

1 **Articulating FPIC through transnational sustainability standards: A comparative**
2 **analysis of Forest Stewardship Council's standard development processes in Canada,**
3 **Russia and Sweden**

4
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6
7 **Introduction**

8 Free, prior and informed consent (FPIC) is an emergent human rights principle which recognizes
9 Indigenous decision-making authority on traditional lands, in cases of resource development such as
10 forestry, oil and mining. International instruments such as the *United Nations Declaration on the*
11 *Rights of Indigenous Peoples* (UNDRIP) uphold the rights of Indigenous peoples to FPIC, linking it
12 to self-determination, and the rights of Indigenous peoples to govern their own affairs through
13 collective decision-making processes. FPIC has become a key assertion of the Indigenous rights
14 movement in dealings with government and industries in matters of resource development.

15 Indigenous groups are also asserting FPIC through the development of internal laws, procedural
16 guidelines and negotiated agreements (Doyle 2015, Papillon and Rodon 2020). While international
17 recognition of FPIC has mostly focused on Indigenous peoples, there is also a movement underway
18 to extend FPIC rights to communities, whom are governed by traditional systems but lack legal
19 protection (Lehr and Smith 2010). In principle, each component of FPIC confers specific meaning.

20 Free, refers to consent given without coercion, intimidation or manipulation. Prior, means that
21 consent is sought well in advance of project approval. Informed, refers to the need for sharing of
22 pertinent information regarding the scope and impacts of the project. Finally, consent is conceived
23 as a collective decision made by rights-holders through a community sanctioned decision-making
24 process (Food and Agriculture Organization 2016, Johnstone 2020).

25 There are numerous drivers and pathways for the implementation of FPIC worldwide, including
26 national laws, corporate social responsibility initiatives, and Indigenous-led actions. While the

1 visibility and diversity of FPIC initiatives is growing, there is also increasing recognition of
2 challenges to implementation, especially in countries lacking conducive conditions, such as support
3 for human rights, Indigenous capacity and effective socio-political organization (Owen and Kemp
4 2014). The literature on FPIC describes a type of “implementation gap”, which links insufficiencies
5 in FPIC application to procedural failures (lack of community input, engagement with
6 unrepresentative groups, coercion) and structural conditions (marginalized and poorly resourced
7 communities, imbalances in financial and technical resources) (Colchester and Ferrari 2007, Cariño
8 and Colchester 2010, O’Faircheallaigh 2015). Indeed, there is growing concern expressed amongst
9 scholars, practitioners and Indigenous peoples that in application, the underlying principles of FPIC
10 are being eroded as a result of the design and application of institutional arrangements which do not
11 sufficiently reflect the spirit and intent of FPIC. Proponents of FPIC must also contend with a
12 reactionary discourse, from some corporate and governmental actors, whom associate FPIC with a
13 type of unilateral Indigenous “veto”¹ over resource development, which could be used
14 indiscriminately by Indigenous groups to block or stall resource development projects (Joffe 2015,
15 Imai 2016).

16 This issue of conceptual differences with regards to the meaning of FPIC conveyed both in design
17 and implementation is the central topic of this paper. Indeed, some describe FPIC as a contested
18 norm due to the lack of a shared definition of the concept and the fundamental parameters for its
19 implementation (Fontana and Grugel 2016, Papillon and Rodon 2020). Although the foundations of
20 FPIC, based in a human rights discourse (and articulated in documents such as UNDRIP), are clear

¹ Joffe (2015) explains that opponents of FPIC have tended to interpret the notion of “veto” to imply a “complete and arbitrary power, with no balancing of rights”. The term “veto” is not used in aspirational documents such as the United Nations Declaration on the Rights of Indigenous Peoples.

1 and widely supported, in the sphere of application, conceptions and approaches diverge. Particularly
2 contentious is the question of what constitutes legitimate forms of “consent” and the extent to which
3 this confers substantive decision-making authority to Indigenous peoples. Several scholars note a
4 tendency within the field of corporate social responsibility for FPIC processes to rely on
5 bureaucratic or procedural approaches, which either downplay or obfuscate the obligation to seek
6 consent through representative institutions and with meaningful community process (Szablowski
7 2010, Yaffe 2018). That being said, there is also growing recognition that FPIC processes are
8 strongly situated, and deeply influenced by the socio-cultural, political and environmental contexts
9 in which they are embedded. FPIC processes are often built on a foundation of existing institutional
10 arrangements between Indigenous peoples, corporations and the state, and as such they reflect the
11 complex histories of these relationships (Fontana and Grugel 2016).

12 In this paper, we seek to provide new empirical evidence regarding FPIC and the way its meaning is
13 debated and articulated within the field of sustainability standards. Initiatives within this field
14 provide market incentives for extractive industries based on their voluntary adherence to a set of
15 norms, encompassing social, cultural, environmental and/or economic dimensions (Meadows et al.
16 2019). The Forest Stewardship Council (FSC), the focus of this study, is an organization that has
17 developed a sustainability standard through a multi-stakeholder process. It was also one of the first
18 to integrate consent requirements into its international standard. FSC presents a particularly
19 interesting case study regarding articulations of FPIC because of its institutional structure which is
20 based on an international standard (a generic set of principles and criteria), which is supplemented
21 by specific sets of indicators developed by each national FSC initiative through a participatory
22 process. Although indicators are designed to account for the specificities of socio-political and
23 environmental contexts at the national level, FSC’s overarching aim is to ensure consistent

1 application of its norms across the globe. FSC therefore provides an interesting opportunity to
2 retrace the process by which a single internationally codified version of FPIC is ‘translated’ in
3 national standard development processes, the tensions which emerge around interpretation, and the
4 final articulations of FPIC which emerge. Specifically, this paper undertakes an analysis of recent
5 FSC standard development processes in three countries, Canada, Russia and Sweden, in order to: a)
6 examine stakeholder dynamics related to FPIC to identify key issues and debates related to
7 interpretation b) to link these to textual versions of FPIC articulated in each national standard and
8 analyse implications regarding approaches to implementation.

9 We begin by setting out a conceptual framework, which draws on the academic literature in order to
10 present a typology based on conceptions of FPIC. This is followed by a description of FSC and its
11 approach to FPIC in standard development. The methods section is next, which includes a brief
12 description of contextual conditions in each country. This is followed by research results, organized
13 on a country-by-country basis and separated according to process (dynamics and key challenges)
14 and written outcomes. We end with a discussion, where we look at the implications of these
15 conceptual differences regarding FPIC and point towards factors which help explain these
16 differences, relating both to process dynamics, as well as broader socio-cultural and political
17 contexts.

18 1. **Conceptual framework - unpacking conceptions of free, prior and informed consent**

19 Conceptions of FPIC are diverse and continue to evolve as the result of ongoing experiences and
20 critical reflection. In the past few decades, FPIC has generated an impressive academic literature,
21 which points to a variety of conceptions of FPIC, reflecting different viewpoints on the goals of
22 FPIC processes as well as the scope and strength of Indigenous authority in decision-making. We

1 have developed a typology based on three conceptions: ‘human rights’, ‘relational’ and
2 ‘procedural’. While these categories are fluid and are certainly not mutually exclusive, the
3 differences between them can help to clarify the divergences of opinion and critiques which have
4 been articulated regarding interpretation and implementation.

5 An influential conception of FPIC is articulated in the sphere of international human rights,
6 including instruments and policies such as UNDRIP (see Table 1). We call this the ‘human rights’
7 conception. It links FPIC to wider goals of Indigenous self-determination, and the recognition that
8 Indigenous peoples have been and continue to be adversely impacted by colonialism, assimilation
9 and appropriation of lands and resources (UNDRIP 2007). FPIC is conceived as a way to redress
10 injustices and ensure that Indigenous peoples have a meaningful say over decisions impacting their
11 lands and resources and ensure culturally appropriate development (Tomlinson 2019). As such,
12 FPIC is an expression of the collective will of the community to determine its own economic, social
13 and cultural development. The legitimacy of an FPIC process is based in engagement with
14 Indigenous communities, whom are empowered to make a decision, either positive or negative,
15 through their own representative institutions. Thus, under a human rights conception of FPIC, the
16 act of giving or withholding consent is fundamental and is a non-negotiable aspect of the process
17 (Colchester and Ferrari 2007, Ward 2011). Furthermore, the autonomy of the Indigenous nations, to
18 determine their own political approach to reaching a decision is also implied. According to James
19 Anaya, Special Rapporteur on the Rights of Indigenous Peoples, this is most feasible under an
20 alternative economic development scenario, where Indigenous peoples are active partners or
21 initiators of resource extraction in their territories, according to their own development priorities.
22 Under conventional scenarios, meaning those where industry and government promote resource
23 extraction projects and Indigenous peoples do not have a direct stake in project development, the

1 human rights approach places particular emphasis on the need for structured process and
2 meaningful decision-making authority (Anaya 2019).

3 There is also a ‘relational’ conception of FPIC, which frames it as the expression of a collaborative
4 dynamic between project proponents and Indigenous peoples, based on an ethic of respect, trust and
5 the pursuit of mutually agreeable outcomes. This view, which has been espoused by some civil
6 society groups, Indigenous organizations and academics, emphasizes dialogue and partnership, but
7 also respect for Indigenous worldviews and cultural knowledge (Mitchell et al. 2019). Value is
8 placed on developing meaningful processes which are tailored to each community’s needs and
9 interests. The ability for an Indigenous community to collectively choose to reject or accept a
10 resource development proposal remains on the table, however a negotiated compromise is
11 emphasized as well as the virtues of ongoing discussion and mediation (Papillon and Rodon 2017,
12 Tomlinson 2019). Under the relational conception, consent is not a one-time decision, but may
13 happen on ongoing basis, especially under circumstances where project conditions change, or new
14 information emerges which might impact Indigenous rights and interests. This may also be true of
15 the human rights conception. Leydet (2019) speaks to the importance of ensuring explicit
16 Indigenous consent at three different stages: before a permit or license or title has been issued; after
17 resource mapping and evaluation of project impacts for Indigenous peoples; and after an agreement
18 has been negotiated between parties. Capacity-building for Indigenous communities may be
19 emphasized in the relational FPIC conception, in order to reduce power imbalances through access
20 to resources, technical assistance and legal advice (Mitchell 2019).

21 Finally, the academic literature points to a tendency, especially amongst the corporate sector, to
22 adopt a discourse which realigns FPIC with notions of ‘participation’ or ‘community engagement’,

1 and which minimizes the obligation of ensuring a substantive role for Indigenous peoples in
2 decision-making. This conception, has been called ‘procedural’ (Papillon and Rodon 2020), because
3 it shifts the underlying purpose of FPIC to one of ensuring a sufficient level of community input
4 and/or support for a project (similar to a social license), often using technical or administrative
5 means, rather than ensuring broad community acceptance based on a deliberative collective and
6 politically autonomous decision-making process. Yaffe (2018) argues that ‘procedural’ conceptions
7 of FPIC are driven by corporate agendas and considerations, such as mitigating corporate risk,
8 managing impacts and ensuring community buy-in. The literature provides many illustrations.
9 Mitchell et al. (2019) points to the use of ambiguous vocabularies, such as formulations which
10 replace clear language around consent with expressions such as ‘demonstrating satisfactory
11 progress *towards* consent’ or an obligation to ‘*seek* rather than *obtain* consent’. Szablowski (2010)
12 observes a tendency to conflate expectations regarding the need to achieve community consent with
13 the need for community consultation. Other scholars describe initiatives where the language of
14 consent or FPIC is never evoked, but rather is replaced with formulations regarding “approvals”,
15 “agreements” or the negotiation of benefit packages, often under clauses of confidentiality
16 (Mahanty and McDermott 2013, Yaffe 2018, Vickers 2019). Rodhouse and Vanclay (2016) express
17 it well: “The threat is that, with the discourse of business and management being more influential in
18 constructing corporate worldviews, the concept of FPIC will become redefined with its rights-based
19 perceptions being replaced by corporate notions of community engagement, leaving FPIC
20 marginalized and weakened in meaning and scope” (p.790). There is some evidence from research
21 looking at the implementation of free and informed consent in the context of the FSC certification
22 of low levels of compliance and weak interpretation of Indigenous decision-making authority,

1 although measurable improvements to the status quo have also been documented (Sandstrom and
2 Widmark 2007, Teitelbaum and Wyatt 2013, Colchester 2016).

3 Table 1: Conceptions of FPIC described in the academic literature

	Driving organizations	Underlying aims	Conception of decision-making
Rights-based	international organizations, human rights organizations, Indigenous organizations	recognizing and protecting fundamental rights and self-determination	substantive, iterative, self-chosen representatives, based on customary systems of decision-making
Relational	civil society organizations, Indigenous organizations, human rights organizations academics	negotiating mutually agreeable arrangements, mitigating impacts on Indigenous rights, reducing inequality	substantive, negotiation-based, recurrent
Procedural	financial organizations, corporate sector, government, civil society organizations	enhancing participation, building social acceptability, mitigating corporate risk	limited, often based in consultation

4

5 **2. Background - Forest Stewardship Council Standard Development and Free, Prior and** 6 **Informed Consent**

7 The Forest Stewardship Council is widely recognized for its commitment to the inclusion of
8 Indigenous peoples in governance, policy and implementation of standards (Tikina et al. 2010,
9 Mahanty and McDermott 2013). FSC has a unique governance structure, which provides equal
10 voting power to social, economic and environmental members, through a chamber-based approach,
11 representing a variety of interest groups from a cross-section of society. Indigenous peoples are
12 included in the Social Chamber, except in Canada, where a fourth Aboriginal Chamber was created.
13 In 2013, a Permanent Indigenous Peoples Committee was formed as an advisory committee to the
14 international board.

1 The foundation of the FSC system are forest management standards, which set out the requirements
2 which forest operations must adhere to before receiving FSC forest management certification. At
3 the international level, these are based on principles and criteria, and at the national level these are
4 combined with indicators designed to account for specific ecological and socio-economic
5 characteristics of each country (FSC 2016). The most recent international FSC standard was
6 approved in 2012 (FSC 2015a). Since then, national initiatives have been charged with revising
7 national standards, within the guidelines set out by FSC International, whom also approves the final
8 standard. Development of national standards is spearheaded by national initiatives through the
9 creation of a chamber-balanced Standard Development Group (SDG). The standard development
10 process is designed to be participatory through ongoing consultations, field testing and revision. For
11 this most recent standard revision process, FSC International introduced a new element, the
12 International Generic Indicators (IGIs), which constitute a set of baseline indicators for each criteria
13 (FSC 2015b). The IGIs were designed to streamline the development of national indicators and
14 improve consistency of indicators across all countries. The SDGs are given the latitude to adopt,
15 adapt or drop each indicator with sufficient justification. Global consistency or ‘equivalence’
16 between the international and national standards is fundamental to the legitimacy of the FSC
17 system, which is based on the claim that all FSC-certified products meet the same level of rigour,
18 regardless of country of origin. This is a considerable challenge given the diverse socio-political
19 and environmental contexts in which FSC-certified territories are situated.

20

21 FSC was one of the first certification schemes to include consent requirements within its standards.
22 Requirements using the language of “free and informed consent” were first introduced to the FSC
23 standard in 1994 under Principle 3 - Indigenous peoples’ rights. The most recent version of the FSC

International Standard added the word ‘prior’ and took a more expansive position on FPIC with inclusion in two principles and five criteria (FSC 2015a). For the first time, consent requirements were also included in Principle 4 - Community relations and worker’s rights, through a focus on the customary rights of non-Indigenous communities. The IGIs on FPIC set out specific provisions such as the need for Indigenous peoples and local communities to be sufficiently informed concerning their rights, the value of the resource, the impacts of management activities and their right to withhold or modify consent. Table 2 provides two examples of IGIs specific to FPIC from Principle 3 which illustrate the type of language adopted.

In this paper, we examine and compare the standard development processes in Canada, Russia and Sweden, specific to FPIC requirements. For the standard development group in each country, this involved working with the IGIs in order to come up with a set of FPIC indicators commensurate with the national context but also sufficiently coherent with the IGIs to ensure global consistency.

Table 2 : Examples of International Generic Indicators related to FPIC (FSC 2015b)

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

- 1) Ensuring Indigenous Peoples* know their rights and obligations regarding the resource;
- 2) Informing the Indigenous Peoples* of the value, in economic, social and environmental terms, of the resource over which they are considering delegation of control;
- 3) Informing the Indigenous Peoples* of their right to withhold or modify consent to the proposed management activities to the extent necessary to protect their rights, resources, lands and territories*; and
- 4) Informing the Indigenous Peoples* of the current and future planned forest* management activities.

3.3.1 Where control over management activities has been granted through Free Prior and Informed Consent* based on culturally appropriate* engagement*, the binding agreement* contains the duration, provisions for renegotiation, renewal, termination, economic conditions and other terms and conditions.

1 **3. Methods and case study context**

2

3 The research is based on a combination of semi-structured interviews and comparative analysis of
4 FSC standards. The data collection proceeded at two levels. The first focused on dynamics within
5 standard development processes in Canada, Russia and Sweden. In total, 49 semi-structured
6 interviews were conducted with participants in standard development processes between 2018-2019
7 (see Table 3). In each country, this included official members of the standard development groups
8 (SDG), consultants to SDGs, FSC board members, and members of FSC who participated in formal
9 or informal public review processes. Table 3 provides a breakdown of participants by Chamber. In
10 this paper, when we refer to “Participants”, we are referring not only to members of the SDG, but
11 also the aforementioned people who participated in the process.

12

13 Table 3: Interviews with the FSC members and stakeholders

	Environmental Chamber	Economic Chamber	Aboriginal Chamber	Social Chamber	FSC staff/board	FSC non-member stakeholder
Canada	3	2	3	2	3	1
Russia	11	5	NA	4	2	1
Sweden	3	5	NA	1	1	2

14

15 Interview questions revolved around the following issues: process approach and dynamics, priority
16 issues brought forward regarding FPIC, forms of engagement, level of satisfaction with the process
17 and with final indicators. All interviews were recorded, transcribed and coded. An iterative process
18 was used to identify and organize data around key themes such as: definitions and meanings
19 ascribed to FPIC, perceptions of FPIC, qualities of negotiation processes, key challenges to a shared
20 articulation of FPIC, satisfaction with final indicators.

21

1 The second part was a comparison of national standards with regards to the wording of FPIC
2 indicators. Specifically, we looked at the *FSC Canada National Forest Stewardship Standard*
3 (2018a), the *FSC National Forest Stewardship Standard of Russian Federation* (2020a), *FSC*
4 *National Forest Stewardship Standard of Sweden* (2018b) (in this paper we shorten to Canadian,
5 Russian and Swedish national standards). We did this by systematically comparing the IGI within
6 Principle 3 and 4 which specifically reference FPIC with related indicators in Canadian, Russian
7 and Swedish national standards². This also included review of all intent boxes, guidance and
8 appendices related to these indicators. This was done by constructing a country-by-country table
9 which highlighted all textual differences (with the exception of very minor and insignificant
10 changes). These differences were compared with the conceptual approaches described in the
11 theoretical framework, looking at specific qualities such as aims, language, conceptions of decision-
12 making based in Table 1). Interview data regarding perceptions of FPIC and satisfaction with
13 negotiated versions of FPIC in standards was used to deepen our understanding of written versions
14 of FPIC indicators.

15
16 The three countries in this study were selected for a number of reasons. All have a sizeable forest
17 sector and are amongst the top five countries in the world in terms of forest area certified to the FSC
18 standard (see Table 4). They share similar forest types (boreal and deciduous/broadleaf). All have
19 significant Indigenous populations, whom live in forest regions and rely on forests as part of their
20 livelihoods, through a combination of subsistence and commercial activities.

² This comparison of FSC standards, focused exclusively on large landowners (Sweden) and large tenures (Canada, Russia). This decision stems from the fact that large landowners/tenure holders represent the majority of certified territories in these countries, and furthermore small and low-intensity managed forests are treated separately in Canadian and Swedish standards.

Table 4: Country characteristics

	Forest ownership regime	Total area certified FSC (ha) ^c	Forest sector contribution to GDP ^d
Canada	93.2% public, 6.8% private ^a	50,569,757	1.2
Russia	100% public ^a	48,641,596	0.8
Sweden	7% state owned, 13% state-owned companies, 78% private, 2% other public owners ^b	11,472,526	2.9

Sources: ^aForest Trends 2002, ^bSkogsstyrelsen 2015, ^cFSC International 2019, ^dFAO 2014

In Canada, the vast majority of forests are publicly owned. Forest management is under provincial jurisdiction, with a long-standing tradition of allocating timber harvesting and management responsibilities to the forest industry under long-term licenses (Luckert et al. 2011). FSC is also well established in Canada, with more than 48 million hectares certified (FSC 2020b). There are many communities which depend on the forest in a variety of ways, including for employment, recreation and non-timber forest products. This includes Indigenous communities, whose traditional territories, extend over vast parts of Canada. The rights of Indigenous peoples are protected under the Constitution Act (1982). With regards to forest governance, the Supreme Court of Canada has determined governments must consult and potentially accommodate Indigenous communities whose rights might be affected by forestry operations, thus provincial governments have important responsibilities in the area of forest consultation, which are shared with the forest industry (Newman 2009). At a societal level, the profile of FPIC is growing rapidly. Canada publicly supported UNDRIP in 2016, and various levels of government including the federal government and province of British Columbia have since made commitments, albeit preliminary, to implement UNDRIP through legislation.

1 In Russia, all forests are publicly owned, and since the early 1990s, timber harvesting rights are
2 allocated to forestry companies through lease agreements. However, the principles of sustainable
3 forest management, including public participation requirements, have been driven mainly by non-
4 state actors, including NGOs and corporations seeking access to international markets
5 (Tysiachniouk 2012, Dobrynin et al. 2020). Historically, the state has provided little protection for
6 the rights of Indigenous peoples, despite the presence of a large number of ethnically distinct groups
7 whose livelihood remains connected to subsistence-based forest activities (IWGIA 2014). Russian
8 law recognizes some groups as Indigenous, e.g. the small-numbered populations of the North, living
9 mostly in the Arctic and forested areas in the North Siberia and Far East. Russian governments have
10 refused to support international instruments such as UNDRIP, or ILO Convention 169 (IWGIA
11 2014). By contrast, FSC has applied a more expansive definition of Indigenous peoples under
12 Principle 3, based on criteria of self-identification as well as the elements of traditional land-based
13 lifestyles and some socio-political organization at the group level (Dobrynin et al. 2020). According
14 to several studies, FSC has brought improvements in terms of consideration of social values in
15 forest management, however there is not a strong tradition of community engagement in forest
16 sector (Tysiachniouk and Henry 2015, Dobrynin et al. 2020).

17 In Sweden, the majority of forests are privately owned, based largely on a combination of non-
18 industrial forest owners (48%), private companies (24%) and one state owned company (13%)
19 (Skogsstyrelsen 2015). Many families hold farms and forestland collectively and forestry
20 cooperatives play an important role in service provision and marketing of timber. There are
21 approximately 20,000 Sami peoples in Sweden, most living in northern boreal regions. Members of
22 Sami villages hold usufructuary rights to herd and graze reindeer on certain geographically defined
23 areas, a right which is protected in the Constitution. However, the specific areas on which Sami

hold rights is contested, and has been the subject of court challenges (Sandström and Widmark 2007). In order to better conciliate reindeer husbandry and forestry operations and reduce land use conflict, consultation procedures were introduced by the Swedish parliament in 1979 for year-round grazing areas. The introduction of FSC in the 1990s helped extend consultations processes to winter grazing areas, and introduced a conflict resolution process, administered by FSC. Sweden voted in favour of UNDRIP in 2007, however under the qualifications that consent be regarded as a right to consultation, not as a veto right, and that it only applies to lands formally owned by Indigenous peoples (Doyle 2015).

4. Results - examining standard development processes in Canada, Russia and Sweden

Canada - dynamics and key challenges

From the outset, FPIC was flagged by FSC Canada as a significant challenge in standard development, due to the expanded scope of FPIC and the higher number of FPIC-related indicators within the IGIs compared with the previous standard (FSC Canada 2013). FSC Canada took a relatively pro-active stance. A technical expert panel was formed, comprised of people with expertise in Indigenous rights and auditing, who played an active role in the early development of the standard. A facilitator was also hired, who provided direction and expertise to the SDG and took a leadership role in developing a Canada-specific guidance document for certificate holders. Extensive public consultation was done with stakeholders and a number of field tests were done on public and private forests.

There were, nonetheless, concerns raised by members of the Economic Chamber, such as uncertainty regarding the scope of Indigenous authority, and the potential for FPIC to be viewed by

1 Indigenous peoples as a veto right. Some thought FPIC would lead to unrealistic expectations
2 amongst Indigenous communities and conflictual negotiations between certificate holders and
3 Indigenous communities, for example in discussions towards a binding FPIC agreement. Concerns
4 were also expressed that Indigenous communities could leverage the certification process towards
5 achieving gains in other areas, such as political negotiations with government related to unsettled
6 land claims or revenue sharing. According to one respondent, discourses around veto were omni-
7 present, particularly in the early phases: *“It was the one four-letter word that we had to deal with*
8 *for about a year straight, when we first started working on the revision of the standard. Because*
9 *every time we made a presentation to members, certificate holders, even within the working group,*
10 *there would always be people who would raise the question “Aren’t you saying? – the way you’ve*
11 *explained this seems like a veto to me”. In the Canadian context, the word veto has such power, and*
12 *it’s such a fear-based word, because of course the Canadian government used veto as a way to*
13 *refute or to defend its position not to support UNDRIP”.*

14 Another set of concerns revolved around the logistical challenges of obtaining consent in a context
15 where forestry companies are often involved with multiple Indigenous communities with
16 overlapping claims to the same territory and where these communities have differing levels of
17 readiness to participate in FPIC processes. The material and human resource challenges faced by
18 Indigenous communities in the context of excessive consultative requests across resource sectors
19 are well known in Canada (Newman 2009, Boyd and Lorefice 2018). Thus, questions were raised
20 regarding situations where Indigenous communities were preoccupied with other processes, had
21 insufficient capacity or refused to participate due to ongoing political dossiers. These issues were
22 also raised by members of the Aboriginal Chamber, who felt it was important that the costs of

1 implementing FPIC not be downloaded to Indigenous communities, and that sufficient time be
2 allowed for meaningful engagement without undue pressure.

3 There was also strong reaction from members of all chambers concerning the decision of FSC
4 International to incorporate FPIC into Principle 4 at the criteria level, aimed at local communities
5 with either legal or customary rights on the forest. The Aboriginal Chamber was firm in the position
6 that FPIC should not be extended to non-Indigenous communities in Canada, which was supported
7 by the Social Chamber. Although participants recognized that an inclusive approach to FPIC might
8 be appropriate in some countries, in Canada it was felt that FPIC must be reserved for Indigenous
9 communities, who are covered under UNDRIP and have distinct rights as set out in the Canadian
10 Constitution. After extensive research, the Social Chamber identified no documented examples of
11 customary rights applying to non-Indigenous communities in Canada.

12 Despite these challenges, participants within the SDG described the dynamic around FPIC as
13 constructive. According to one participant, this stemmed from the fact that most members of the
14 SDG came to the table with some understanding of Indigenous rights and/or had long-term
15 relationships working with Indigenous peoples. Others pointed to the ongoing participation of the
16 Aboriginal Chamber, who helped adapt IGI articulations of FPIC to a Canadian rights-based
17 perspective, and maintain a level of stringency around the interpretation of consent. According to
18 interviews, a key to forging consensus between participants was a building shared relational
19 perspective on FPIC, viewing it as an ongoing process, which should proceed at an appropriate pace
20 to each community, and which might include an investment in capacity-building in order to ensure
21 meaningful engagement. As described by one staff member: *“As long as it’s based on trust,*
22 *relationship building, and that there is a genuine effort to respect the FPIC process and all it*

1 *encompasses. So the FPIC guidance is trying to do that. So therefore, it's about changing a*
2 *direction in terms of the relationship and providing capacity to local Indigenous communities to*
3 *live the principle of FPIC, as described in UNDRIP, and build up on successes, aiming at the*
4 *fulsomeness of the whole consent and agreements”.*

5 **Canada – differences between IGIs and FPIC indicators in the Canadian standard**

6 Overall, the FPIC indicators in the Canadian standard remain relatively close to the IGIs, mirroring
7 the human rights language adopted there. However, there are also some notable differences, which
8 reflect efforts by the SDG to integrate a relational approach to FPIC (see Table 5).

9 The Canadian standard adopts more active language than the IGIs when describing the relationship
10 between forestry companies and Indigenous peoples. For example, one of the main indicators
11 regarding FPIC (3.2.1) of the Canadian standard replaces the IGI language of “Indigenous Peoples
12 are informed when where and how they can comment on and request modification to management
13 activities...” with “...it is determined when, where and how Indigenous Peoples can participate in
14 management planning, both strategic and/or operational...”³. This focus on strategic influence is
15 particularly revealing as it reflects a spirit of mutual collaboration rather than information sharing.
16 Another aspect was the addition of a new indicator (3.2.2) which requires forestry companies to
17 support Indigenous capacity-building. This issue of Indigenous capacity was frequently raised as
18 essential to meaningful engagement by both Aboriginal and Economic Chamber members.

19 Another important change is a number of stipulations around “best efforts”, which will allow
20 applicants more time in order to achieve FPIC. This decision was a response to concerns around

³ All excerpts are from *The FSC National Forest Stewardship Standard of Canada* (2018).

1 differing levels of readiness by Indigenous communities, and an awareness that relationship
2 building is a long-term process which will not necessarily subscribe to certification timelines. Under
3 indicator 3.2.5, wording is included which allows for conformance even when FPIC has not been
4 achieved under circumstances where the process is advancing “in good faith”. A motion was passed
5 at the FSC General Assembly in 2017, to add this at the level of the IGIs. Under the intent box for
6 this same indicator it says that “best efforts” will also be considered when “for reasons outside the
7 sphere of influence” of the FSC applicant, there is a lack of response or cooperation from
8 Indigenous groups. This is likely a reflection of ongoing concerns expressed by the Economic
9 Chamber that FPIC process would become embroiled in broader political disputes.

10 Finally, a significant change to the Canadian standard is the outright removal of FPIC from
11 Principle 4 at the indicator level in favour of indicators using language of engagement, thereby
12 eliminating the possibility that non-Indigenous rights-holders have access to FPIC.

13 Table 5: Summary of dynamics, key changes from IGIs to Canadian FPIC indicators in national
14 standard and conception of FPIC

FPIC dynamics in standard development process	Key differences between IGI and Canadian standard	Conception of FPIC
-Concerns over veto power -Social/Aboriginal Chamber support for relational conception	-Use of more active language when describing relationships between proponents and Indigenous peoples (inform vs. engage) (3.2.1) -Obligation to engage Indigenous peoples at operational and strategic level in planning (3.2.1) -Addition of capacity-building indicator (3.2.2, 3.2.5) -Flexible timelines accepted when FPIC not achieved but process advancing in good faith (3.2.5) -“Best efforts” accepted when FPIC not achieved for reasons outside sphere of influence (ex: lack of response or cooperation from Indigenous groups) -Removal of FPIC indicators from Principle 4	Based in strong relational conception with a flexible approach to implementation.

	in favour of language around engagement (4.2.1, 4.2.2, 4.2.3)	
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1 **Russia - dynamics and key challenges**

2 For members of the SDG, the introduction of FPIC was considered a significant departure from
3 current approaches. Adherence to Principle 3 and 4 had been based mainly on the designation of
4 socially-valuable forests, known as High Conservation Values and public consultations, which,
5 while limited mainly to hearings for the purposes of information-sharing, had nonetheless required
6 companies to engage with a wide range of local and self-identified communities (Tysiachniouk
7 2012). Ensuring even this relatively basic level of consultation was the result of long-standing
8 efforts on the part of FSC Russia's Social Chamber, in a context where communities had little legal
9 recourse with regards to forestry operations, and were often situated in geographically remote
10 regions without strong political institutions or social organization at the community level
11 (Tysiachniouk and McDermott 2016). For the Social Chamber, the introduction of stronger and
12 more prescriptive FPIC requirements in the form of IGIs was received favourably, as it represented
13 an opportunity to further solidify the recognition of Indigenous peoples in Russia and protect the
14 rights of non-indigenous communities. FPIC was seen as an opportunity to redress weaknesses in
15 the system, demand greater accountability from forestry companies and potentially strengthen the
16 position of local and Indigenous communities in negotiations with the forestry industry.

17 For members of the Economic Chamber, the new FPIC requirements were met with a combination
18 of skepticism and frustration. For some, FPIC was seen as a foreign concept, developed elsewhere
19 using a top-down approach which did not sufficiently reflect the realities of the Russian situation.
20 Some felt that FPIC would disrupt what was perceived as a careful social consensus amongst FSC
21 stakeholders regarding an acceptable set of social practices with communities, and pose an unfair

1 administrative and financial burden on companies. Thus, for members of the Economic Chamber,
2 applying FPIC raised many new issues, which became the focus of heated and sometimes protracted
3 discussions amongst members of the SDG. *“Another aspect of FPIC, so to speak, is that we all*
4 *understand it was invented, in quotation marks, in Canada, based on North American realities,*
5 *where the Indigenous population is more institutionalized. There, it would be clear there is a leader*
6 *of the Indigenous population - who to sign with. When we speak with our Indigenous people, with*
7 *our local people, it’s very difficult to say that everywhere it’s really clear who is the leader, even*
8 *the informal leader. Because even the Indigenous population is so fragmented”*. From a practical
9 perspective, concerns were also voiced that, given the low level of social organization within some
10 communities, and the overlap levels of political administration, identifying legitimate representative
11 organizations with whom to engage in FPIC processes could be difficult.

12 At the center of these debates was the question of identifying rights and rights-holders eligible for
13 an FPIC process under FSC’s Principle 3 and Principle 4. Given the fluid and often-times contested
14 definitions of Indigenous versus non-Indigenous, operationalizing these categories was considered
15 difficult, made more so by the lack of clear direction provided by FSC International. Neither the
16 FSC International Standard, IGI, nor supportive documents such as the International FPIC
17 guidance provided sufficient clarification, and communications between the SDG, the Russian
18 Board and FSC-International failed to provide the necessary answers. Questions were also raised
19 about the definition of customary rights, how to identify these and what to do in situations where
20 identified rights contradicted Russian law. Furthermore, like in Canada, some members of the
21 Economic Chamber mobilized arguments around veto, voicing the opinion that FPIC would be used
22 to obstruct or halt forestry operations, causing new conflicts and disagreements. *“It is frightening*
23 *[for companies] that the local population can give consent to logging, or can quickly withdraw it.*

1 *For some reason, they do not trust that agreements that can be reached in this respect. It is*
2 *frightening that this may be the subject of blackmail by the population, some extortion”.*

3 Members of the SDG grappled with these issues throughout the process of developing the Russian
4 standard, with increasing tensions and conflict between the Social and Economic Chambers. The
5 Environmental Chamber remained divided on FPIC. Throughout the process, the Social Chamber
6 maintained its position of support for a strong interpretation of FPIC as outlined in the FSC
7 International Standard and IGIs. The Economic Chamber also developed a unified position, which
8 sought to either remove FPIC or significantly reduce its scope and/or applicability in Russia. The
9 Economic Chamber became increasingly organized, adopting a variety of arguments and strategies.
10 In the case of Principle 3, this included demands by the Economic Chamber to revisit the definition
11 used by FSC for the identification of Indigenous peoples, which relied on a combination on self-
12 identification, some social organization, and dependence on natural resources for subsistence. The
13 current standard includes a list of Indigenous peoples, and a well-developed practice for
14 implementing Principle 3. However, from 2017 onward, the Economic Chamber pushed for a more
15 restrictive definition, which would create stronger alignment between FSC’s approach and Russian
16 legislation.

17 With the potential for FPIC debates to derail the standard development process, the SDG agreed to
18 develop an explanatory note, known as Annex B4, to clarify the scope and applicability of FPIC in
19 Russia, especially the question of eligibility for FPIC. The proposals for the Annex varied widely
20 between chambers, with the Economic Chamber reiterating the need to remove FPIC from the
21 overall standard or from non-Indigenous rights holders while the Social Chamber maintained its
22 position of inclusion. A compromise was reached and the Annex was approved in 2018, which

1 places considerable restrictions on the application of FPIC. Even after approval, however, pressure
2 from the Economic Chamber continued, as it became apparent that other countries, such as FSC
3 Canada and FSC Sweden had excluded FPIC from Principle 4. They sought to have FPIC removed
4 from Principle 4, based on the argument that most customary rights (access, berries, medicinal
5 plants, mushrooms) were already protected under Russian law and those that were not could be
6 illegal, thus causing a direct contradiction between FSC rules and Russian law.

7 **Russia - differences between IGIs and FPIC indicators in the Russian standard**

8 The final standard, including Annex B3 and B4, approved in 2020, shows traces of these debates.
9 As shown in Table 6, although FPIC indicators follow the general language of the IGIs, there are
10 some notable restrictions placed on the application of FPIC indicators, which puts considerable
11 limits on scope and applicability. For example, two of the main FPIC indicators in Principles 3 and
12 4 (3.2.3 and 4.2.3), which set out requirements for an FPIC process, limit this requirement to
13 customary rights developed “over a long period of time within a specific area” and that are “not
14 governed by law, however, not conflicting with it”, thereby excluding both legally protected and
15 “unlawful” activities from FPIC⁴. It also clarifies that FPIC is limited to “particular activities”
16 rather than “for all the activities of the Organization”. The annexes also stipulate that FPIC is a
17 mechanism which should be adopted only *after* existing mechanisms of engagement have failed. It
18 reads: “The FPIC is to be used in cases when other mechanisms, such as dispute resolution or
19 damage reparation procedures, or mapping of social HCVs, etc., are not sufficient to protect the
20 rights of Indigenous Peoples and local communities. FPIC shall not be used as a substitute for such
21 mechanisms”.

⁴ All excerpts are from *The FSC Forest Stewardship Standard for the Russian Federation* (2020a)

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2 An effort is also made in the Russian standard to link FPIC to traditional lifestyles and livelihoods of

3 both Indigenous and local communities. For example, unlike FSC International’s definition of

4 customary rights, Annex B3 adds the stipulation that holders of customary rights “maintain a lifestyle

5 which makes them dependent (economically or culturally) on the use of the site, resource or object

6 for which they claim their rights”.

7 Finally, Annex B4 outlines a number of circumstances where FPIC should not apply. This includes

8 situations where the requirement to obtain FPIC from Indigenous or local communities is in conflict

9 with other requirements of the standard (the example of significant job cuts or social liabilities is

10 used) or when obtaining FPIC will lead to a conflict between the forestry company and other FPIC

11 rights holders, or between different groups of rights holders. Indeed, even a conflict between different

12 rights holders on the same territory can excuse a forestry company from meeting FPIC requirements.

13 Taken together, this list of caveats and exceptions raises many questions regarding the integrity of

14 FPIC implementation in Russia, leading us to describe Russia’s approach as tending towards

15 “procedural” (see Table 6). It also raises questions regarding the potential for inconsistencies with the

16 FPIC approaches described in other standards, like Canada, for which these types of “exceptions” do

17 not exist.

18 Table 6: Summary of dynamics, key changes from IGIs to Russian FPIC indicators in national
19 standard and conception of FPIC

FPIC dynamics in standard development process	Key differences between IGI and Russian standard	Conception of FPIC
-Strong concerns over veto power -Evidence of procedural conception based in risk mitigation	-FPIC restricted to customary right not governed by law and not in conflict with it (3.2.3, 4.2.3) -Guidance stipulates that FPIC required only for particular activities within areas affected by legal and/or customary rights -Guidance states a number of exceptions to	Founded on a relational conception (IGIs) but with clear shift towards a procedural conception. Flexible

-Social Chamber support for strong language based in IGLs	requirement for FPIC: when FPIC conflicts with other requirements in the standard (ex: leads to significant cuts of jobs or other adverse social consequences) when obtaining FPIC leads to conflict between the Organization and other FPIC right holders, or between different FPIC right holders if there are more than one community claiming rights to the same territory -Guidance states FPIC not normally applied on whole managed area, zoning required -Guidance states it is only possible for the community to withhold or modify arrangements under FPIC before it expires in case the agreement is violated by the Organization	approach to implementation.
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2 **Sweden - dynamics and key challenges**

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4 Interviews with participants revealed that while FPIC requirements proved challenging to negotiate,
 5 they were not the focus of overt conflict. After early attempts to develop indicators for Principle 3
 6 using a large working group proved unsuccessful, a separate smaller working group was created
 7 including three members each from the Economic Chamber and Social Chamber, however not all
 8 were members of the SDG. The approach taken by the working group was to rely on the IGLs but
 9 also to develop indicators which would be in step with the consultation process used in the previous
 10 standard (also in the Swedish Forest Code). This was a relatively prescriptive and standardized
 11 approach applied across all large forest holdings. The new process, termed the Participatory
 12 Planning Process (PPP) aimed to enhance information-sharing on both sides, as well as mechanisms
 13 for mediation and dispute resolution. According to interview respondents, the biggest challenge
 14 faced by the working group was agreeing on the parameters for granting or withholding consent,
 15 due to differences in interpretation between the Social Chamber and Economic Chamber.

16 Indigenous members of the Social Chamber argued that Sami should have strong decision-making
 17 influence under FPIC, in line with conceptions in the IGLs. For them, FPIC was viewed as an

1 important mechanism to redress what was seen as a legacy of imbalanced power dynamics within
2 existing consultation process. One member described the position of the Sami: *“In Sweden it’s the*
3 *outcome of the process that is important. Because today, a lot of our members don’t really feel*
4 *listened to, and actually feel that it is not necessary for us to participate, because they don’t listen*
5 *to us. And they will continue with their forest management activities, even if we say, “can you*
6 *please stop”.* So for us, it’s not the process, because we have quite good processes, it’s the outcome.
7 *Is it going to give us more than we had before?”.* Indeed, Sami dissatisfaction with consultation
8 processes has been well documented, including perceptions that Sami input is not given sufficient
9 weight and that this is resulting in ongoing degradation of reindeer habitat (Widmark 2006,
10 Johansson 2014). During discussions, Indigenous representatives within the Social Chamber also
11 sought to revisit the boundaries of Sami reindeer grazing areas (traditional territories) for each
12 community, potentially extending the territories covered by the Participatory Planning Process.
13 Previously, the boundaries were established by a governmental map established in 1974, however
14 the Sami argued these boundaries were not mutually agreed upon and did not reflect current land
15 use nor consider recent court rulings.

16 For members of the Economic Chamber, the pre-existing process was described as quite effective
17 and appropriate, thus the main concern was regarding the changing dynamic around consent under
18 the new standard and the potential impact of increasing territories under consultation. There were
19 concerns for a shifting balance of power, a veto right, and implications for management planning
20 and corporate stability. A member of the Economic Chamber explains: *“How can we plan*
21 *something, when someone can come in and say that we can’t do our harvesting there. What is that*
22 *going to mean for us? How can we do planning? And on what basis can they misuse this?”.* Given
23 the ownership structure in Sweden, based mostly on private land, there were questions raised about

1 the scope of consent processes and its applicability in Sweden. Members of the Economic Chamber
2 sought clarity on the parameters surrounding consent. What rights should be covered under FPIC
3 and what constitutes an infringement upon the rights of the Sami? What should the threshold be for
4 the violation of a legal or customary right? Under what conditions should the Sami be able to
5 withdraw consent for management activities? And for how long? As in Canada and Russia,
6 members of the Economic Chamber expressed concerns that FPIC would create heightened
7 expectations amongst the Sami.

8 As in Canada, there was clear consensus amongst the SDG that FPIC rights should not be extended
9 to local communities under Principle 4. This was based on a similar rationale to Canada, that local
10 communities in Sweden do not have customary rights, either on an individual or collective basis
11 beyond the '*Allemansrätt*', which provides free movement of all people on public or private lands in
12 Sweden, already covered under Swedish law.

13 According to participants, discussions around FPIC were very long and sometimes difficult, but
14 there was agreement both within the working group and the SDG, that what was needed was a clear
15 process, which would clarify the respective responsibilities of companies and reindeer herders, as
16 well as the steps to follow under situations of disagreement or where Sami said “no” to forestry
17 operations.

18 **Sweden - differences between IGIs and FPIC indicators in the Swedish standard**

19 Principle 3 and indicators on FPIC reflect the tenor of discussions within the Swedish SDG. While
20 at the indicator level, there are many similarities to the language of the IGIs, the accompanying
21 Directives set out the details of the PPP, which are much prescriptive and operationally-focused

1 than either Russia or Canada. For example, the Directive sets out the specific management activities
2 that are covered under the PPP (ex: regeneration felling, continuous cover forestry, soil
3 scarification, fertilization, road construction). It also obliges both parties to provide certain
4 information, to follow a sequence of standardized steps and to abide by specific timelines.

5 The specific issue of consent is treated under indicator 3.2.4. Consent, or withholding of it, is part of
6 the PPP. Under a scenario where reindeer herding is threatened in a way “that disables reindeer
7 herding after the participatory planning process has been conducted”, three pathways are proposed,
8 either suspending activities for 5-7 years while mitigation measures are applied, 2) agreeing to
9 revisit the management activity in the next planning period or 3) under a situation where there is not
10 agreement about the severity of the impact, mediation can be requested⁵. If a solution is still not
11 reached, a review from a dispute resolution committee can be called for, which reviews the process
12 and ensures that all steps have been fulfilled. A forest company is not obligated to accept the
13 withdrawal of consent in cases where it affects the long-term forest management. Finally, the
14 Directive outlines scenarios if the forestry company still decides to proceed with forestry operations
15 despite the absence of Sami consent. It appears that this can be justified if the company
16 demonstrates that the absence of consent will substantially affect the long-term management or that
17 consent is being withheld for a type of activity in general, without sufficient demonstration by the
18 Sami that it disables reindeer herding in the area. Thus, while FPIC is based in a negotiative and
19 relational dynamic, there are also indications that the scope of Sami authority to either provide or
20 withhold consent is limited by a number of conditions (see Table 7).

21 Table 7: Summary of dynamics, key changes from IGIs to Swedish FPIC indicators in national
22 standard and conception of FPIC

⁵ All excerpts are from *The FSC National Forest Stewardship Standard of Sweden (2018)*

FPIC dynamics in standard development process	Key differences between IGI and Swedish standard	Conception of FPIC
<ul style="list-style-type: none"> -concerns over veto power -desired alignment with existing consultation process - Social Chamber support for strong language based in IGIs 	<ul style="list-style-type: none"> -Requirements to follow detailed Participatory Planning Process which lays out activities covered, information requirements, timelines -Consent only allowed for specific activities not territorial -Specific scenarios laid out if consent is withheld. Includes mediation and dispute resolution committee. -A forest company is not obligated to accept the withdrawal of consent in cases where it affects long-term forest management. -Removal of FPIC indicators from Principle 4 in favour of language around engagement (4.21, 4.2.2, 4.2.3) 	<p>Founded on a relational conception (IGIs) but with moderate shift towards a procedural conception. Prescriptive approach to implementation.</p>

5. Discussion and Conclusions

This research adds empirical evidence to what are a small number of studies looking specifically at FSC and the implementation of consent. As mentioned previously, ‘free and informed consent’ has been part of the FSC standard since its inception in 1994. The research that does exist, mainly focused on Canada and Sweden, provides indications that, thus far, when applied on the ground consent requirements have rarely been treated as forms of substantive decision-making for Indigenous peoples, but rather as stipulations for bilateral consultation and agreement-making, which can take a variety of forms, from economic agreements to protocols for consultation (Widmark 2006, Sandstrom and Widmark 2007, Teitelbaum and Wyatt 2013). There is also preliminary evidence that Indigenous peoples are not fully satisfied with outcomes of these consultation strategies, and observe ongoing degradation to natural resources and livelihoods (Sandstrom and Widmark 2007, Johansson 2014).

Given this legacy, it is not surprising that FSC’s more expansive approach to FPIC provoked strong reactions. FSC’s revised international standard brings requirements in line with the discourse of international human rights, which has rapidly become the “gold standard” of corporate social

1 responsibility, however its language also sets a very high bar. As our research shows, building
2 consensus around a common interpretation of FPIC at the national level, where considerations
3 around feasibility, risks and transaction costs are considerable, was not straightforward. All three
4 standard development processes experienced a significant value rift between Social/Aboriginal
5 Chambers and the Economic Chamber in attitudes and conceptions surrounding FPIC. Members of
6 the Social/Aboriginal Chamber were mostly favourable to the language put forward in the FSC
7 International Standard and IGIs, which reflects a human rights discourse through its commitment to
8 strong authority for Indigenous institutions and substantive interpretation of consent. Several
9 expressed hopes that the new FPIC requirements would help overcome problems associated with
10 ineffective consultation processes. Members of the Economic Chamber, across the three countries,
11 expressed reservations, in some cases outright opposition to FPIC. While some of these issues
12 related to difficulties in deciphering the rights-based language of the international standard and IGIs
13 and applying these from an operational perspective, others reflected risk-based concerns, regarding
14 the implications of shifting decision-making authority towards Indigenous peoples. The most visible
15 manifestations were expressions concerning the risk of an Indigenous veto and the view that FPIC
16 requirements would lead to ‘unrealistic expectations’, and the potential for unsubstantiated or
17 unjustified withdrawal of consent and economic disruption for the forest industry.

18
19 While key issues and chamber-based positions were similar, negotiations processes played out
20 differently in the three countries, with variable outcomes in terms of FPIC approach. As such, there
21 is evidence that IGIs underwent a type of translation process in each country, founded on the need
22 to find consensus amongst disparate interests with the SDG. Indeed, much like the literature on
23 ‘institutional fit’, which raises the question of policy compatibility across scales and the reshaping

1 that occurs as a result of cultural, social and environmental factors, our study points towards the
2 contributing influence of both process dynamics and the broader institutional context regarding
3 Indigenous rights (Young et al. 2008, Epstein et al. 2015, McDermott and Ituarte-Lima 2016). In
4 Canada, a conciliatory dynamic was maintained within the SDG and consensus was reached
5 through emphasis on a relational approach to FPIC, based in information-sharing, capacity-building,
6 negotiation and dispute resolution, when necessary. The SDG had the advantage of organizational
7 support, an experienced membership and strong participation from the Aboriginal Chamber, who
8 along with the Social Chamber, had considerable influence and voting power. Other research has
9 recognized the beneficial impact of the Aboriginal Chamber and associated engagement of regional
10 and national Indigenous organizations in FSC processes (Collier 2002, Mahanty and McDermott
11 (2013, Colchester 2016). We also observe that when compared with the Russian and Swedish
12 standards, the Canadian standard takes the least prescriptive approach to FPIC, leaving significant
13 latitude to forestry companies and Indigenous peoples to define FPIC arrangements according to
14 their own conditions and priorities. While this may be connected to the relational approach adopted
15 by the SDG, it may also speak to broader socio-cultural context in Canada, with significant
16 diversity in terms of patterns of Indigenous land use, cultural traditions and political relationships to
17 government, which precludes a one-size-fits-all approach. The Canadian standard is also relatively
18 unrestrictive with regards to its conception of the act of giving or withholding consent. There are no
19 temporal or spatial restrictions placed on consent-giving as is the case in Russia and Sweden. The
20 one notable exception is the stipulation that forestry companies not be held accountable to situations
21 where Indigenous groups withhold consent for reasons “outside their sphere of influence”. While
22 this may be related to the often-times politicized and/or conflictual relationship between Indigenous
23 peoples and government (sometimes involving forestry companies) over land rights, it may also

1 have the effect of justifying the orientation of FPIC processes away from broad interpretations of
2 Indigenous rights towards narrower and operationally-focused perspectives. This may, in turn have
3 the effect of reducing process legitimacy amongst some Indigenous communities. Previous research
4 from Canada has shown that Indigenous groups do not necessarily view certification as
5 disassociated from their wider political aspirations (Teitelbaum et al. Wyatt 2019), and that past
6 practices associated with FSC certification have not necessarily met the expectations of Indigenous
7 communities (Kant and Brubacher 2008, Tikina et al. 2010; Teitelbaum and Wyatt 2013).

8 The standard development process in Russia stands out both in terms of its internal dynamics and
9 outcomes. Divisions between the Social and Economic Chamber were most pronounced and
10 dynamics were adversarial, with repeated attempts by the Economic Chamber to sideline or remove
11 FPIC from the Russian standard, both under Principles 3 and 4. Negotiations around consent had
12 some unanticipated consequences, such as efforts by the Economic Chamber to limit the
13 applicability of FPIC through proposals to reduce the criteria by which FSC Russia defines
14 Indigenous peoples. Other studies have also observed similar attempts to restrain the application of
15 FPIC through a narrow interpretation of Indigenous rights and/or politicization of FPIC processes
16 due to conflicts over claims to indigeneity (Mahanty and McDermott 2013, Fontana and Grugel
17 2016, Tomlinson 2019, Tysiachniouk et al. 2021). With regards to the final standard, the parameters
18 surrounding FPIC are more restrictive than either Canada or Sweden. Unlike Canada, which views
19 FPIC as an integrated process of engagement, in the Russian standard, FPIC is presented as a
20 mechanism to be used only *after* existing engagement mechanisms (HCVs, consultations) and only
21 for those customary rights not covered by nor conflicting with the law. The annexes outline a
22 further series of exceptions, such as conflicts with other requirements or competing claims to rights,
23 providing some evidence that the Russian standard has internalized a certain procedural discourse,

1 with cost and risk management influencing the framing of FPIC, resulting in a more restrictive
2 approach to implementation.

3 The reduced ‘institutional fit’ observed in the Russian standard development process can in part be
4 explained through Chamber dynamics, including what was a unified, well-organized and connected
5 Economic Chamber. However, there were broader factors at play, related both to socio-cultural and
6 political contexts. Previous research has shown that institutionalized practices around community
7 and Indigenous consultation are not well developed in Russia, due in part to vast distances, absence
8 of sufficient communication technologies and low levels of knowledge regarding forest
9 management. Some communities also have reduced levels of formal political organization and
10 fewer resources and capacity to participate in these processes (Wilson 2016, Dobrynin et al. 2020).
11 Although FSC has helped to improve consultation practices, there appears to be wider gap between
12 FPIC and existing consultation practices than either Canada or Sweden. Furthermore, unlike Canada
13 where FPIC benefits from growing societal and legal recognition, in Russia it is neither well known
14 nor accepted by government, who rejects FPIC on the basis that it undermines state sovereignty
15 over publicly-owned lands (Lerner et al. 2017). As such, the Economic Chamber was able to
16 leverage a number of arguments regarding the absence of favourable conditions for the
17 implementation of FPIC and the potential for higher transaction costs.

18 In Sweden, negotiations around consent were conciliatory, but unlike Canada and Russia’s
19 processes, it focused on developing a singular operationally-focused approach to FPIC. Drawing on
20 the experience of the existing consultation process, the challenge became, how to agree on an
21 approach to consent which could be applied consistently across all Sami reindeer grazing territories.
22 The result is significantly more prescriptive, as the Swedish standard (through directives) provides a

1 more detailed and operational approach than either Canada or Russia, which targets specific details
2 such as activities, types of engagement, timelines and dispute resolution. While this may be related
3 to what are more uniform patterns of land use amongst Sami, there is also a tradition of taking a
4 more prescriptive approach to consultations between forestry companies and Sami within the FSC
5 standard. In terms of interpretations of consent, the Swedish standard is relational but decision-
6 making authority is potentially more restrictive than Canada's, for example through stipulations that
7 FPIC only apply in situations where forestry activities "disable reindeer herding" and that it only
8 apply to "certain activities" within a medium time frame, however it is arguably less restrictive than
9 the Russian standard. What explains the presence of this more procedural influence in the
10 conception of FPIC? At the level of process, like in Russia, the Economic Chamber was well
11 organized, in this case represented by a number of influential forestry companies. There was only
12 one Indigenous representative on the standard development group. Other socio-cultural and political
13 factors may also have been at play. Sweden's forests are, for the most part, privately-owned,
14 assigning strong property rights to landowners. The Swedish government has been criticized for
15 providing insufficient protection of Sami rights in land use planning and development, and for
16 failing to develop procedures which provide the Sami with meaningful influence over resource
17 development decisions (Kløcker Larsen and Raitio 2019).

18 The broader question remains, will FSC's revised national standards permit substantive articulations
19 of FPIC or will it fall prey to the technical or symbolic approaches described in the literature? It will
20 take time and ongoing research to begin to answer these questions, and it will require systematic
21 research looking at on-the-ground implementation. The assessment process and decisions taken by
22 third-party auditors will be a key interface in terms of judging the legitimacy of corporate practices
23 in the area of FPIC. However, our research does provide some early insights. At the level of FSC's

1 international standard and IGI, the interpretation of consent is substantive, lining up with UNDRIP
2 and operationalized through processes which adopt explicit language around the right to withhold or
3 modify consent. The international standard also takes an inclusive approach through the extension
4 of FPIC to local communities with legal and customary rights. However, as demonstrated in this
5 study, this language was not easy to reconcile with national and localized interests. In all three
6 countries, the negotiation process between chambers involved compromise and reinterpretation, in
7 some cases towards stronger formulations of FPIC, but more often towards more restrictive ones.
8 This was particularly evident in Russia, and to a lesser extent Sweden and Canada. A common
9 thread between countries, however, was a tendency to orient FPIC approaches towards operational
10 issues based in forest management, for example by placing limitations on the spatial and temporal
11 applicability of FPIC or through the exclusion of political scenarios. While this may come as no
12 surprise given FSC's market-based regulatory approach and the strong presence of corporate actors
13 in the standard development process, these operational formulations nonetheless represent a shift
14 from the language of the IGIs. While further research will be required in order to understand the full
15 implications of this operational tendency, it appears to open the door to more technical approaches
16 to FPIC, which run counter to conceptions described by some Indigenous peoples based in holistic
17 views of land and resources and substantive decision-making authority.

18

19 6. References

20 Anaya, J. 2013 : *Report of the Special Rapporteur on the Rights of Indigenous Peoples: Extractive*
21 *Industries and Indigenous Peoples*. UNCHROR, 24th session, UN Doc A/HRC/24/41.

1 Ansari, S., Fiss, P.C., Zajac, E. 2010. Made to fit: How practices vary as they diffuse. *Academy of*
2 *Management Review* 35, 1: 67-92.

3

4 Barelli, M. 2012. Free, prior and informed consent in the aftermath of the UN Declaration on the
5 Rights of Indigenous Peoples: Developments and challenges ahead. *The International Journal of*
6 *Human Rights* 16, 1: 1-24.

7

8 Boyd, B. and Lorefice, S. 2018. Understanding consultation and engagement of Indigenous Peoples
9 in resource development: A policy framing approach. *Canadian Public Administration* 61, 4: 52-
10 595.

11

12 Cariño, J. and Colchester, M. 2010. From dams to development justice: Progress with “free, prior
13 and informed consent” since the World Commission on dams. *Water Alternatives* 3, 2: 423–537.

14

15 Colchester, M. and Ferrari, M.F. 2007. *Making FPIC – free, prior and informed consent – work:*
16 *Challenges and prospects for Indigenous peoples*. FPIC Working Papers. Forest Peoples
17 Programme, Moreton-in-Marsh. 21p.

18

19 Colchester, M. 2016. Do commodity certification systems uphold indigenous peoples’ rights?
20 Lessons from the Roundtable on Sustainable palm oil and Forest Stewardship Council. Policy
21 Matters 2016: Certification and Biodiversity.

22

- 1 Dobrynin, D., Smirennikova, E., Mustalahti, I. 2020. Non-state forest governance and
2 ‘responsibilization’: The prospects for FPIC under FSC certification in Northwest Russia. *Forest*
3 *Policy and Economics* 115. <https://doi.org/10.1016/j.forpol.2020.102142>
- 4 Doyle, C.M. 2015. *Indigenous Peoples, title to territory, rights and resources. The transformative*
5 *role of free, prior and informed consent*. Routledge. London. 350p.
- 6 Epstein, G., Pittman, J., Alexander, S.M., Berdej, S., Dyck, T., Kreitmair, U., Rathwell, K.J.,
7 Villamayor-Tomas, S., Vogt, J., Armitage, D. 2015. Institutional fit and the sustainability of social-
8 ecological systems. *Current Opinion in Environmental Sustainability*. 14: 34-40.
- 9 Fontana, L. B. and Grugel, J. 2016. The politics of Indigenous participation through “free prior
10 informed consent”: Reflections from the Bolivian case. *World Development* 77: 249–261.
- 11 Food and Agriculture Organization. 2014. *Contribution of the forest sector to national economies,*
12 *1990-2011*. Forest Finance Working Paper. FSFM/ACC/09.
- 13 Food and Agriculture Organization. 2016. *Free, prior and informed consent: An Indigenous*
14 *peoples’ right and a good practice for local communities - Manual for project practitioners.*
15 <http://www.fao.org/3/a-i6190e.pdf>
16
- 17 Forest Trends. 2002. *Who owns the world’s forests? Forest tenure and public forests in transition.*
18 Written by A. White and A. Martin. Washington, D.C. 30p.

- 1 FSC (Forest Stewardship Council Canada) 2013. *FSC Canada Thematic Review of the Draft FSC*
2 *International Generic Indicators* (IGI). [https://ca.fsc.org/preview.fsc-canada-igi-thematic-paper.a-](https://ca.fsc.org/preview.fsc-canada-igi-thematic-paper.a-415.pdf)
3 [415.pdf](https://ca.fsc.org/preview.fsc-canada-igi-thematic-paper.a-415.pdf)
- 4 FSC (Forest Stewardship Council International). 2015a. *FSC Principles and Criteria for Forest*
5 *Stewardship*. FSC-STD-01-001 V5-2. Bonn, Germany. [https://fsc.org/en/forest-management-](https://fsc.org/en/forest-management-certification#principles%2C-criteria-and-indicators)
6 [certification#principles%2C-criteria-and-indicators](https://fsc.org/en/forest-management-certification#principles%2C-criteria-and-indicators)
- 7 FSC (Forest Stewardship Council International). 2015b. *International Generic Indicators*. FSC-
8 STD-60-004 V1-0 EN. Bonn, Germany.
- 9 FSC (Forest Stewardship Council International). 2016. *Standard Setting in FSC*. FSC-RP-Standard
10 Setting V1-1. Bonn Germany.
- 11 FSC (Forest Stewardship Council Canada). 2018a. *The FSC National Forest Stewardship Standard*
12 *of Canada*. FSC-STD-CAN-01-2018 V 1-0 EN.
- 13 FSC (Forest Stewardship Council Sweden). 2018b. *The FSC National Forest Stewardship Standard*
14 *of Sweden*. FSC-STD-003-05-2019 V-1. FSC-STD-003-05-2019 V-1.
- 15 FSC (Forest Stewardship Council International). 2019. December 2019. *FSC facts and figures*.
16 <https://fsc.org/en/page/facts-figures>
- 17 FSC (Forest Stewardship Council Russia). 2020a. *The FSC National Forest Stewardship Standard*
18 *of Russian Federation*. FSC-STD-RUS-02-2020 EN
19

1 FSC (Forest Stewardship Council Canada). 2020b. 2020 Annual Report. Forest Stewardship
2 Council Canada. Toronto. <https://ca.fsc.org/en-ca/about-us/governance/annual-reports>
3
4 Imai, S. 2016. Consult, consent and veto: International norms and Canadian treaties. *Osgoode Legal*
5 *Studies Research Paper* No. 23/2016. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2726091
6
7 IWGIA (International Working Group for Indigenous Affairs). 2014. *IWGIA Report 18: Indigenous*
8 *Peoples in the Russian Federation*. (J. Rohr).
9 https://www.iwgia.org/images/publications/0695_HumanRights_report_18_Russia.pdf
10
11 Joffe, P. 2015. "Veto" and "consent" – Significant differences. 32p. [https://quakerservice.ca/wp-](https://quakerservice.ca/wp-content/uploads/2018/10/Veto-and-Consent-Significant-differences-Joffe.pdf)
12 [content/uploads/2018/10/Veto-and-Consent-Significant-differences-Joffe.pdf](https://quakerservice.ca/wp-content/uploads/2018/10/Veto-and-Consent-Significant-differences-Joffe.pdf)
13
14 Johansson, J., 2014. Towards democratic and effective forest governance? The discursive
15 legitimization of forest certification in northern Sweden. *Local Environment* 19: 7803–7819.
16
17 Johnstone, R.L. 2020. What is required for free, prior and informed consent and where does it
18 apply? Chapter in Regulation of Extractive Industries: Community Engagement in the Arctic. R.L.
19 Johnstone,
20 Kant, S., Brubacher, D., 2008. Aboriginal expectations and perceived effectiveness of forest
21 management practices and forest certification in Ontario. *The Forestry Chronicle* 84: 378–391.

1 Sweden, Northern Finland, and Northwest Russia. *Ecology and Society* 14, 2

2 <http://www.ecologyandsociety.org/vol14>

3 [Larsen, M.K., Raitio, K. 2019. Implementing the State duty to consult in land and resource](#)

4 [decisions: Perspectives from Sami communities and Swedish state officials. Arctic Review on Law](#)

5 [and Politics 10: 4-23.](#)

6 Lehr, A., Smith, G., 2010. *Implementing a corporate free, prior and informed consent policy:*

7 *Benefits and challenges.* Foley Hoag, Boston. 99p.

8 Lerner, A.M., Koshurina, V., Chistanova, O., Wheeler, A. 2017. Mitigating the Risks of Resource

9 Extraction for Industrial Actors and Northern Indigenous Peoples. Arctic Review on Law and

10 Politics. 8.

11 Leydet, D. 2019. La mise en oeuvre du principe de consentement et ses contextes. *Recherches*

12 *amérindiennes au Québec* 49, 2: 15-24.

13 Mahanty, S. and McDermott, C.L. 2013. How does 'Free, Prior and Informed Consent' (FPIC)

14 impact social equity? Lessons from mining and forestry and their implications for REDD+. *Land*

15 *Use Policy* 35: 406-416.

16 McDermott, C.L. and Ituarte-Lima, C. 2016. Safeguarding what and for whom? The role of

17 institutional fit in shaping REDD+ in Mexico. *Ecology and Society* 21, 1.

18 Meadows, J., Annandale, M., Ota, L. 2019. Indigenous Peoples' participation in sustainability

19 standards for extractives. *Land Use Policy* 88.

20

1 Mitchell, T., Arseneau, C., Thomas, D., Smith, P. 2019. Towards an Indigenous-informed relational
2 Approach to free, prior, and informed consent (FPIC). *International Indigenous Policy Journal* 10,
3 4.
4
5 Newman, D.G. 2009. *The duty to consult: New relationships with Aboriginal peoples*. UBC Press,
6 Purich Publishing. Vancouver, B.C. 128p.
7
8 O’Faircheallaigh, C. 2015. *Negotiations in the indigenous world: Aboriginal peoples and the*
9 *extractive industry in Australia and Canada*. Routledge, New York, NY. 224p.
10
11 Owen, J.R. and Kemp, D. 2014. ‘Free prior and informed consent’, social complexity and the
12 mining industry: Establishing a knowledge base. *Resources Policy*: 91-100.
13
14 Papillon, M. and Rodon, T. 2017. Indigenous consent and natural resource extraction. Foundations
15 for a made-in-Canada approach. *IRPP Insight*. Number 16.
16
17 Papillon, M. and Rodon, T. 2020. The transformative potential of Indigenous-driven approaches to
18 implementing free, prior and informed consent: Lessons from two Canadian cases. *International*
19 *Journal on Minority and Group Rights* 27: 1-22.
20
21 Papillon, M., Leclair, J., Leydet, D. 2020. Free, prior and informed consent: Between legal
22 ambiguity and political agency. *International Journal on Minority and Group Rights* 27: 223-232.
23

1 Rodhouse, T. and Vancley, F. 2016. Is free, prior and informed consent a form of corporate social
 2 responsibility? *Journal of Cleaner Production*. 131: 785-794.

3

4 Sandstrom, C., Widmark, C., 2007. Stakeholders' perceptions of consultations as tools for co-
 5 management – a study of the forestry and reindeer herding sectors in northern Sweden. *Forest*
 6 *Policy and Economics* 10, 1–2: 25–35.

7

8 Skogsstyrelsen 2015. *Forests and forestry in Sweden*. The Royal Swedish Academy of Agriculture
 9 and Forestry (KSLA). Stockholm.

10 https://www.skogsstyrelsen.se/globalassets/in-english/forests-and-forestry-in-sweden_2015.pdf

11

12 Szablowski, D., 2010. Operationalizing free, prior and informed consent in the extractive industry
 13 sector: examining the challenges of a negotiated model of justice. *Canadian Journal for*
 14 *Development Studies* 30, 1–2: 111–130.

15

16 Teitelbaum, S. and Wyatt, S. 2013. Is forest certification delivering on First Nation issues? The
 17 effectiveness of the FSC standard in advancing First Nations' rights in the boreal forests of
 18 Ontario and Quebec, Canada. *Forest Policy and Economics* 27: 23-33.

19

20 Teitelbaum, S. Wyatt, S. St-Arnaud, M., Stamm, C. 2019. Regulatory intersections and Indigenous
 21 rights: lessons from Forest Stewardship Council certification in Quebec, Canada. *Canadian Journal*
 22 *of Forest Research* 49, 4: 414-422.

1

2 Tikina, A.V., Innes, J.L., Trosper, R., and Larson, B.C., 2010. Aboriginal peoples and forest
3 certification: a review of the Canadian situation. *Ecology and Society* 15, 3.

4

5 Tomlinson, K. 2019. Indigenous rights and extractive resource projects: negotiations over the policy
6 and implementation of FPIC. *The International Journal of Human Rights* 23, 5: 880-897.

7

8 Tysiachniouk, M.S, McDermott, C.L., Kulyasova, A.A., Teitelbaum, S., Elbakidze, M. 2021. The
9 politics of scale in global governance: Do more stringent international forest certification standards
10 protect local rights in Russia? *Forest Policy and Economics* 125.

11

12 Tysiachniouk, M. 2012. *The case of Forest Stewardship Council Certification in Russia*.
13 Environmental Policy, Volume 7. Wageningen Academic Publishers. 344p.

14

15 Tysiachniouk, M. and Henry, L. 2015. Managed citizenship: global forest governance and
16 democracy in Russian communities. *International Journal of Sustainable Development and World
17 Ecology* 22, 6: 476-489.

18

19 Tysiachniouk, M., McDermott, C.L. 2016. Forest certification with Russian characteristics. *Forest
20 Policy and Economics* 62: 43-53.

21

22 UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples). UN General
23 Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted*

- 1 by the General Assembly, 2 October 2007, A/RES/61/295, available at:
2 <https://www.refworld.org/docid/471355a82.html> [accessed 14 May 2020]
- 3 Vickers, R. 2019. The regulation of natural resources law in Australia for Indigenous People. *Jambe*
4 *Law Journal*. 2, 2: 99-117.
- 5 Ward, T. 2011. The right to free, prior, and informed consent: Indigenous peoples' participation
6 rights within international law. *Northwestern Journal of International Human Rights*. 10, 2:
7 <http://scholarlycommons.law.northwestern.edu/njihr/vol10/iss2/2>
- 8 Widmark, C. 2006. Forestry and reindeer husbandry in northern Sweden - the development of a
9 land use conflict. *Rangifer* 26, 2: 43-54.
- 10 Wilson, E. 2016. What is the social licence to operate? Local perceptions of oil and gas projects in
11 Russia's Komi Republic and Sakhalin Island. *The Extractive Industries and Society*. 73-81.
12 <https://www.sciencedirect.com/science/article/pii/S2214790X15001318>
- 13 Yaffe, N. 2018. Indigenous consent: A self-determination perspective. *Melbourne Journal of*
14 *International Law*. 19, 2. 44p.
- 15
- 16 Young, O. R., L. A. King, and Schroeder, H.. 2008. *Institutions and Environmental Change:*
17 *Principle Findings, Applications, and Research Frontiers*. MIT Press, Cambridge, Massachusetts,
18 USA.
- 19