts on the rights or interests;

OR,

- the manager gives written notice to the disputant, in order to trigger the dispute resolution process and bring closure to the disagreement.

**Note:** *The last bullet here is intended to protect the forest manager against potential frivolous or injurious attempts to discredit their certification. It gives the manager the option of initiating the dispute resolution process, to cut short discussion. The alert certifying body, will, of course, need to aim at clarity between claims of injury from all sides.*

**Free and informed consent:** *Consent has two aspects to it: the consent must be freely given, and it must be knowledgeably given. Consent itself means to express willingness; to give permission; to agree. It also means a voluntary agreement, permission.*

**Note:** *Freely given consent is consent that is voluntarily given, without manipulation, undue influence or coercion. Key to "freely given consent" is maintaining the essential dignity and individual/community's right to choose.*

*Informed consent involves explicitly informing a participant in the process, its potential benefits and risks, the alternatives to participating, and the right to withdraw from the process at any time. Key to "informed consent" is the quality, timeliness and appropriateness of information used to decide consent.*

*Implicit in the right of free and informed consent in this context is the right to set specific conditions for granting, withholding, or withdrawing consent. The conditions could also set benchmarks to be met by the forest manager. The right to grant, withhold or withdraw consent is one of the "legal and customary rights" referred to in Principles 2 and 3.*

**Indigenous lands and territories:** For FSC purposes, this refers to the lands, territories and resources where Indigenous Peoples have ownership, management or use rights. In addition, to many indigenous peoples the concept of territory incorporates a spiritual space.

**Indigenous peoples\*\*:** "The existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them and, by conquest, settlement, or other means reduced them to a non-dominant or colonial situation; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form a part, under State structure which incorporates mainly the national, social and cultural characteristics of other segments of the population which are predominant." (Working definition adopted by the UN Working Group on Indigenous Peoples) (FSC-AC, February 2000).

More recently, (March 2002) the FSC Board has agreed to incorporate ILO Convention 169 into FSC requirements. This Convention relates to 'Indigenous and Tribal Peoples' and applies to:



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

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

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

**Legal rights:** “Those rights conferred by act of legislation, court or other instrument of government capable of defining local communities and indigenous rights as law”

**Local\*:** *adj.* **1** belonging to or existing in a particular place or places. **3** of or belonging to the neighbourhood

**Local communities/local populations/local people:** those families or communities who have been inhabiting the forest applying for certification, or using its resources as part of their livelihoods, before the management consolidated its rights; also those families/communities living around the forest being managed or along the access roads, and may be affected by the operations.

**Maintain\*:** *v.tr.* **1** cause to continue; keep up, preserve.

**Mechanism\*:** *n.* **3** the mode of operation of a process. **4** a means.

**Outstanding dispute (of substantial magnitude involving a significant number of interests):** a dispute that involves: local rights holders, local forest workers, or local residents; the legal or customary rights of local communities and indigenous peoples; a range of issues and/or interests; potential impacts to the disputant(s) that are irreversible or cannot be mitigated; and are related to meeting the FSC Standards.

**Protect\*:** *v.tr.* **1** keep (a person, thing, etc.) safe; defend; guard.

**Recognise\*:** *v.tr.* **4** acknowledge the existence, validity, character, or claims of.

**Respect\*:** *v.tr.* **2 a** to avoid interfering with, harming, degrading, insulting, injuring or interrupting. **b** to treat with consideration.

**Shall\*:** *v.aux.* **3** expressing a command or duty

**Traditional knowledge:** this covers knowledge accumulated over generations, is often specific to the culture, and considered to be collective property. It includes, but is not limited to, knowledge of:

- local behaviour, distribution or cycles of fish, wildlife and plant life;
- broader climatic changes or cycles;
- local ecosystem or geomorphologic responses to natural or human disturbances;
- local population densities or changes in fish and wildlife;
- qualitative information about the utility of a variety of medicinal, edible, or material resource plants;

- requirements or activities needed to maintain or enhance local ecosystems.
- It should be noted that the case for compensating for the use of traditional knowledge is lessened if is not specific to one group of indigenous people.

## ANNEX 2: Structural Analysis

### Principle 2

| Principle 2  | Phrase 1                               | Phrase 2                                    | Phrase 3  | Phrase 4  | Phrase 5       | Phrase 6             | Phrase 7 |
|--|--|---|---|---|----------------|----------------------|----------|
| <b>Full text</b>   | Long-term tenure and forest use rights | to the lands and forest resources           | shall   | be clearly defined,   | documented and | legally established. |          |
| <b>Long-term tenure and forest use rights to the land and forest resources shall be clearly defined, documented and legally established.</b> |  | Qualifies where the long-term rights apply. | This word pushes the interpretation of the sentence into the imperative. Where this can sometimes have an effect is when the forest manager does not have a long-term tenure, and yet still wishes to become certified. | Three verbs, written in parallel, and therefore of equal weight. The requirement that the establishment of the rights be legal might conceivably be interpreted as at odds with Criterion 2.2, which contemplates "customary rights". Note that the definition of the rights must be clear, that is, unambiguous. |                |                      |          |

| Criterion 2.1   | Phrase 1   | Phrase 2  | Phrase 3   | Phrase 4 | Phrase 5 | Phrase 6 | Phrase 7 |
|---|--|---|--|----------|----------|----------|----------|
| <b>Full text</b>  | Clear long-term tenure and forest use rights to the land   | shall   | be clearly demonstrated  |          |          |          |          |
| <b>Clear long-term tenure and forest use rights to the land (e.g. land title, customary rights, or lease agreements) shall be clearly demonstrated.</b> | Targets the long-term rights of the applicant. Specifies that these rights be unambiguous. Examples of rights to the land are provided within the Criterion for greater clarity. | This word pushes the interpretation of the sentence into the imperative. This is a command. | Again, the requirement is that the demonstration of the right also be clear. Problems may arise with customary rights which are often indefinite with no supporting documentation. |          |          |          |          |

| Criterion 2.2   | Phrase 1   | Phrase 2  | Phrase 3  | Phrase 4   | Phrase 5  | Phrase 6  | Phrase 7 |
|---|--|---|---|--|---|---|----------|
| <b>Full text</b>  | Local communities  | with legal or customary tenure or use rights  | shall maintain control over forest operations   | unless they delegate control   | with free and informed consent  | to other agencies.  |          |
| <b>Local communities with legal or customary tenure or use rights shall maintain control, to the extent necessary</b> | The usual interpretation for "local community" runs something like, "communities that are in or adjacent to" forest operations, but it | FSC recognises the validity of both legal rights and customary rights. Care should be taken to include both legal and | Note that the "control" introduced here is qualified in the Criterion by the words, " <b>to the extent necessary to protect their</b> | Delegating control is an aspect of maintaining control. The right to delegate control in the manner of their | Free and informed consent is consent that has been given voluntarily and knowledgeable. (See also "free and informed consent" | The term, as it is used here, is neutral. "Agencies" could be a single person, an organisation, or a government branch. A forest manager or CB should identify the legitimate representative of the local community who is able to provide 'consent'. Guidance to identify legitimate |          |

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| <p><b>to protect their rights or resources, over forest operations unless they delegate control with free and informed consent to other agencies.</b></p> | <p>could mean that an association of people maintain control over rights or resources.</p> | <p>customary rights. Not only are the community's tenure or resource use rights recognised, but their right to protect those rights is also recognised.</p> | <p><b>rights or resources".</b><br/>Control as it is used here does not seem to be of the same scope as the control described in Criterion 3.1 - it seems to be more focussed. Nevertheless, "shall" is used here, which puts the sentence into the imperative. This is a command.</p> | <p>choosing is one of the "legal or customary rights" referred to in Principle 2. (See also "delegate control", and "customary rights" in the Glossary).</p> | <p>and customary rights" in the Glossary).</p> | <p>authorities would almost certainly be nationally or regionally specific, and would therefore be expected through the work of a national working group, or through national consultation on the certification body's generic standard.</p> |
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| Criterion 2.3   | Phrase 1  | Phrase 2  | Phrase 3  | Phrase 4   | Phrase 5   | Phrase 6   | Phrase 7   |
|---|---|---|---|--|--|--|--|
| <p><b>Full text</b></p>   | <p>Appropriate mechanisms shall be employed</p>   | <p>to resolve disputes over tenure claims and use rights.</p>   | <p>The circumstances and status of any outstanding disputes</p>   | <p>will be explicitly considered in the certification evaluation.</p>  | <p>Disputes of substantial magnitude</p>   | <p>involving a significant number of interests</p>   | <p>will normally disqualify an operation from being certified.</p>   |
| <p><b>Appropriate mechanisms shall be employed to resolve disputes over tenure claims and use rights. The circumstances</b></p> | <p>Deciding if a mechanism for resolving dispute is appropriate can sometimes be difficult. Choosing one of these two approaches may be helpful here.</p> | <p>This phrase makes it clear, the disputes under question are those over tenure claims and use rights.</p> | <p>To assist the mandatory consideration of disputes in the certification assessment of Criterion 2.3, the manager should maintain a record</p> | <p>This phrase uses the verb "will", which brings the sentence into the imperative, and further enhances the strength with the word, "explicitly".</p> | <p>A CB should normally consider a range of factors in evaluating the circumstances of outstanding disputes of substantial magnitude involving a significant number of interests.<br/><br/>(See also Glossary definition for "Outstanding dispute".)</p> | <p>The intent of the statement is clear - in <b>most circumstances</b>, disputes of this sort will disqualify an operation from being certified.</p> | <p>The intent of the statement is clear - in <b>most circumstances</b>, disputes of this sort will disqualify an operation from being certified.</p> |

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| <b>and status of any outstanding disputes will be explicitly considered in the certification evaluation. Disputes of substantial magnitude involving a significant number of interests will normally disqualify an operation from being certified.</b> | <p>1) Define characteristics of an appropriate mechanism and let local people negotiate their own version with the manager.</p> <p>2) Define a fair mechanism within the Standards.</p> | <p>of disputes and the status of their resolution, including evidence related to the dispute (whether generated internally, from outside experts or provided by disputants), and documentation of steps taken to resolve the dispute.</p> | <p>It is hard to imagine this sentence as anything other than a direct order to a CB.</p> | <p>If an exception must be made, conditions warranting the exception must be made clear.</p> |
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## Principle 3

| Principle 3  | Phrase 1   | Phrase 2   | Phrase 3   | Phrase 4   | Phrase 5  | Phrase 6   | Phrase 7 |
|--|--|--|--|--|---|--|----------|
| Full text  | The legal and customary rights   | of indigenous peoples  | to own, use and manage   | their lands, territories and   | shall   | be recognised and respected.   |          |
| <b>The legal and customary rights of indigenous peoples to own, use and manage their lands, territories and resources shall be recognised and respected.</b> | <p>As with Principle 2, the FSC definition of "rights" goes beyond strictly legal definitions to incorporate "customary rights as well". The right to protect their rights is one of the rights embedded in Principle 3.</p> <p>For areas where significant legal questions exist for implementing Principle 3, national and regional bodies might consider commissioning a legal opinion, similar to that done by FSC Canada.</p> | <p>The FSC definition works reasonably well for most places. In Indonesia, the concept of <b>adat</b> may be a useful way to apply the definition.</p> <p>Also useful is the ILO Convention 169, adopted by the FSC Board, which stipulates that "Self-identification as indigenous or tribal shall be regarded as a fundamental criterion".</p> | <p>This trio of verbs, written in parallel, covers a broad range of activities possible over lands, territories and resources.</p> | <p>The FSC definition of Indigenous lands and territories works well for most places.</p> <p>There may be local agreements or treaties that offer greater specificity of definition.</p> | <p>This verb places the statement into the imperative. This is a command.</p> | <p>The phrase "recognise and respect" is sometimes in need of clarification. As such, an Indicator may be useful to provide direction for <b>how</b> a legal or customary right might be recognised and respected.</p> <p>Please see Glossary definitions for both "recognised" and "respected".</p> |          |

| Criterion 3.1   | Phrase 1  | Phrase 2  | Phrase 3   | Phrase 4  | Phrase 5  | Phrase 6   | Phrase 7 |
|---|---|---|--|---|---|--|----------|
| <b>Full text</b>  | Indigenous peoples                                      | shall control forest management   | on their lands and territories   | unless they delegate control  | with free and informed consent  | to other agencies.   |          |
| <b>Indigenous peoples shall control forest management on their lands and territories unless they delegate control with free and informed consent to other agencies.</b> | Please see Glossary definition for “Indigenous people”. | Note that the “control” introduced here is <b>not</b> qualified in the same way Criterion 2.2 limits the concept.<br><br>Because the phrase uses the word “control”, this Criterion is as much about the relationship and balance of power between forest manager and Indigenous People as it is about mechanisms of control. | Please see Glossary definition for “indigenous lands and territories”. | Delegating control is an aspect of maintaining control.<br><br>The right to delegate control in the manner of their choosing is one of the “legal or customary rights” referred to in Principle 2. (See also “delegate control”, and “customary rights” in the Glossary). | Free and informed consent is consent that has been given voluntarily and knowledgeably. (See also “free and informed consent” and customary rights” in the Glossary). | As with Criterion 2.2, “other agencies” could be almost any person or organisation entrusted to carry out the wishes of Indigenous People. |          |
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| Criterion 3.2   | Phrase 1  | Phrase 2  | Phrase 3   | Phrase 4  | Phrase 5  | Phrase 6   | Phrase 7 |
| <b>Full text</b>  | Forest management                                       | shall not   | threaten or diminish,  | either directly or indirectly,  | the resources or tenure rights  | of indigenous peoples.   |          |



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| <p><b>Forest management shall not threaten or diminish, either directly or indirectly, the resources or tenure rights of indigenous peoples.</b></p> | <p>Makes it clear what kind of activities the forest manager is responsible for in relation to Indigenous Peoples' rights.</p> | <p>This places the negative verb in the imperative. This is a command.</p> | <p>Given that every forestry activity may in some way affect tenure or resource rights, it is helpful to remember that this Criterion deals with resources or tenures that occupy <b>areas</b>. As such, proper planning should allow a distribution and abundance of resources that moves with dynamic ecosystems, in agreement with local Indigenous Peoples, of course.</p> <p>The phrase, directly or indirectly, may be understood in terms of action or neglect for which the manager is responsible.</p> | <p>This phrase keeps it clear whose rights are under consideration.</p> |  |
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| Criterion 3.3 | Phrase 1  | Phrase 2              | Phrase 3                    | Phrase 4                          | Phrase 5                     | Phrase 6            | Phrase 7 |
|---------------|---|-----------------------|-----------------------------|-----------------------------------|------------------------------|---------------------|----------|
| Full text     | Sites of special cultural, ecological, economic or religious significance | to indigenous peoples | shall be clearly identified | in cooperation with such peoples, | and recognised and protected | by forest managers. |          |

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| <p><b>Sites of special cultural, ecological, economic or religious significance to indigenous peoples shall be clearly identified in cooperation with such peoples, and recognised and protected by forest managers.</b></p> | <p>Largely identified by indigenous peoples, the range of possible sites is broad. These will tend to be specific locations.,</p> | <p>To keep it clear <i>whose</i> sites are under consideration</p> | <p>Again, the statement is put in the imperative, so there is no question of the intent, or the threshold.</p> | <p>To make it clear they must be involved in the identification and articulation of significant sites.</p> | <p>The verb <b>protect</b>, strengthens the interpretation beyond respect, and specifically requires that the forest manager be actively involved in keeping these sites safe from harm. (See also definition of “protect”, in attached Glossary).</p> | <p>To keep it clear who has the responsibility.</p> |  |
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| Criterion 3.4           | Phrase 1                                       | Phrase 2  | Phrase 3   | Phrase 4   | Phrase 5                                    | Phrase 6                                  | Phrase 7 |
|-------------------------|--|---|--|--|---|---|----------|
| <p><b>Full text</b></p> | <p>Indigenous peoples shall be compensated</p> | <p>for the application of their traditional knowledge</p> | <p>regarding the use of forest species or management systems in forest operations.</p> | <p>This compensation shall be formally agreed upon</p> | <p>with their free and informed consent</p> | <p>before forest operations commence.</p> |          |

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| <p><b>Indigenous peoples shall be compensated for the application of their traditional knowledge regarding the use of forest species or management systems in forest operations. This compensation shall be formally agreed upon with their free and informed consent before forest operations commence.</b></p> | <p>The forms of compensation can vary widely, and need not always mean financial compensation. Any act that has value to the Indigenous People would satisfy this requirement.</p> | <p>Note that the Criterion does not insist TK be used, only that when it is used, the indigenous people supplying the TK shall be compensated.</p> | <p>Because many Indigenous Peoples live close to the forest, or in it, their knowledge of it may be of particular use in a forest manager's adaptive management planning. (See also Glossary definition for "Traditional Knowledge".)</p> | <p>The requirement is that the agreement be a formal one. This often means that the agreement be in writing, but it could also mean that the agreement is formalised at a community meeting with a ceremony that is meaningful to the local people. The use of the term, <b>formally</b>, also suggests that the agreement is structured in some way, so as to make it binding upon the parties involved.</p> | <p>This is the second place where free and informed consent is required in this Principle. Given that some companies have become wealthy through use of traditional knowledge, while the people supplying the information have not, this requirement seeks to prevent a situation where the benefits are all one-sided.</p> | <p>This pins down when the agreement must be made.</p> |  |
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