



**Forest Stewardship Council
Board of Directors**

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Germany

15 February 2024

Dear FSC Board of Directors,

We, the undersigned organisations, wish to register our concerns with and share our recommendations for FSC's application of its new Remedy Framework in Indonesia. This is in part a response to information we received from one of the Independent Assessors, Remark Asia, on the implementation of their Social Baseline Assessment.

1. Lack of outreach by FSC to alert communities to process

Although FSC contracted Independent Assessors in December 2023 to identify impacted communities and to start their assessment of social harms between January and March 2024, FSC itself apparently does not plan any actions to alert communities to the roll out of the Remedy Framework until the very end of February 2024 (in Kalimantan) and early March 2024 (in Sumatra).

According to FSC-Indonesia, these information sharing meetings will only be with selected local NGOs and not directly with impacted communities. We are told that FSC is relying on the NGOs to themselves then undertake the field engagement with the communities to alert them to the process. While we as NGOs provide ongoing support to communities, this move is an improper delegation by the FSC of its responsibility to inform communities and ensure their effective participation in the process. Moreover, this timeline fails to provide sufficient time for NGOs to properly inform communities and to prepare them for the process.

2. Lack of funding to provide support and advice to communities to engage equitably in the process

The Remedy Framework notes that communities may seek independent advice, and funding for such, in order to engage effectively in the Remedy process. However, to date FSC has expressed reluctance to set up and administer a fund to provide for the communities' need for advice and information. As you are aware, NGOs have since early 2023 been making repeated suggestions on the need for a suitably funded Blind Trust or ESCROW fund, which can be used to ensure communities get the training and advice they need from NGOs and legal advisers. It is regrettable that discussions on how to establish such a fund have stalled.

3. Hasty assessments by Independent Assessors

The methodology presently employed by the Independent Assessor for conducting the social baseline assessment is insufficient for providing a fair basis for redressing the social harms associated with APRIL's forest conversion since 1994 and other unacceptable activities. The proposed process is so truncated and hasty that it poses a substantial risk that FSC will itself be acting in violation of FSC commitment and standards to uphold human rights and respect the customary rights of indigenous peoples and local communities.

The Remedy Framework requires baseline assessments to be "undertaken in full consultation with affected stakeholders and relevant environmental and social experts", "follow FPIC processes"; and



that these processes “are based on best practice guidelines”.¹ The methodology proposed by the Independent Assessor does not follow FSC Guidelines for the implementation of the Right to FPIC.

Independent Assessor Re-Mark Asia, for instance, has allocated less than two weeks to conduct FPIC-based social assessment process with indigenous communities impacted by TPL's operations. Given that harms were caused to dozens of communities due to forest conversion, this timeframe is insufficient and falls outside the recognized standards for FPIC consultations. This is not unexpected, considering FSC's request for proposals allocates less than a month for independent assessors to visit potentially impacted communities, before they are required to report back on the nature and scope of the harm caused to impacted rights holders.

Re-mark Asia, for example, “identified 63 villages (out of 243 village in and around PT TPL) as sites that have the potential for social harm”. The Independent Assessor's methodology, however, and explanation of the FPIC process is not coherent, and appears to suggest FPIC will be applied retroactively. FPIC, by its nature, cannot be applied retroactively.

4. Non-participatory Assessments

It is a matter of concern that Re-mark intends to present an initial draft of their evaluation, encompassing potential remedial measures, to APRIL prior to engaging with communities on-site. This approach raises apprehensions about the impartiality and independence of the social assessment process. The decision to share the initial draft with APRIL before any FPIC process has taken place with impacted communities appears to be in contradiction to the participatory approach required in FSC Remedy Framework.

5. Hasty Third Party Verification

The Remedy Framework relies on Third Party Verifiers contracted by the company to verify the adequacy of the baseline assessment, identification of social harms, priority social harms and proposed remedial plans. We note that CBs are proposing to check these matters without visiting every affected community. Instead they plan to act in a very hasty manner and sample as few as 10% of the impacted communities.

6. Lack of Outreach by FSC on the Methodology

The methodology for the assessments to determine impacted communities and the harms they have suffered due to industrial forest conversion was developed by the companies seeking to apply the remedy process (APRIL and APP) without input from civil society or the impacted communities.

As part of the social baseline assessment, the harms that impacted communities suffered include damage and loss of HCVs which they relied on, benefited from, valued, and maintained. The process of identifying these harms will require retroactive HCV assessments in which affected communities are active participants.

If we are to understand FSC has agreed to the methodologies developed by APRIL and APP, including the methodology on retroactive HCV assessments, this approach raises serious concerns to their adequacy and robustness.

¹ 6.1. (a), (b) and (c) of FSC Remedy Framework, p.19 (FSC-PRO-01-007 V 1-0 EN)



To be revised in line with above:

In these circumstances, we believe that FSC is not upholding the rights of indigenous peoples and local communities to Free, Prior and Informed Consent.

- The delay in FSC’s outreach and the lack of funding for NGO engagement with the communities means that they will not be informed of the FSC Remedy Framework before being asked to make decisions about crucial matters such as how they wish to be represented in dealings with the assessors, CBs and companies.
- The truncated assessment process itself will not allow time for communities to consider their options properly prior to be asked to give consent.
- The hasty and partial verification process will mean that the FPIC in most communities will remain unverified.

Recommendations:

We therefore call on FSC to:

- improve the roll out of the FSC Remedy Framework to align with international human rights law and FSC’s own P&C and FPIC Guide;
- provide clarity to CSOs as to their role in the social assessment process and their expected role in respect to preparing communities for the assessment and ensuing negotiations;²
- ensure that a credible funding mechanism is established so that impacted communities can be provided with training and expert advice so they can engage in the remedy process in an informed way³;
- ensure the independent assessors provide every impacted community with sufficient information, due time and a reasonable process to allow meaningful and iterative FPIC;
- require that third party verifiers interact with every impacted community to check on the adequacy of the engagement and the FPIC process;
- establish a transparent process for inviting CSOs to the planned information-sharing workshops taking place in Kalimantan and Sumatra and provide suitable information packs prior to, and detailed minutes after, these meetings;
- consider piloting the social assessment process in a number of impacted communities, using the lessons learned to inform the subsequent broader social assessment process;
- share a copy of APRIL and APP’s methodologies for identifying communities and the harms that they have suffered; and
- open up and revise the process for developing the methodology for retroactive HCV assessments based on inputs from the HCVN, relevant Indonesian and international NGO’s and impacted communities.

We call on the Independent Assessors and Third Party Verifiers:

- to provide details on how they plan to ensure that the right to FPIC will be upheld in conformity with the FSC Guide to FPIC.

² It is the responsibility of FSC to ask for CSO to support the Remedy Framework. If FSC requires the support of CSOs, resources should be made available to finance this work.

³ To our understanding, FSC Indonesia is not set up as a legal entity that can establish a blind trust/receive funding from a company to be passed on to NGOs or communities. Given the urgency of this recommendation, the use of Indonesian entities, that are able to receive funding from corporations and pass it on to NGOs and impacted communities, is required. **Forum Komunikasi Kehutanan Masyarakat (FKKM)**, a multi-stakeholder NGO, is one possible option to act as a blind trust for impacted communities in Riau, as FKKM can receive funds from industry and NGOs. A similar organisation could be sought to support impacted communities in Kalimantan.



Signed:

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