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*This project was possible thanks to a grant from the ISEAL Innovations Fund,
which is supported by:*



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Confederation

Federal Department of Economic Affairs,
Education and Research EAER
State Secretariat for Economic Affairs SECO

Thinking through FPIC for VSS and application of the FPIC-360° Tool

July 2022

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Table of Contents

SECTION 1: ABOUT THE FPIC-360° TOOL	3
SECTION 2: BENEFITS OF THE FPIC-360° TOOL	4
SECTION 3: FPIC-360° TOOL FOR VOLUNTARY SUSTAINABILITY STANDARDS	6
3.1. ADDING THE TOOL TO VOLUNTARY SUSTAINABILITY STANDARDS (VSS) REQUIREMENTS AND GUIDANCE	6
3.2. INCORPORATING THE TOOL INTO ASSESSOR/AUDITOR TRAINING	7
3.3. INCORPORATING THE TOOL INTO THE AUDIT SCOPE	7
SECTION 4: INCORPORATING INDIGENOUS PEOPLES INTO GOVERNANCE AND STANDARD SETTING	8

Section 1: About the FPIC-360° Tool

FPIC-360° is an Equitable Origin initiative in partnership with the Roundtable on Sustainable Biomaterials (RSB) and the Coordinator of Indigenous Organizations of the Amazon River Basin (COICA). The FPIC-360° Tool was designed by a working group of ISEAL Members, Indigenous Peoples' organisations, NGOs, international organisations and independent experts who provided input on the research and development process. Workshops with participants from 15 Indigenous Peoples nations in Colombia, Ecuador and Peru also provided important input and feedback in the development of the Tool.

The FPIC-360° Tool for monitoring and verifying free, prior and informed consent (FPIC)¹ is a multi-pronged tool, founded on the premise that FPIC can only be conducted responsibly and successfully if the Indigenous Peoples affected by a proposed project are co-owners and implementers of the entire process, from design, through implementation and monitoring phases.

The FPIC-360° Tool changes who collects data, how it collected and when it is considered. It addresses the important gap of monitoring and verifying project developers' compliance with FPIC according to VSS requirements. Historically, there has been little guidance on what FPIC looks like on the ground, a lack of knowledge and experience of good practices for respecting the right to FPIC and a lack of resources dedicated to assuring FPIC implementation.

The Tool democratises the design, implementation and monitoring of FPIC processes by facilitating equitable participation in, and ownership of, the FPIC process by all project stakeholders. It focuses on the process and enabling conditions for FPIC, not just the output. It provides a mechanism for communities to proactively provide input in monitoring and verification processes and allows communities to track implementation of FPIC in good faith. The ultimate intent should be to build a trustful, respectful and long-lasting relationship between parties. Possible (and in many cases realistic) historical hardship and grievances must be overcome to reach this level.

The Tool also helps address common challenges related to monitoring and verifying FPIC through embedding two key principles:

- **Participation:** The processes laid out in the Tool are founded on the understanding that FPIC can only be implemented and monitored responsibly if the community has equal participation in, and ownership of, the process.
- **Transparency:** In many cases, FPIC is something that happens to a community from the top down. The FPIC-360° Tool redresses this imbalance by facilitating data collection from both sides of the FPIC process and making it available for review and approval by the rightsholders before being submitted for external verification.

Over the past two years, the Tool has been updated and refined to meet the needs of various users in collaboration with this working group. In 2021, EO launched the online platform

¹ Accessible at www.fpic360.org

version of the Tool for participants to work more collaboratively and transparently during FPIC processes. More information about the Tool development process, features, and Platform can be found at www.fpic360.org.

Section 2: Benefits of the FPIC-360° Tool

The FPIC-360° Tool for monitoring and verification can be utilised by any party carrying out or overseeing an FPIC process, including project developers, impacted communities, assessors/auditors, VSS, donors, development agencies, and financial institutions. It is multi-sided, facilitating a participatory process that is jointly implemented by the assurance provider and/or by the affected Indigenous Peoples' community. It can also be used by standard-setting organisations to aid the verification process.

In recent years, standards organisations have attracted increased scrutiny from rights-based and advocacy organisations that have brought to light inadequacies of standard systems, assurance and certification processes in relation to human rights.²

FPIC processes that are not conducted appropriately, and fully, nor adequately monitored on an ongoing basis, risk undermining trust and working relationships between the communities, companies and other stakeholders involved in project development and execution, or, worse still, risks failing to safeguard the rights of Indigenous Peoples to participate in, and consent to, development planning that affects them. The risk is that the potential positive impacts of standards' application may be significantly diminished by poor FPIC processes and a lack of trust. The FPIC-360° Tool sets out to address this.

Setting out extensive guidance on the principles of FPIC, enabling conditions for the community and project developer, and process steps for implementing FPIC, the Tool can be used in the following ways:

- To facilitate monitoring of FPIC processes and complement to assurance processes for standards and safeguards;
- As a diagnostic tool for Indigenous relations and FPIC;
- A roadmap for companies to implement and document FPIC processes;
- Guidance for assurance providers/verifiers/assessors;
- Supply chain due diligence;
- Standard setting organisation oversight and tracking the progress of an FPIC process;
- Opportunity to increase community participation in the assurance process;
- Managing evidence/documentation in support of the process;
- Facilitating dialogue between relevant parties in the FPIC process;
- As an iterative approach to monitoring FPIC rather than a linear 'check-box' approach.

Throughout the guidance, there are references to normative requirements, links to best international practices, and links to further information for each step of the process.

A report published by ISEAL in 2020, 'Voluntary Standards and FPIC Insights for Improving

² <https://www.msi-integrity.org/not-fit-for-purpose/>

Implementation'³ found that gaps in implementation, training and evaluation exist in standard-setting schemes globally and that there is a lack of research and understanding about the topic in general. Among the report's recommendations for VSS were a call for inclusive governance, including Indigenous Peoples in the governance of VSS; enhanced partnerships and collaboration for more effective support of Indigenous rights and FPIC; mandatory FPIC requirements to meet standards' minimum thresholds without conflicts with environmental requirements; reviews and updates to standard systems to support FPIC implementation; and targeted FPIC due diligence.

The following sections include recommendations for how the Tool can contribute to these recommendations and provide further benefit to VSS and the incorporation of FPIC into their requirements.

³ <https://www.isealalliance.org/get-involved/resources/report-voluntary-standards-and-fpic>

Section 3: FPIC-360° Tool for Voluntary Sustainability Standards

3.1. Adding the Tool to Voluntary Sustainability Standards (VSS) Requirements and Guidance

The FPIC-360° Tool may be incorporated into a standard's requirements for certification. It could be required for use as guidance for the certified unit's FPIC implementation or serve as the framework for how an FPIC process is documented and assured. If the Tool is incorporated into certification requirements, the following best practices are recommended.

The Tool should be noted in the standard's requirements and its application should be further explained in the guidance. For example, the Tool can be referenced as a step-by-step educational resource and roadmap for implementation or can be followed as a checklist for compliance with the certification requirements. In addition, VSS should decide how access to the Tool will be managed (e.g., suggested, required for purchase, or provided free) and whether the VSS will play an oversight role.

The Tool should be provided to the certified entity well in advance of the certification assessment and/or the certified entity should be given ample time to implement the tool before the assessment. FPIC processes themselves are complex and take time by nature. This should be taken into consideration and ample time should be allowed. It is important to acknowledge that certified entities will need adequate resources to contribute to and fulfil the requirement and in some cases may need additional expert guidance. VSS should create programs to support the rollout and capacity of certified entities to fully implement the Tool. This may include training or information sessions to explain how the Tool works, what elements are requirements versus best practice, and what types of evidence can be provided to demonstrate conformance.

Including the FPIC-360° Tool as a reference for FPIC implementation in VSS guidance documents supports certified entities to better understand FPIC, allowing certified entities to benchmark against or implement best practices, and helps certified entities document and record all FPIC activities.

Some VSS have incorporated the FPIC-360° Tool in their guidance documents, including the Responsible Jewellery Council⁴, the Copper Mark⁵, Equitable Origin⁶, and the Responsible Minerals Initiative.⁷ Several VSS such as Roundtable on Sustainable Palm Oil⁸ and Forest Stewardship Council⁹ have also developed stand-alone FPIC Guidance for companies and entities seeking certification.

⁴ https://www.responsiblejewellery.com/wp-content/uploads/SD_RJC_COP-guidance-V1.3-December-2020.pdf

⁵ <https://coppermark.org/wp-content/uploads/2022/04/Risk-Readiness-Assessment-Criteria-Guide-Draft-for-Public-Consultation-April-2022.pdf>

⁶ <https://energystandards.org/responsible-energy-development/>

⁷ <https://www.responsiblemineralsinitiative.org/>

⁸ <https://rspo.org/resources/free-prior-and-informed-consent-fpic->

⁹ <https://fsc.org/en/document-centre/documents/resource/332>

3.2. Incorporating the Tool into Assessor/Auditor Training

Indigenous Peoples and FPIC should be covered as a separate topic within VSS assessor/auditor training since it is a complex and nuanced topic that requires an understanding of international frameworks for Indigenous Peoples rights as well as knowledge of country-specific political and regulatory contexts. Providing the FPIC-360° Tool as a resource can help assessors familiarise themselves with FPIC and international best practices. The indicators demonstrate what assessors might review and verify during an assessment, and the further resources provide context for FPIC that can help assessors make more informed decisions about the applicability of FPIC and the types of documents and activities they should expect to see.

Incorporating the FPIC-360° Tool into assessor/auditor training can help assessors understand what FPIC is and what the international, national and legal requirements of FPIC are. It can also help to clarify how to evaluate FPIC processes at different stages; and provide a framework for requesting, reviewing and organising documentation and evidence during the assurance process.

3.3. Incorporating the Tool into the audit scope

Requiring the use of the FPIC-360° Tool within the audit scope sends a clear signal about the importance of Indigenous Peoples' rights and FPIC within the Standard. It ensures that all certified entities have implemented and documented an equally rigorous FPIC process that has been verified by assurance providers. It also ensures that all certification bodies and assurance providers understand what FPIC is, understand the legal requirements for obtaining FPIC, and have documented evidence of the process for future reference and/or continuous improvement.

By incorporating the FPIC-360° Tool as a requirement within the scope of the audit, VSS can ensure high-quality FPIC processes have been carried out, documented, and monitored for all certified entities. It also allows VSS to create a standardised requirement with a common process for FPIC documentation and verification.

Furthermore, it enables assessors to conduct a deep dive on FPIC where necessary and to promote continuous improvement. As outlined in the Tool, a one-off meeting with a signed attendance sheet or ad hoc engagement with Indigenous communities for a project is not sufficient. The Tool provides detailed examples of what types of evidence could be reviewed and monitored to demonstrate an ongoing, dynamic and non-linear FPIC process.

Section 4: Incorporating Indigenous Peoples into Governance and Standard Setting

There are several examples of VSS incorporating Indigenous representation at the board, advisory and/or executive levels. Board-level representation is a highly recommended practice that is crucial for VSS in their effective decision-making, guidance, and risk management. Indigenous advisory committees or working groups that actively review the standard, and respond to and resolve grievances and concerns have also been effective in promoting diversity and inclusion, building trust and increasing uptake of the standard.

Incorporating Indigenous Peoples into standard-setting may require a differentiated approach from other stakeholder engagement. VSS may need to work with Indigenous organisations to organise workshops and information sessions and these sessions may need to be customised to allow for full participation of Indigenous Peoples. For example:

- Consult with Indigenous organisations on the appropriate location, timing and format of workshops or information sessions;
- Include information in Indigenous languages and provide interpretation where needed or requested;
- Provide offline versions of standards for Indigenous Peoples to provide feedback;
- Allow for additional time for Indigenous Peoples to review and provide feedback on draft standards or standards updates.

Below are several examples of VSS that incorporate Indigenous Peoples in both governance processes and standard setting.

Aluminium Stewardship Initiative

The Aluminium Stewardship Initiative (ASI), which manages the ASI Performance Standard, has an advanced governance structure that incorporates Indigenous Peoples at multiple stages.

In 2016 the ASI established an Indigenous Peoples Advisory Forum (IPAF)¹⁰ that provides a forum for Indigenous Peoples to speak directly to, and have a direct influence on, companies across the aluminium supply chain. The IPAF has an advisory function for ASI-related complaints impacting Indigenous Peoples and meets annually to discuss issues relevant to Indigenous Peoples.¹¹ Through the IPAF, the ASI engages in community development activities, such as community capacity building and community resilience projects.¹²

¹⁰ <https://aluminium-stewardship.org/wp-content/uploads/2019/09/ASI-Governance-Handbook-v2-September2019.pdf>

¹¹ <http://www.forestpeoples.org/sites/default/files/documents/ASI%20English%20edited2.pdf>

¹²

https://www.hrw.org/sites/default/files/media_2021/07/ASI%20response%20and%20letter%20for%20HRW%20Jul2021%20report%20070721.pdf

On the ASI Standards Committee, there are twelve seats out of 24 reserved for civil society organisations and the ASI Indigenous Peoples Advisory Forum (IPAF).

ASI's Standards Committee, which develops the core standards, and oversees the development of implementation guidance, currently includes four direct Indigenous community representatives,¹³ two of which are elected by the IPAF.

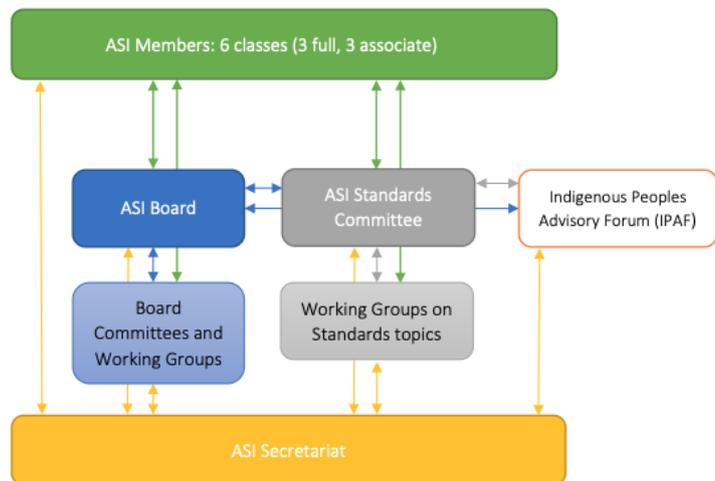


Figure 1 – Overview of ASI Governance

In addition, the Board's annual agenda includes a time and space for input from the Indigenous Peoples Advisory Forum.

Furthermore, ASI's Governance Handbook states that "ASI acknowledges Indigenous Peoples and their connections to their traditional lands where we and our members operate. We aim to respect cultural heritage, customs and beliefs of all Indigenous People and we pay our respects to elders past, present and emerging."¹⁴ This, along with the above practices, can be considered exemplary for incorporating a culture of respect and providing spaces for Indigenous representation in decision-making.

Forest Stewardship Council

The Forest Stewardship Council (FSC), which oversees its FSC certification program, has incorporated Indigenous Peoples in its board, committees, and standard requirements and even created an Indigenous Foundation to advance the rights of Indigenous Peoples.

In 2013, the Forest Stewardship Council set up the Permanent Indigenous Peoples' Committee (PIPC) to ensure that Indigenous voices are heard at the highest levels of FSC decision-making. The PIPC is made up of representatives of Indigenous Peoples from all regions of the world and is "a global advisory committee advises the FSC International Board on the FSC certification system, safeguard Indigenous Peoples' rights, enhance forest management, and support Indigenous Peoples in building FSC certified forest stewardship."¹⁵ Then, in 2020, the FSC launched an operational arm, the FSC Indigenous Foundation to take a more active role in forest and nature-based solutions worldwide.

¹³ <https://aluminium-stewardship.org/the-aluminium-stewardship-initiative-asi-program-and-action-on-human-rights>

¹⁴ <https://aluminium-stewardship.org/wp-content/uploads/2021/09/ASI-Governance-Handbook-v3-September2021.pdf>

¹⁵ <https://www.fscindigenousfoundation.org/our-work/>

The FSC Standard has incorporated the rights of Indigenous Peoples in its standard's requirements and signalled its importance by dedicating an entire Principle, Principle 3: Indigenous Peoples' Rights to the subject. This goes beyond the requirements of many other standards and helps underscore the importance of Indigenous rights protections.

Equitable Origin

Equitable Origin has incorporated Indigenous Peoples into standard setting in the EO100™ Standard for Responsible Energy Development and in its organisational governance. EO has at least two permanent board seats reserved for Indigenous representatives and has Indigenous experts, such as James Anaya, former Special Rapporteur on the Rights of Indigenous Peoples, on its Advisory Committee.

During the development of the EO100™ Standard, a formal Consultation Committee was formed including representatives from Indigenous communities. Equitable Origin conducted over 70 workshops in Indigenous communities and held a public comment period to collect, analyse and record over 1,300 comments from communities and Indigenous Peoples' organisations, industry, academia, NGOs, and governments. Equitable Origin also has Indigenous rights experts on the Standards Technical Committee and Indigenous staff as part of the team.

Within the EO100™ Standard, 'Indigenous Peoples' Rights' is one of the five principles and Equitable Origin is developing country-specific guidance on Indigenous Peoples' rights for companies and assessors.

Equitable Origin also established the web-based Indigenous Rights and Resources Hub (*Centro para el Fortalecimiento de los Derechos Indigenas*) in 2020.¹⁶ The Resource Hub provides Indigenous-created content to Indigenous communities related to exercising their rights in the context of natural resource development. The Resource Hub recently held a three-month e-learning course for Indigenous leaders on FPIC led by eleven Indigenous rights experts.

¹⁶ www.cefoindigena.org