

Contractors and Certification: How does Forest Certification Impact the Use of Contractors¹

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Introduction

Forest certification has grown rapidly in its importance for the international forestry and wood products industry over the last decade. As a result, forest companies in many parts of the world need to consider the requirements of certification standards when making management decisions, either because the forest is already certified, or because the option to certify needs to be maintained.

One of the requirements of most certification standards for forestry is that the welfare and rights of the forest workforce are considered and protected. Within this overall requirement the issue of contractors needs to be considered.

This paper is based on the experience of the author together with inputs from a number of certification bodies and trade union representatives³. It is based on certification using the Forest Stewardship Council (FSC) scheme which at present is the only globally applicable forest certification scheme. However, it seems likely that other schemes will develop similar requirements. The FSC Principles and Criteria (P&C) include a full principle with five criteria dealing with the issue of 'Community Relations and Workers' Rights' (see Box 1).

The paper is in three sections. It begins by looking at the requirements of the standard at the international and national level. It then explores the practicalities of using contractors in certified forests. Finally, it addresses the question of replacing employees with contractors. The paper ends with a brief summary of conclusions.

Box 1: FSC PRINCIPLE 4: COMMUNITY RELATIONS AND WORKERS' RIGHTS

Forest management operations shall maintain or enhance the long-term social and economic well-being of forest workers and local communities.

- 4.1 The communities within, or adjacent to, the forest management area should be given opportunities for employment, training, and other services.
- 4.2 Forest management should meet or exceed all applicable laws and/or regulations covering health and safety of employees and their families.
- 4.3 The rights of workers to organize and voluntarily negotiate with their employers shall be guaranteed as outlined in Conventions 87 and 98 of the International Labour Organisation (ILO).
- 4.4 Management planning and operations shall incorporate the results of evaluations of social impact. Consultations shall be maintained with people and groups directly affected by management operations.
- 4.5 Appropriate mechanisms shall be employed for resolving grievances and for providing fair compensation in the case of loss or damage affecting the legal or customary rights, property, resources, or livelihoods of local peoples. Measures shall be taken to avoid such loss or damage.

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The requirements of the standard

Most international standards are completely applicable anywhere. For example, a standard defining the design of a light bulb is equally applicable in South Africa, Canada or France. However, because forests are so variable in terms of their geography, ecology, climate, socio-economic context and use, it is not possible to produce a detailed international standard which is uniformly applicable.

Therefore, it is necessary to have a relatively general international framework of requirements which is broadly applicable to all forest types. Based on this international framework, national standards can be developed which interpret the requirements for the local context.

The international framework has to set the 'bottom line' and ensure that all universally appropriate principles are clearly set out. The national standard then takes these principles and turns them into a standard which can be understood, implemented and used as a basis for certification. This is very important as it means that there is scope for some difference of interpretation between different countries to reflect different situations and expectations.

The FSC has created an international framework in the form of 10 Principles and Criteria (the FSC P&C)⁴. These are generic and are applicable to all forest types and locations. It has also produced a set of guidelines setting out how national standards should be developed from this international framework. Once such national standards have been developed, they must be endorsed by the FSC, which thereby maintains a sufficient level of compatibility between different national standards.

The FSC P&C includes one Principle with five associated Criteria on 'Community Relations and Workers' Rights'. The full text is given in Box 1. The principle covers a number of issues including health and safety, the right to organise and the links between employment and the local community.

However, it is quickly apparent reading the requirements that there is great scope for further interpretation at a national level.

For example, criterion 4.2 requires certified operations to 'meet or exceed' laws on health and safety. Where this was being interpreted for a national standard in a country with adequate law and strong enforcement, the national standard would probably simply require compliance with national laws. However, interpreting this criteria for a national standard in a country with imperfect laws and poor enforcement, a more detailed set of requirements would be developed – perhaps referring to compliance with an industry code of practice, or the international guidelines produced by ILO and FAO.

In the absence of an endorsed national standard, the FSC still allows certification to proceed, based on an 'interim standard' produced by the certification body. This is done by developing a set of more specific requirements, some of which are generic and taken from the certification body's own generic 'standard' and some of which are specific based on input from technical experts and stakeholders. Generally, the initial certification in a country is based on a certification body 'interim standard' and as a result, certification body's have considerable experience in considering how the P&C should be interpreted.

This paper is based on the inputs from certification bodies and trade union representatives and aims to summarise current thinking on how the FSC Principle on 'Community Relations and Workers' Rights' should be interpreted for contractors.

The use of contractors in certified forest enterprises

1.1 Can contractors be used in certified forests?

There is nothing in the requirements of the international FSC P&C, nor in any of the endorsed FSC national standards, which prohibits the use of contractors. Indeed, the FSC standard is

⁴ The full text of the FSC P&C can be found on the FSC website at www.fscoax.org

predominantly concerned with outcomes rather than systems, and so the focus is on the way an individual working in a forest is treated, rather than the system (employee or contractor) which delivers the treatment.

However, it is also recognised that some systems are more prone to failure than others, and there are many cases in the forest industry where the conditions under which contractors work are significantly inferior to those of employees. Therefore, it is important to be clear what level of performance contractors have to meet in order to be certifiable.

It is important to be clear before continuing that forest certification is usually applied to a specific forest area and that *all activities* which occur in that area are required to meet the requirements of the standard. Therefore, although a forest company may have no legal obligation to ensure that contractors meet the law and the requirements of the standard, consistent failure by a contractor working in a certified forest to comply will lead to suspension and withdrawal of the certificate just as it would if the company was failing to comply.

1.2 Types of contractor and client

Before examining the type of performance contractors must achieve, however, it is useful to note that 'contractors' covers a wide range of situations from large companies employing hundreds of workers to small partnerships or even individuals carrying out specific operations. Each has its own potential risks and benefits.

In addition, the clients of contractor companies range from very large forest companies to small forest enterprises, and therefore have a range of different requirements which contractors must fulfil.

Large organisations

Probably the biggest concern for both certification bodies and trade unions is the treatment of workers, often largely unskilled, working for companies which provide some or all of the labour to forest companies. Such contractors are frequently used for operations such as planting, weeding and even harvesting where manual harvesting is still used.

The main concern with this type of contractor company is that contracts are frequently awarded to the company which offers the lowest price. In order to meet the contract, the contractor company is then required to offer extremely low wages and benefits to its workers.

Another concern is that such companies frequently do a lot of short term contracts, particularly where there is seasonal work, and that they do not provide any job security to their workers.

Finally, contract companies in many countries have developed a system of employing workers in one region and then taking them to another region to work creating a migrant workforce. This is often in conflict with Criterion 4.1 which requires the provision of opportunities for local employment. In addition, since the migrants often come from regions which are poorer and more remote than the one in which they are working, they are prepared to work for lower pay and conditions than local workers, forcing local people to accept the same reduced pay and conditions. This contravenes the overall Principle which requires that forest management operations should 'maintain or enhance the long-term social and economic well-being of ... local communities'.

However, there are also benefits in using contract companies. Firstly, they are often more efficient than forest companies and so they are able to deliver the same job at a lower price without unacceptable reductions in the workers' pay and conditions.

It also encourages the development of entrepreneurs, distributing management roles among a number of companies rather than maintaining all this expertise in the forest company. It can also provide workers with some degree of choice about who they work for rather than having the forest enterprise as the only local employer.

Small organisations

Many forest enterprises are much too small to employ operational staff full time. They may only carry out operations such as harvesting or planting once every few years. For these

enterprises it is essential to have access to contractors who can carry out the operations for them.

This can be very beneficial since many small forest enterprises do not have professional managers, and knowledgeable, experienced, well-trained operators can provide a lot of useful input into the management of the forest.

In addition, this type of contract operation encourages the development of lots of small companies, ensuring opportunities for local and rural communities to develop their own companies.

However, there are also problems associated with small contractor companies. They are frequently run somewhat informally with little emphasis on training, health and safety or even high standards of work. Access to information is often poor and membership of associations or trade unions very low.

1.3 Awarding of contracts

For a certifier one of the first things to check when a forest enterprise uses contractors is how the contract is awarded.

For small forest enterprises, use of local contractors is normally preferred to show compliance with criteria 4.1. However, there are a number of reasons why a different contractor might be used including:

- the need to use better trained operators more likely to meet the performance requirements of the standard.
- long-term relationship already established through previous work.
- local contractors unable to carry out the operations within a reasonable timeframe or at a reasonable price.

For large forest enterprises, certifiers will normally wish to see a very transparent process for selecting contractors. The process must be adequate to ensure that the contractor selected will not jeopardise continuing compliance with the standard. Some of the issues to check are:

- the contractor will abide by all laws (criteria 1.1) including payments of taxes and social costs (criteria 1.3) and health and safety (4.2).
- the contractor will ensure that the conditions of the workers and their families meet the health and safety requirements of the standard (criteria 4.2);
- local communities and disadvantaged groups have an opportunity for employment and training (criteria 4.1);
- contractor workers have sufficient training and supervision to ensure that they understand and implement all environmental and technical guidelines of the forest company (Principles 5, 6, 7, 8);
- the contractor is selected on the basis of ability and not as a result of bribery or nepotism (Principle 1).

The most common mechanism used to achieve all of this is through a transparent process based on tendering against clear criteria which cover all the issues discussed above, and not just cost. Certification bodies may want to see all the tenders submitted and have a clear explanation of how the final selection was made.

1.4 What should be in contracts with contractors

Forest certification is based on the requirement that all activities and operations within the certified forest area meet the requirements of the standard, irrelevant of who carries them out. This means that all operations carried out by contractors must meet the standard so it is important that this is communicated in the contract.

Therefore, contracts with contractors need to provide appropriate information on certification and the requirements of the standard. Most importantly they must specify the level of performance required for the specific operations being carried out under the contract including

both technical requirements and environmental protection and health and safety. There are a number of ways this can be achieved:

- develop a company policy setting out commitments to meeting the standard and make compliance with company policy a requirement of the contract.
- include details of the standard and its requirements in the contract;
- include a reference to the standard and certification in the contract and provide background information in a separate document.

It may also be useful to consider running briefing sessions or training courses for contractors to help them to understand what the standard requires and why it is important. This type of communication is also a requirement of ISO 14001 so any forestry company which has implemented this environmental management system should have an appropriate programme in place already.

1.5 Termination of contract for non-compliance

It is essential that the contract includes clauses allowing suspension or termination in the event of non-compliance with the standard.

If possible, there should be a clearly defined process for dealing with problems and sorting them out, particularly for contractors from the local community or disadvantaged groups who may need support initially in understanding and implementing the necessary performance levels. However, this must be linked to a clear understanding that failure to comply will lead to the contract being suspended and then terminated.

1.6 Specific requirements

There are a number of specific issues relating to the treatment and welfare of workers which must be met by an operation seeking certification. One of the questions which the issue of contractors raises is the degree to which the treatment of contractors can differ from the treatment of employees. Below is a discussion of the most important of these issues.

Wages

All workers, whether employees or contractors, must be paid a fair wage which meets all legal requirements.

However, there is also a recognition among certifiers that wages are, to some degree, a commercial issue. Therefore, overall the view seems to be that wages are the business of the employer provided that they meet the standard and are commensurate with the activity being undertaken.

The view seems to be that generally people doing the same job should be paid the same wage. This is true both of contract workers versus employees and also, very importantly, between different categories of contract workers (for example, migrant workers should be paid the same as local workers, and women the same as men).

Safety

Workers working for contractor companies should meet the same H&S standards as employees of the company in terms of performance in the forest. Therefore, safety training, safety equipment and safe working practices should be in place equally for every type of worker.

However, there is also recognition that sometimes for small-scale contractors, particularly those working for small forest enterprises, the requirements for systems and documentation may need to be examined to ensure that they are appropriate.

The experience of certifiers is that in many countries the law on safety in the forest is very strict and well-enforced and that legal compliance should be sufficient to meet the standard. However, in other countries either the law is weaker, or it is poorly enforced in which case compliance with the standard will be assessed as part of

	<p>the certification audit and will be expected to exceed legal requirements.</p>
Health care	<p>The consensus from certification bodies is that the important issue is that contractor companies must comply with the law and the standard, rather than be judged by whatever the forest company provides.</p> <p>There are some countries and situations where provision of health care is so poor that contractor companies will need to provide such care in order to meet the standard (criteria 4.2). In these situations, the detail of what is required should be developed through the national standard.</p> <p>However, where adequate health care is provided by the state, it is not necessary for a contractor company to provide a private health insurance as a 'perk' even if the forest company does</p>
Health care for families	<p>As with health care for forest workers, certification bodies agreed that while contractor companies must meet the law and the standard, they are not obliged to exceed it, even where the forest company does so with the provision of care for families of its own employees.</p>
Job security	<p>Principle 4 requires that forest management should 'maintain or enhance the long-term social and economic well-being of forest workers...'. .</p> <p>Although none of the criteria specifically addresses the issue of job security, there is a growing debate about the need to include specific guidelines in national standards. This has already begun in some national standards, for example the Swedish national standard requires 'secure, long-term employment'.</p> <p>This implies that it is not acceptable for a certified forest operation to use contractors as a method for avoiding secure, long-term employment.</p> <p>It is well-accepted in forestry that some jobs are seasonal, and in some places there is a long tradition of contractor workers working only part of the year to earn money while having another activity for the rest of the year (for example, farmers in many parts of Africa and Asia or students in Europe).</p> <p>However, where there are workers who need full-time employment, and where there is sufficient work to provide this, certified forest enterprises and the contractor companies they use should be seeking to provide long-term and secure employment. And they should certainly not be actively seeking to avoid providing security in order to minimise their own obligations to the workers.</p>
Training for current job	<p>There is complete agreement that the training provided to contractors needs to be as good as that provided to employees since this is key to ensuring that the requirements of the standard are met.</p>
Long term training	<p>Certification bodies recognise that, for small-scale contractor companies in particular, the provision of long-term training and development may be difficult.</p> <p>The consensus seems to be that contractor companies should be supportive of individuals wishing to undertake further training, and that large certified forest enterprises should work with their contractors to make long-term training available and attractive.</p> <p>In particular, in situations where it is important to build capacity in</p>

	local communities or among particular disadvantaged groups and none currently exists, forest enterprises may need to provide training to local entrepreneurs interested in setting up contractor companies in order to support their initial establishment.
Union membership	<p>All certifiers agree that contract workers must be free to join a union, but are not required to do so.</p> <p>There is slight variation in the degree to which each certification body approaches the requirement to be proactive in informing contract workers that they are free to join a union, and possibly even encouraging them to do so. This is likely to be clarified through the development of national standards as there is more union involvement in this process.</p> <p>The union view is that contract workers should be proactively encouraged to join representative and democratic trade unions.</p>
Insurance	The consensus is that this should be adequate and comply with legal requirements.

Changing from employees to contractors

One of the most contentious issues relating to the use of contractors is the policy, which many companies have adopted, of replacing employees in some or all jobs with contractors. There are a number of reasons why companies chose to do this including the need to reduce costs, increase efficiency or become more flexible.

The move from employees to contractors is not specifically addressed in the FSC P&C. However, it seems likely that it will be addressed in many countries through national standards. However, in the interim, certification bodies are having to work with only minimal guidance on how this very difficult issue should be dealt with.

It is clear that no certifier is comfortable with the wholesale replacement of employees with contractors because the potential to have a non-compliance with the standard during the process or changeover or because of the new situation is very high.

However, it is also recognised that in some situations there is an economic imperative which narrows the choice, that in others the benefits of the more efficient organisation of a contractor company genuinely exceeds those of a forest enterprise. Therefore, it is accepted that certified forest enterprises will sometimes replace their employees with contractors, but this will only be acceptable under conditions which do not lead to non-compliance with the standard.

Though there are no hard-and-fast rules yet, there is a growing consensus among certifiers about some of the key things which need to be in place to ensure continued compliance if a certified forest enterprise is planning to increase its use of contractors. The aim of these must be to ensure that the standard is met at all times, which means that the long-term social and economic well being of forest workers and local communities must be 'maintained or enhanced':

- employees (or their genuine representatives) must, as far as possible, have the opportunity to participate in, and give feedback on, management decisions and policy formulation. It is not acceptable for the management of the forest enterprise to develop the policy in isolation and announce it as a final decision.
- the input from employees must be seriously considered and the development of the policy reflect this input.
- there should be adequate consultation with local stakeholders about the planned and actual changes.
- the forest enterprise must consider, manage and ensure the long-term welfare and job security of its employees once they leave the enterprise.

- the impact on the local community, if most employees are local, must be managed and the use of local contractors is important.
- the work quality from the contractors must be the same as employees (ie it is not acceptable that the forest is managed worse than before).

As discussed above, in the end it will be important to address this through national standards, however, in the absence of such guidance the managers of forest enterprises should focus on ensuring that their decisions are clear, justified and do not result in hardship, poor forest management or social dislocation.

Conclusions

The use of contractors in the forestry world is widespread and increasing. This is not necessarily inconsistent with FSC certification since the focus of the standard is on outcomes (the treatment of the workforce) rather than with the system that delivers this outcome (employees or contractors).

However, the welfare and rights of all contractors working in a certified forest must be fully consistent with the requirements of the standard. The forest enterprise which holds the certificate is therefore responsible for ensuring, through whatever system they find most appropriate, that contractors are aware of the standard and comply with its requirements.

This means that all contractors working in a certified forest must comply with the law, not only in the operations carried out in the forest, but also in their overall treatment of their workers and compliance with the law (eg social payments).

In addition, the contractors must meet or contribute to meeting each of the criteria of Principle 4 as well as the rest of the standard. The detail of what is expected in the delivery of these criteria should be clarified through national standards processes. In particular, these should clarify what are the minimum levels acceptable for provision of long-term job security, health and safety, pay, union membership and training.

The issue of changing from employees to contractors remains a difficult one and should, wherever possible, be specifically addressed in national standards. Where they do not yet exist, then certified companies, or those likely to seek certification, must ensure that the process does not lead to non-compliance with either the international P&C or the likely requirements of a national standard.