



SAN GUIDE FOR FREE, PRIOR AND INFORMED CONSENT (FPIC) PROCESSES

2017 SAN STANDARD

SAN-G-SP-2-V1

SAN GUIDANCE FOR ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT

Critical criterion 4.20 of the 2017 SAN Standard requires that

"Activities diminishing the land or resource use rights or collective interests of communities are conducted only after having received the communities' free, prior and informed consent (FPIC). The farm management and group administrator implement complaints or grievance mechanisms to protect community members' rights. If the farm management and group administrator diminish communities' land or resource use rights, mutually agreed compensation commensurate with the loss of use is negotiated with and provided to communities as part of the FPIC process. The farm management and group administrator fully document the FPIC process, including maps developed through the participatory process that indicate the location, boundaries, and planned uses of lands and other resources over which communities have legal, customary, or user rights."

This guidance is directed to SAN authorized auditors and farm or group administrator representatives that will implement critical criterion 4.20. It describes

- A. The cases where an FPIC process is required; and
- B. The steps required in the FPIC process, in cases where an FPIC process is necessary.

1. FPIC DEFINITION

The FPIC concept has emerged as an international human rights standard that recognizes the collective rights of indigenous peoples to self-determination and to their lands and territories (FAO, 2014), and it is based on several international laws and conventions. The FPIC process is used in the context of projects and activities in the oil and gas, mining, forestry, and oil palm sectors, but has been less used in the context of other agricultural crops or cattle production systems.

The 2017 SAN standard, critical criterion 4.20 provides more specific provisions for certificate holders to conduct an FPIC process with local communities in cases when these communities' land or resource use rights would be diminished by proposed activities of the farm or group administrator; and defines FPIC as follows:

The right of indigenous peoples and other local communities to make free and informed choices about the use or development of their lands and resources. FPIC is implemented through a participatory process involving all affected groups that is carried out prior to the finalization or implementation of any development plans. An FPIC process ensures that communities are not coerced or intimidated; that decisions are reached through communities' own chosen institutions or representatives; that communities' consent is sought and freely given prior to the authorization or start of any activities; that communities have full information about the scope of any proposed development and its likely impacts on their lands, livelihoods and environment; and that ultimately their choices to give or withhold consent are respected.

2. LEGITIMATE LAND USE RIGHTS

All farms or group administrators, that are currently certified or want to get certified after July 1, 2017 based on the SAN 2017 Sustainable Agriculture Standard, have to comply with critical criterion 4.19 on legitimate land use rights with no exception:

Legitimate right to use the land is demonstrated by ownership, leasehold, or other legal documents or by documentation of traditional or community use rights. Right to use the land is not legitimately disputed by current or former local residents or communities, including in relation to past dispossession or forced abandonment. In the event of land conflict, legitimate right may be demonstrated if a conflict resolution process has been implemented, documented, and accepted by the affected parties.

This critical criterion always applies and assures that the certified land users produce crops or cattle on land legally owned by them or ceased for agriculture or cattle production use. Therefore it guarantees the absence of land conflicts of those land portions forming part of the certificate scope of the farm or group administrator.

3. APPLICABILITY

3.1. PROJECT OR ACTIVITIES APPLICABLE FOR FPIC SCOPING

The following project or activities are applicable for FPIC Scoping:

1. The project or activity will convert non-agricultural land into crop or livestock grazing land;
2. The project or activity will convert smallholder crop land used primarily for subsistence or local consumption into land growing crops for trade and consumption outside the local area;
3. The project or activity will convert traditional grazing lands into other agriculture land uses that exclude or diminish the former grazing activities;
4. The project or activity will increase water withdrawal in a location and to a degree that may significantly reduce the availability of water for other nearby or downstream human users;
5. The project or activity will eliminate or diminish access of local peoples or communities to natural ecosystems or other areas currently used for hunting, fishing, or extraction of plants or their parts for food, fiber, fuel, medicines, or other products;
6. The project or activity takes place on or near areas used by local peoples for traditional cultural or religious activities.

3.2. OPERATIONS NOT PROPOSING NEW PROJECTS, ACTIVITIES NOR CERTIFICATE SCOPE EXPANSIONS

Certified operations that held a valid SAN certificate as of June 30, 2017 and **are not** planning to initiate any projects or activities, applicable for FPIC Scoping as identified in Section 3.1, or scope expansions after July 1st 2017, are considered to have complied with critical criterion 4.20 of the 2017 SAN Standard, by virtue of having complied with critical criterion 7.2 of the 2010 SAN Sustainable Agriculture Standard. This type of operation will prepare in the future for compliance with continuous improvement criterion B-4.46 on the identification of communities' concerns related to the farm's or group administrator's operations.

If operations newly seeking certification from July 1, 2017 onward, are not planning to initiate any projects or activities applicable for FPIC Scoping as identified in Section 3.1, then Critical Criterion 4.20 on FPIC is **not applicable**.

3.3. OPERATIONS PROPOSING NEW PROJECTS OR ACTIVITIES

All operations planning to initiate any projects or activities applicable for FPIC Scoping as identified in Section 3.1, shall apply Step 1 of Section 4 (Conducting the FPIC):

- i. As a result of this Step 1: if the proposed projects or activities do not diminish the rights of local communities, the applicant is considered **compliant** with critical criterion 4.20.
- ii. As a result of this Step 1: if the proposed projects or activities diminish the rights of local communities, the applicant **only is considered compliant** with critical criterion 4.20, **if** steps 2 - 6 of Section 4 (Conducting the FPIC) have been implemented.

3.4. OPERATIONS PROPOSING TO EXPAND THEIR CERTIFICATE SCOPE

All operations that intend to expand the scope of their certificates by adding more than 10% new production area or more than 10% new member farms are subject to a scope expansion audit, pursuant to section 9.c) of the SAN 2017 Certification Rules.

3.5. SMALLHOLDERS AND GROUP ADMINISTRATORS

According to the SAN 2017 standard's application rules, CC 4.20 on FPIC **does not apply to smallholders individually**. Consequently, criterion CC 4.20 is not scored for individual smallholders when forming part of the audit sample of member farms of a group administrator.

However, CC 4.20 on FPIC **does apply to group administrators** - as responsible party for the compliance of its member farms - who have to assure through member selection, internal inspection and sanction procedures, that all its members (being them smallholdings or not) comply with this criterion and this SAN FPIC guidance document.

4. CONDUCTING AN FPIC PROCESS

A Free Prior and Informed Consent (FPIC) process compliant with critical criterion 4.20 and the applicable scenarios described above, shall cover the six steps summarized below.

For more detailed information about how to conduct FPIC processes, the technical guidance documents cited in the References section can be consulted.

Figure 1: Steps for the Free, Prior and Informed Consent Process



STEP 1 – SCOPING

- a) Identify communities, sub-groups within communities, and other stakeholders with potential interests in the land or resources that are proposed to be developed, appropriated, utilized, or impacted by the proposed activity, project, or expansion;
- b) Identify any rights or claims of these communities to land or resources (e.g., water rights, water access points, or rights to hunt or extract forest products) that overlap or are adjacent to the site(s) or area(s) of the proposed activity, project, or expansion;
- c) Identify whether the proposed activity, project, or expansion may diminish the rights, claims, or interests identified in Step 1 - b. This is the case in circumstances including, but not necessarily limited to, the following:
 - i. Land currently used by communities, or members of a community, for primary subsistence activities would no longer be available to these people for these activities. For instance, if smallholder farm plots growing mainly crops for family subsistence or local consumption are proposed to be converted to plantation agriculture, or if traditional pastoral grazing lands are proposed to be enclosed for intensified cattle production and made unavailable to their former pastoralist users.

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- ii. Communities, or members of a community, would cease to have access, or would have diminished access, to natural resources used for local consumption or subsistence. For instance, if:
- Access to streams or other water bodies for communities’ drinking water, washing, or livestock watering is to be eliminated or diminished;
 - Access to traditional hunting or fishing areas is to be eliminated or diminished;
 - Access to, or rights to extract, plants or plant parts such as firewood, medicinal plants, or fruits is eliminated or diminished;
 - Statutory or customary allocation of resources, such as permissions to withdraw water from local rivers, would change in a way that diminishes communities’ allocation or use of these resources.

STEP 2 – PLANNING, RESEARCH AND ASSESSMENT

- a) Conduct participatory mapping of land and natural resource use;
- b) Assess potential impacts (positive and negative) of the project;
- c) Involve independent parties to support the mapping and assessment process. Communities have the right to choose an independent party that can support them in the FPIC process. These independent parties could include local NGOs. Independent parties should also be involved in the FPIC process in order to act as an impartial verifier.

STEP 3 – CONSULTATION

- a) Re-define and revise the project, if necessary, to address potential impacts relative to community rights;
- b) Provide community representatives with a description of project activities, benefits, and impacts, presented in a manner that is accessible and appropriate to community representatives’ education levels and to the cultural context;
- c) Allow the community to consult internally regarding the acceptability of the proposed project;
- d) Consult if the community will still consider the project (STOP / GO decision).

STEP 4 – NEGOTIATION

- a) Facilitate access to legal advice for communities, if necessary. Legal advice and access to independent parties should be available to communities throughout the FPIC process, but especially in the negotiation phase;
- b) If the community is amenable to the project, negotiate terms of agreement for proceeding, including benefits, compensation, or mitigation to the community, commensurate with the loss of use of land or resources;
- c) Develop a plan for participatory monitoring and conflict resolution.

STEP 5 – AGREEMENT

- a) Consult the community representatives whether they will enter into the agreement (STOP / GO decision);
- b) Finalize the agreement and secure endorsement from the local authorities, as necessary.

STEP 6 – IMPLEMENTATION

- a) Implement the agreement and compensation mechanism (if applicable);
- b) Implement the participatory monitoring and conflict resolution plan, including a mechanism for the community and its members to raise grievances and have these grievances duly considered and resolved.

5. REFERENCES

Forest Stewardship Council. (2012). *FSC guidelines for the implementation of the right to free, prior and informed consent (FPIC) (Version 1)*. Available at: <https://ic.fsc.org/download.fsc-fpic-guidelines-version-1.a-1243.pdf>

Food and Agriculture Organization of the United Nations. (2014). *Respecting free, prior and informed consent: practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition*. Available at: www.fao.org/3/a-i3496e.pdf