

Free, Prior and Informed Consent (FPIC) and forest certification

Comparing standard development processes in Canada, Russia and Sweden

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This paper draws on the Forest Stewardship Council (FSC) standard development process to better understand key issues surrounding interpretation and negotiation of FPIC in Canada, Russia and Sweden.

Results show that all three processes experienced tensions regarding negotiation of FPIC. Members of Social/Aboriginal Chambers were mostly favourable to the language of the International Generic Indicators (IGIs). Several expressed hopes

that the new FPIC requirements would help overcome problems with ineffective consultation processes.

Members of Economic Chambers expressed reservations, in some cases outright opposition to FPIC. The most visible manifestations were expressions concerning the risk of an Indigenous veto and the view that FPIC requirements would lead to unsubstantiated withdrawal of consent and economic disruption to the forest industry.

Comparative analysis of national standards reveals that IGIs underwent a translation process in each country. Canada's standard leaves significant latitude to forestry companies and Indigenous peoples to define their own FPIC arrangements. The Russian standard takes a more restrictive view, presenting FPIC as a mechanism to be used only after existing engagement mechanisms have failed. The Swedish standard defines a prescriptive process which sets out spatial and temporal limitations on FPIC.





A forest, with multiple vertical layers, in Komi Republic. This type of forest is valuable for traditional hunting due to the diversity of habitats for wildlife. Photographer: Marine Elbakidze.

Free, prior and informed consent (FPIC) is an important human rights principle, supported by Indigenous peoples worldwide and enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Indigenous Peoples define FPIC as an expression of their collective right to self-determination, including the possibility to accept or reject a resource development project that will affect their rights, based on a collective decision-making process.

Implementation of FPIC is happening on many fronts, including through national laws, corporate initiatives and Indigenous-led actions. However, there is growing concern that FPIC is being “watered down” by weak interpretations of FPIC, which minimize the obligation to seek consent in favour of procedural approaches more closely resembling forms of consultation.

One of the first sustainability standards to adopt FPIC was the Forest Stewardship Council (FSC). While consent has been part of the FSC standard since 1994, the most recent international standard (2012) has taken a more expansive position. For the first time, consent requirements appear in both Principles 3 and 4, thus including non-Indigenous communities with customary rights.

Our research focused on FSC standard development processes in Canada, Russia and Sweden. The goal of the research was: (a) examine stakeholder dynamics related to FPIC in standard development processes to identify key debates related to interpretation (b). To compare textual articulations of FPIC in standards in order to analyse implications for implementation.

In total, 49 semi-structured interviews were conducted with participants in standard development processes in

Canada, Russia and Sweden between 2018 and 2019. Additionally, textual analysis of the approved national standards was done to compare IGIs which specifically reference FPIC with related indicators in Canadian, Russian and Swedish national standards.

Canada

The Canadian process

FPIC was widely considered to be a challenging issue within the standard development process, however the dynamic was constructive. The Social and Aboriginal chambers¹ supported a substantive interpretation of FPIC, resembling the IGIs. The Economic Chamber expressed a number of concerns, including potential costs and fears that FPIC would be viewed by Indigenous peoples as a way to impose a veto on forestry operations or to leverage the certification process towards achieving political gains in other areas, such as negotiations with government. There was also

¹ Unlike FSC organizations in other countries, which are based on three chamber (Social, Economic, Environmental), the governance of FSC Canada has a fourth chamber named the Aboriginal Chamber.

strong opposition from members of all chambers concerning the decision by FSC International to incorporate FPIC into Principle 4, aimed at local communities with customary rights on the forest. Although participants recognized that an inclusive approach to FPIC might be appropriate in some places, in Canada it was felt that FPIC must be reserved for Indigenous communities, who are covered under UNDRIP and have distinct rights as set out in the Canadian Constitution.

The Canadian standard

FPIC indicators remain relatively close to the IGIs, mirroring the substantive language adopted there. Indeed, in some cases, the Canadian standard adopts more active language (ex: going beyond “information sharing” to “participation” in management planning). Another aspect was the addition of an indicator requiring forestry companies to support Indigenous capacity-building. Other changes point to less stringency, for example the stipulation of ‘best efforts’ in cases where FPIC is not achieved, but is advancing ‘in good faith’. FPIC was also removed from Principle 4, thereby eliminating the possibility of non-Indigenous rights-holders having access.

Russia

The Russian process

FPIC was a source of conflict for participants in the standard development process. FPIC was considered a significant departure from existing approaches, which had been based mainly on the designation of socially-valuable forests and public consultations. For the Social Chamber, the introduction of FPIC was seen as an opportunity to demand greater accountability from forestry companies and strengthen the position of Indigenous and non-Indigenous communities.

For the Economic Chamber, FPIC requirements were met with scepticism and frustration. FPIC was seen as a foreign concept, which did

not sufficiently reflect the realities of the Russian context. Concerns were raised that applying FPIC would be impractical given the geographic isolation and the lack of political organizations in some communities. Given the fluid and often-times contested definitions of Indigenous versus non-Indigenous in Russia, operationalizing rights-holders eligible for FPIC was also considered difficult. Like in Canada, members of the Economic Chamber raised concerns around veto. Throughout the process, the Economic Chamber sought to either remove or significantly reduce the scope of FPIC requirements. This included requests to revisit the definition used by FSC for the identification of Indigenous peoples, in order to make it more restrictive.

The Russian standard

The final standard shows traces of these debates. Although FPIC indicators follow the general language of the IGIs, there are some notable restrictions. FPIC is to be used in cases when other mechanisms are insufficient and only for customary rights within limited areas and which

do not conflict with Russian law. An annex to the national standard outlines a number of circumstances where FPIC does not apply, including if FPIC conflicts with other requirements of the standard (ex: will lead to significant cuts of job) or when FPIC will lead to conflict between the forestry company and other FPIC rights holders, or between different groups of rights holders. FPIC is included in Principle 4.

Sweden

The Swedish process

The approach taken in the process was to develop indicators which would be in line with the previous standard, a relatively prescriptive and standardized approach. The biggest challenge was agreeing on the parameters for consent. Indigenous members of the Social Chamber argued that the Sami should have strong decision-making influence under FPIC, in line with conceptions in the IGIs. For them, FPIC was viewed as an important mechanism to redress what was seen as a legacy of imbalanced power dynamics within consultation processes. For members of the Economic Chamber, there



An old-growth forest with hanging lichen in Sweden. Lichen is a crucial food source for reindeer, thus protection of old-growth forests are a pivotal issue for Sami reindeer herders. Reindeer is a keystone species in Scandinavia and the Sámi have a long history of living off reindeer for livelihood (front page). Photographer: Marine Elbakidze.



A Cree hunter from an inland Cree community poses with a rabbit snared from one of the hunting grounds in the James Bay region of Canada. Photographer: Allan Saganash Jr.

were concerns around the potential for veto and impacts on management planning and corporate stability. There was clear consensus that FPIC rights should not be extended to local communities under Principle 4.

The Swedish standard

FPIC indicators reflect the tenor of discussions within the Swedish process. While at the indicator level, there are many similarities to the language of the IGIs, the accompanying directives sets out a process which is more prescriptive and operationally-focused, including standardized steps and specific timelines. The possibility to withhold consent is limited to situations where reindeer herding is threatened in a way that “disables reindeer herding”, under shorter timelines and for specific management activities. FPIC was removed from Principle 4.

Conclusions

Building consensus around a common interpretation of FPIC at the national level, where considerations around feasibility, risks and costs are considerable, was not straightforward. All three standard development processes saw division between Social/Aboriginal Chambers and Economic Chambers in attitudes and conceptions regarding FPIC. This was reflected in the wording of the final standards which veered from the substantive language of the IGIs. While further research will be required, this trend points to the potential for more bounded and operational approaches to FPIC.

Key words

Free, prior and informed consent, FPIC, Indigenous peoples, forest certification.

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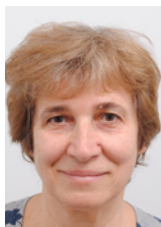
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