

18 August 2023

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SUBJECT: AL OTH 25/2023

Dear Ms. Beatriz Balbin,

Thank you for your letter dated June 19, 2023, in which you highlighted your concerns regarding a certificate holder within Forest Stewardship Council (“FSC”) and requested certain pieces of information about our organization including processes and procedures. FSC takes all allegations about the violation of Indigenous People’s rights seriously and assures the Office of the High Commissioner for Human Rights that the matter will be reviewed via all appropriate channels following FSC’s standard procedures.

FSC is deeply saddened by these allegations. As an organization working towards responsible forest management for over twenty years, we take every measure possible to ensure adherence to regulatory standards.

As the leader in sustainable forestry, FSC is trusted by NGOs, businesses, and consumers worldwide to protect healthy, resilient forests for all, forever.

FSC sets standards for forestry operations that want to conform with sustainable forestry requirements including good management practices, and for producers and traders of forest products who want to source from these suppliers and communicate this to their customers. In addition, FSC sets standards for certification bodies (“CBs”) to follow during their evaluations of organizations’ conformity with forest management and chain of custody standards. FSC’s standards on CBs, forest management and chain of custody form the foundation of the certification system.

Actors in FSC’s certification system each play a key role in getting products from the forest to the market; as well as ensuring the protection of forests for future generations. Certificate holders conform with the requirements set by FSC in the certification standards. In conforming with FSC standards, certificate holders ensure that their forests and forest sector products are responsibly sourced and managed, thereby yielding environmental, social and economic benefits.

CBs carry out the forest management and chain of custody evaluations that lead to FSC certification. They also conduct audits to ensure that certificate holders continue to conform with FSC’s certification requirements. If they do not conform, then their CB may suspend or terminate their certificate, and FSC may block them from the system.

Just as conformity of certificate holders is checked by CBs, CB performance is also checked by an independent third-party, Assurance Services International (“ASI”). ASI carries out annual checks on the CBs through office-based, remote and field assessments. If a CB does not conform with the required standard, then ASI may suspend them. In addition, ASI carries out additional investigations on certificate holders at the direction of FSC, as well as following allegations of wrongdoing.

In response to your letter and the five requests for observations from our side, FSC has compiled the following answers.

1a. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

On the overlap of rights claims over concessions distributed to Canales Tahuamanu S.A.C:

In October 2022, ASI conducted an assessment of the CB's evaluations of the certificate holder Maderera Canales Tahuamanu following the death of a logger after an encounter with indigenous people. During the assessment, ASI investigated how the CB evaluated the compliance of Maderera Canales Tahuamanu through a documentation review with FSC principles of indigenous peoples' rights. ASI determined that there is an ongoing legal land dispute between the Maderera Canales Tahuamanu and FENAMAD regarding part of the forest management area belonging to the Maderera Canales Tahuamanu. Based on the documentation reviewed, the ASI assessment concluded that Maderera Canales Tahuamanu were the official guardian of its concessions that were distributed by the state.

The assessment also determined that Maderera Canales Tahuamanu recognizes the risks of contact between its workers and isolated indigenous communities as the company adopted measures to maintain distance through buffer zones, trained its workers, and suspended forestry activities. Maderera Canales Tahuamanu is working together with the Ministry of Culture of Peru to minimize interactions between indigenous population and workers. The assessment did not identify any evidence of indigenous peoples' claims on the land that overlapped with Maderera Canales Tahuamanu concessions.

On obtaining consent of the Mashco Piro affected by the company's operations as per FSC requirement:

ASI and FSC share the view by the Inter-American Commission on human rights and of the UN Special Rapporteur on the Rights of Indigenous Peoples on people in voluntary isolation (non-consent is presumed against any type of activity that interferes with their territory). In accordance with standard practices, ASI evaluates whether CBs apply this view when indigenous peoples in voluntary isolation are affected by the management activities of the certified entity. Based on information gathered during assessments, ASI and FSC do not have evidence that the Mashco Piro Indigenous People are legally entitled to and are present on the concession owned by Maderera Canales Tahuamanu. It is ASI's and FSC's understanding that the territory of the Mashco Piro people is adjacent to the concession owned by Maderera Canales Tahuamanu and that, notwithstanding the tragic case when contact occurred in August 2022, adequate measures have been taken by this certificate holder to maintain distance with the Mashco Piro people through the means of buffer zones and training of workers.

On the impact of the legal proceedings engaged by Canales Tahuamanu S.A.C. on FENAMAD, an indigenous-led human rights organization:

The defamation proceedings mentioned in the letter of the United Nations Human Rights Special Rapporteur regarding Canales Tahuamanu S.A.C. on FENAMAD were not known to ASI and FSC. Currently, there is no normative reference in FSC's system that could be applied to correct the matter or to apply corrective measures related to this. Entities and private persons are free to challenge each other legally for defamation.

1b. Please provide information on the human rights due diligence policies and processes established by your organization to prevent or mitigate adverse human rights impacts that are directly linked to your operations, products or services, including those related to FSC's certification, in line with the UN Guiding Principles on Business and Human Rights.

FSC expresses its commitment to fulfil its responsibility to respect human rights FSC through its two main policy instruments: FSC Principles and Criteria for Forest Stewardship (FSC-STD-01-001) and FSC's Policy for the Association (FSC-POL-01-004).

FSC Principles are the essential rules or elements of environmentally appropriate, socially beneficial and economically viable forest management, and the Criteria provide the means of judging whether a Principle has been fulfilled. They are the foundation of FSC's certification scheme and constitute the core of a comprehensive standards package. FSC Principles 1 (Compliance with Laws), 2 (Workers' rights and employment conditions), 3

(Indigenous People's rights) and 4 (Community relations) make explicit references to internationally recognized human rights.

FSC explicitly stipulates its human rights expectations of associated individuals, organizations, and their corporate groups, and those seeking association in FSC's Policy for Association ("PfA"). According to the policy's unacceptable activities, parties associated to FSC commit to avoid in both certified and non-certified operations the following:

- Violation of customary or human rights within the forestry or forest products sector.
- Violation of workers' rights and principles defined in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work within the forestry or forest products sector.

[Note: There are 6 unacceptable activities defined in the PfA – further details about the policy can be found in the written response for question 3]

The latest PfA (V.3) applies to entire corporate groups even if only a limited part of a group has an active relationship with FSC. As a result, the PfA extends the reach of FSC's core values of protecting human rights and the environment to those organizations in the group that are not themselves active in the certification system. The policy also defines the consequences of violating its content, including requiring improvements and remedy, and terminating all contractual relationships with any individual or organization found to be in violation of the policy.

FSC manages remedies for non-compliance with the PfA, including human rights violations, through two documents called Remedy Frameworks (FSC-PRO-01-004 and FSC-PRO-01-007). They are based on the fundamental principles of social and environmental justice. The application of Free, Prior and Informed Consent (FPIC) is therefore at the core of the remedy process and is verified at critical stages. In addition, the UN Guiding Principles on Business and Human Rights underpin the requirements of FSC's Remedy Framework by requiring that organizations seeking to address unacceptable activities, as well as their corporate groups, establish effective grievance mechanisms to prevent future social and environmental harm.

In addition to the Remedy Frameworks, FSC has developed a set of operational policies to ensure that FSC and its associated individuals, organizations and their corporate groups, and those seeking association comply with the PfA and refrain from engaging in unacceptable activities: 'Disclosure Requirements for Association with FSC' (FSC-PRO-10-004) and the automated tool called FSC Check; as well as 'Processing FSC Policy for Association Complaints' (FSC-PRO-01-009). These operational policies are detailed in the answer to question 3.

FSC has due diligence processes that allow it to identify, prevent, mitigate and account for how they address impacts on human rights. FSC Principle 7 makes clear references to the obligation of Organizations (CHs) to have and implement a management plan consistent with its policies and objectives and proportionate to scale, intensity and risks of its activities. Organizations shall cover forest management planning and social management. The management plan shall identify risks, include verifiable targets by which progress towards each of the prescribed management objectives can be assessed.

The Organization shall also update and revise periodically the management planning and procedural documentation to incorporate the results of monitoring and evaluation, stakeholder engagement or new scientific and technical information, as well as to respond to changing environmental, social and economic circumstances.

The Organization is obliged to make publicly available a summary of the management plan free of charge and it shall be made available to affected stakeholders upon request. The Organization shall, proportionate to scale, intensity and risk of management activities, proactively and transparently engage affected stakeholders in its management planning and monitoring processes, and shall engage interested stakeholders on request.

Furthermore, according to Principle 8, the Organization shall monitor and evaluate the environmental and social impacts of the activities carried out in the Management Unit and shall make publicly available a summary of the results free of charge.

FSC oversees the compliance of each Organization part of its system through periodic evaluations by external auditors (CBs) at the management unit and across supply chains, as established in FSC-STD-20-001, FSC-STD-20-007, FSC-STD-20-007a, FSC-STD-20-007b, FSC-STD-40-004, and FSC-STD-20-011. These normative documents describe the procedures to follow when a non-conformity with FSC standards is identified and the obligation to adopt appropriate corrective actions.

Complaints against a certificate holder related to the unacceptable activities of FSC's PfA that overlap with certification requirements follow the ordinary route for dispute resolution. Based on the principle of subsidiarity and escalation, these complaints will thus be processed according to dispute resolution procedures of the certificate-holder, the CB and/or ASI. Complaints against the performance of ASI are addressed by FSC. This operational-level grievance mechanism is defined in respective certification requirements and the procedures 'Processing Complaints in the FSC Certification Scheme' (FSC-PRO-01-008) and 'Processing Appeals' (FSC-PRO-01-005). These procedures also enable individuals and communities to file complaints regarding FSC's normative framework, the performance of FSC International and FSC Network.

2. Please provide information on how FSC ensures compliance with its own Policy for Association, requiring that any organizations associated with FSC must refrain from “unacceptable activities that severely impact forests and people...” which includes human rights violations and abuses against Indigenous Peoples and human rights defenders.

Background of the Policy for Association

The Policy for Association (PSC-POL-01-004) defines the six activities which are unacceptable to FSC and serves as a risk management tool for FSC. The unacceptable activities in the current PfA version, valid from January 2023, are:

- Illegal harvesting or illegal trade in forest products
- Violation of customary or human rights within the forestry or forest products sector
- Violation of workers' rights and principles defined in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work within the forestry or forest products sector
- Destruction of High Conservation Values (HCVs) in forests or High Conservation Value areas
- Conversion of natural forest cover
- Use of genetically modified organisms in forestry operations for any other purposes than research.

When an individual or organization associates with FSC, i.e. becomes a member or gets FSC-certified, they commit to avoiding activities that contradict the core values of FSC across all of their operations – be it a certified or a non-certified part of the operation. The PfA is applicable to all entities of a corporate group that a certificate holder or member belongs to. Therefore, its scope goes beyond the forest management or chain of custody requirements, which cover the certified scope of a certificate holder. Adherence to the PfA is formalized when a certificate holder signs FSC's trademark license agreement (TLA).

Ensuring compliance

To ensure compliance, FSC relies on different parts of the system as well as on third parties for detecting PfA violations. CBs monitor and audit certified organizations for compliance with FSC requirements. ASI, an independent body from the CBs and FSC, oversees their work and investigates suspicious cases of certified entities. At the same time, FSC engages proactively with stakeholders such as activist NGOs to learn about cases to pursue. In addition, FSC's complaints management is open to any individual or organization to report violations (see here <https://connect.fsc.org/participate/complaints> about how to submit a complaint). Such third-party whistleblowing has been an important element to detect PfA violations at early stages in the past¹.

FSC aims to become even more proactive in the future and strengthen the ability to detect PfA violations outside of the scope of certification. Since 31 July 2023, all companies or individuals who wish to associate with FSC first go through a new risk-assessment tool called FSC Check. FSC Check compares information submitted by an applicant against FSC databases to identify companies or individuals who may have been involved in an unacceptable activity or violation of FSC's requirements in the past to avoid that such applicants enter FSC's system.

Addressing PfA violations

¹ PfA violations usually require comprehensive and complex case management and as of 2023, FSC has appraised more than 50 PfA cases since its introduction in 2009.

When there is clear and convincing evidence corroborating allegations of a company that belongs to an associated corporate group violating the PfA, FSC takes strong action, sometimes expelling the entire corporate group from FSC's system. Regardless of the source of the allegation, an associated individual or organization is held accountable for violations of the PfA of any member of its corporate group. The measures and consequences depend on the gravity of the violation.

3. Please provide information on the specific human rights and environmental due diligence measures taken by your organization prior to renewing Canales Tahuamanu SAC FSC certification, in particular with regards to potential land dispute with Indigenous Peoples living in concession areas, and regarding any other human rights concerns that local civil society may have in this regard.

When a certificate holder is recertified by a CB, the process is similar to the initial certification and involves an evaluation of conformity of all applicable FSC normative requirements. During any evaluation the CB completes an explicit analysis of the critical aspects of management control required to ensure that the applicable FSC normative requirements are implemented over:

- the full geographical area in the scope of certification; and
- the full range of management activities. (Forest Management Evaluations - FSC-STD-20-007)

The ASI assessment conducted in 2022 included an analysis of the recertification process conducted by the CB (confirming all the steps that were taken by the CB). In addition to these actions, the assessment confirmed that the CB was aware of legal proceedings between Maderera Canales Tahuamanu and FENAMAD (regarding part of the forest management area belonging to the Maderera Canales Tahuamanu) which were ongoing at the time.

4. Please provide information about any interim measures your organization can take to suspend the certification of Canales Tahuamanu SAC until the rights and survival of the Mashco Piro People living on the company's concessions are safeguarded, and until safeguards are set up to prevent any form of strategic lawsuit against those organizations defending the rights of Indigenous Peoples.

When FSC or ASI receives an allegation regarding a certificate holder, as is the case here, there are several courses of action that can take place, including but not limited to additional investigations, assessments and evidence gathering. These steps must be conducted prior to any decision regarding the suspension of the certificate holder.

In accordance with FSC's certification programme, the certificate is managed by the CB which is the only entity that can suspend or withdraw the certificates. If ASI identifies evidence of wrongdoings of Maderera Canales Tahuamanu that were not already addressed through certification processes, ASI can request a suspension and apply sanctions to the CB if this request is not being fulfilled. Sanctions may include suspension of parts or full CB activities.

5. Please provide information on policies FSC has taken, or is considering taking, to ensure respect of human rights defenders and their legitimate activities, in particular of those working to defend the human rights of Indigenous Peoples and their land, without fear of judicial harassment, violence, intimidation or other restrictions.

As mentioned in answers 2 and 3 above, as a fundamental code of conduct for all organizations and individuals associated with FSC, FSC has put in place a 'Policy for Association' which stipulates various activities as unacceptable, with the consequence of a formal disassociation from FSC in case of relevant breaches. Human rights' violations are one of the six activities that associated entities such as FSC certified organizations must not be involved in (FSC-POL-01-004 <Policy for Association> V3-0, Clause 1b).

FSC further requires all certified forest management operations to recognize and uphold the legal and customary rights of Indigenous Peoples to maintain control over relevant management activities within or related to the forestry operation (FSC-STD-01-001 <Principles & Criteria for Forest Stewardship> V5-3, Clause 3.2).

More specifically, FSC has firmly embedded the principle of 'Free, Prior and Informed Consent' (FPIC) into its forest stewardship standards that all certified forest management operations must respect when it comes to the delegation by Indigenous Peoples of control over relevant management activities (FSC-STD-60-004 <International Generic Indicators> V2-1, Clause 3.2.4).

FSC further requires certified forest management operations to respect the rights, customs, and culture of Indigenous Peoples as defined in the 'United Nations Declaration on the Rights of Indigenous Peoples' (UNDRIP) and ILO Convention 169 (FSC-STD-60-004 <International Generic Indicators> V2-1, Clause 3.4.1). This also applies in countries and jurisdictions that have not endorsed the relevant stipulations.

Finally, relevant in-country laws and regulations related to the rights of Indigenous Peoples, such as the right for self-isolation, are required to comply with as a basic principle (FSC-STD-01-001 <Principles & Criteria for Forest Stewardship> V5-3, Principle 1).

As a forward looking measure and based on the relevant incident in Peru, FSC looks into options to further enhance its national forest stewardship standards in countries having Indigenous Peoples living in voluntary isolation, by describing the presence of those Indigenous Peoples, listing relevant legislation, and addressing the respect of such isolation decisions explicitly by additional indicators in correspondingly revised certification standards.

We hope that this response satisfies your request and will be very happy to answer any additional questions you may have.

Yours sincerely,



Kim Carstensen
Managing Director, FSC International