



Food and Agriculture Organization
of the United Nations



Free Prior and Informed Consent

An indigenous peoples' right and a
good practice for local communities


MANUAL FOR PROJECT PRACTITIONERS



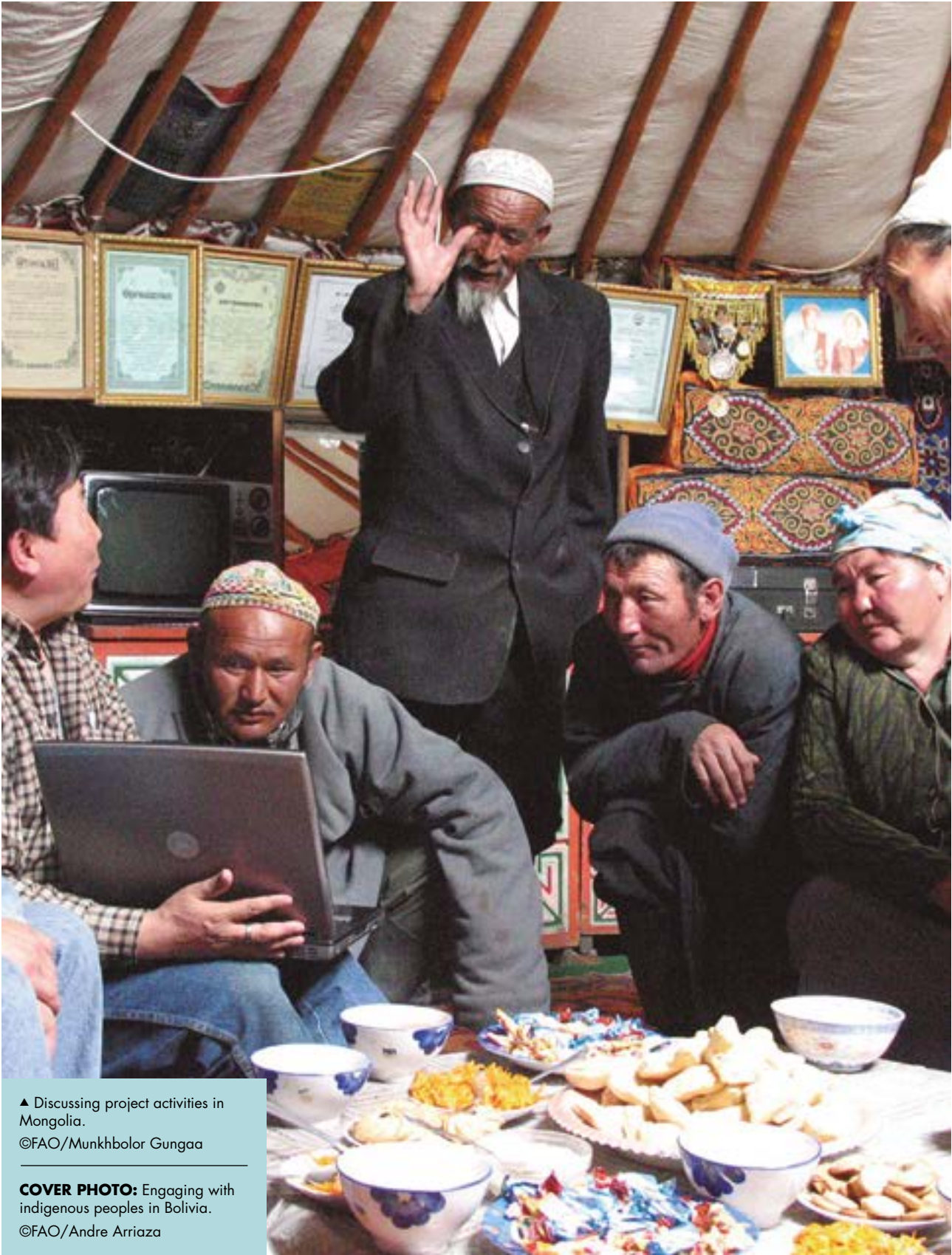
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▲ Discussing project activities in Mongolia.
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COVER PHOTO: Engaging with indigenous peoples in Bolivia.
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Foreword

INDIGENOUS PEOPLES THE STEWARDS OF NATURAL RESOURCES AND GUARDIANS OF BIODIVERSITY AND THEIR RIGHT TO DEVELOPMENT AS A BASIC HUMAN RIGHTS BASED PRINCIPLE

The United Nations Economic and Social Council estimates that there are around 400 million indigenous peoples, or five percent of the total world population, spread over 90 countries. They have been present for thousands of years, preserving their language, traditions, culture and livelihoods, many times barely surviving by living in isolated and remote areas.

They face critical challenges for their survival and the preservation of their cultures. They typically have higher rates of poverty, food insecurity and malnutrition than non-indigenous populations. While accounting for only five percent of the world's population, they constitute 15 percent of its poor.

Public attention is increasingly focusing on indigenous people's issues for a variety of reasons.

On the one hand, their rights, territories and livelihoods are seriously threatened by the world's demographic pressure, compounded by the extractive industries' appetite for resources. A widespread lack of respect of their cultures and rights has resulted in many communities

being decimated, dispossessed of their lands and forcibly relocated.

On the other hand, scientists increasingly recognize what indigenous peoples have been voicing for decades: while holding much of the world's diversity in terms of culture, language and spirituality, indigenous peoples are also the stewards of natural resources and guardians of biodiversity. This has brought increased interest to indigenous peoples in the aftermath of the climate change negotiations during COP 21 in Paris 2015, in that indigenous peoples hold some of today's answers to tomorrow's challenges.

In 2007, the UN General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples, recognizing their rights and making specific mention of Free, Prior and Informed Consent (FPIC) as a pre-requisite for any activity that affects their ancestral lands, territories and natural resources.

Despite its approval in 2007, progress towards the implementation of FPIC has been slow and uneven by countries, private sector corporations,

non-governmental organizations, international financial institutions, and the United Nations agencies.

In the last two or three years, development experts have recognized that FPIC is not only important for indigenous peoples but it is also good practice to undertake with local communities, as involving them in the decision making of any proposed development activity increases their sense of ownership and engagement and, moreover, helps guarantee their right to development as a basic human rights principle.

In an FPIC process, the “how”, “when” and “with and by whom”, are as important as “what” is being proposed. For an FPIC process to be effective and result in consent or lack of it, the way in which the process is conducted is paramount. The time allocated for the discussions among the indigenous peoples, the cultural appropriateness of the way the information is conveyed, and the involvement of the whole community, including key groups like women, the elderly and the youth in the process, are all essential. A thorough and well carried FPIC process helps guarantee everyone’s right to self-determination, allowing them to participate in decisions that affect their lives.

FAO, as well as other partner organizations, have been working for many years with indigenous peoples, incorporating their views into programmes on food security, nutrition, forestry, fisheries, and climate change. It was in 2015 when FAO decided to take a step forward in respecting indigenous peoples’ rights through a more programmatic approach.

To that end, FAO partnered with Action Against Hunger (ACF); Action Aid (AA); the Spanish Agency for International Development Cooperation (AECID); the International Federation of the Red Cross and Red Crescent Society (IFRC); Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ); and World Vision (WV).

As a result of this collaboration, FAO and partner organizations jointly developed a common approach to incorporate FPIC into the work of each respective organization. The first outcome of this alliance is this FPIC Manual, which will enable field practitioners to incorporate FPIC into project and programmes’ design and implementation, ensuring that indigenous peoples’ rights are duly respected.

We take this opportunity to thank our partner organizations for having supported this approach that enables us to have a common voice when implementing Free, Prior and Informed Consent in the field.

Lastly, we would like to dedicate this Manual to those indigenous leaders, women and men, who have devoted their lives to ensuring that indigenous people’s rights are recognized and respected. Their vision, persistence and resilience have truly inspired us and we pay tribute to their sacrifices.

Daniel Gustafson
FAO Deputy Director-General (Operations)

A NEW COURSE IN INTERCULTURAL EFFORTS AND DEMOCRACY: THE DIALOGUE FOR THE FREE, PRIOR AND INFORMED CONSENT OF INDIGENOUS PEOPLES

In recent years, we have witnessed growing volume of outcries by indigenous peoples denouncing the lack of compliance with the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), especially with obtaining their Free, Prior and Informed Consent (FPIC) before enacting projects on their land. This is in defence of their ancestral territories and speaking out about abuses by extractive industries encroaching more and more onto indigenous territories that are rich in untapped natural resources.

The pursuit of profit has led rapacious companies to, seek energy sources and resources impinging on indigenous lands. The focus on profits has seen companies convince municipal and national authorities to accelerate extractive and economic projects, without the consent of indigenous peoples who have lived there for hundreds of years. This generates conflicts that has led to a series of violations of indigenous peoples' human rights.

The negative impact on the life and natural resources of indigenous peoples is evident. Equally, it is clear that once resources are exhausted, there has been no thought to the state of the land in the aftermath of any of these interventions. Desert areas, huge holes in land, water pollution (fresh and sea water), changing the course of rivers, the reduced ability of agricultural systems to produce food, disease, hunger, unemployment, child labour, violation of labour laws for women and men; privatization

of community regions, migration to cities and urban disorder, are but a few examples.

Man-made land degradation caused by extraction projects, impacts the whole society at national and global level. Projects such as construction of hydroelectric dams, oil and bio fuel plantations, massive irrigation systems, and construction of roads, bridges and airports, among others have taken their toll.

The United Nations Permanent Forum on Indigenous Issues has received complaints from hundreds of indigenous communities in many countries who have witnessed atrocious acts: the torture and death of their leaders; the destruction of their sacred places; the dismantling of their own authority systems; the criminalization of their struggles to see their rights respected; rootlessness and manipulation in the purchase of land and property rights.

The United Nations Permanent Forum on Indigenous Issues gives a global voice for these indigenous peoples who see their most basic human rights trampled on by commercial interests. Thanks to the work of the Forum, many of the abuses committed on indigenous peoples by companies and governments have been brought to light.

At the same time, it is obvious that indigenous peoples have not benefited from these businesses or state initiatives, initiatives that are always couched as projects for development. Indeed, it has been difficult to find a project

that has brought a paradigm shift and resulted in real and genuine development to the indigenous territories. Not surprisingly, this has generated greater distrust among the global indigenous leaders on the intentions of politicians and businessmen on projects in their territories, and thus complicates the relationship between indigenous peoples, states and private companies.

Equally, it is obvious that humanity needs resources for progress. Technological development, wellbeing and development environments cannot advance if they do not have sufficient or available resources. From what we have seen, despite having access to these resources, this development does not reach those communities who have been caring for these resources in a sustainable way for hundreds of years. This is what needs to be changed and this Manual contributes substantively to the men and women of good will who support the human rights of indigenous peoples, providing a clear path to achieve them.

Modern entrepreneurship and new politics need to develop a culture of democratic dialogue, of full information, transparency in managing affairs and solidarity in all the initiatives proposed to all the inhabitants of their countries. This is particularly significant with indigenous peoples given the conditions mentioned above.

In fact, the pursuit of free, prior and informed consent from indigenous peoples is the means of

how democracy can evolve to better decision-making stages rooted in the respect for human rights. In this sense, indigenous peoples can contribute again to the betterment of human relationships. It is also a serious global call to rethink the ethics of the creation of wealth. With this current path of entrepreneurship and resource management, the world is headed towards self-destruction.

I appreciate the contribution that the Food and Agriculture Organization of the United Nations (FAO) is making to sensitize its own processes of project implementation and those of its partners. This manual accompanies the FAO Policy on Indigenous and Tribal Peoples (2010), and the continuous dialogue permanently installed with indigenous peoples in every region of the world, along with the Voluntary Guidelines on various topics. It is also a significant milestone in meeting the objectives of the Sustainable Development Goals 2030 and the System-Wide Action Plan for a common approach to achieving the Declaration on the Rights of Indigenous Peoples. All these instruments are essential in our human struggle for survival at a time when climate change is a matter of global concern.

Alvaro Pop
President - United Nations Permanent Forum
on Indigenous Issues
Guatemala, 2016

Acronyms and abbreviations

ACHPR	<i>African Charter on Human and Peoples' Rights</i>
AA	<i>Action Aid</i>
ACF	<i>Action Against Hunger</i>
AECID	<i>Agencia Española de Cooperación Internacional para el Desarrollo</i>
CBD	<i>Convention on Biological Diversity</i>
ESMG	<i>Environmental and social management guidelines</i>
FAO	<i>Food and Agriculture Organization of the United Nations</i>
FPIC	<i>Free, Prior and Informed Consent</i>
GIAHS	<i>Globally Important Agricultural Heritage Systems</i>
GIZ	<i>Deutsche Gesellschaft für Internationale Zusammenarbeit</i>
ICCPR	<i>International Covenant on Civil and Political Rights</i>
ICERD	<i>International Convention on the Elimination of All Forms of Racial Discrimination</i>
ICESCR	<i>International Covenant on Economic, Social and Cultural Rights</i>
IFRC	<i>International Federation of Red Cross and Red Crescent Societies</i>
ILO	<i>International Labour Organization</i>
NGOs	<i>Non-Governmental Organizations</i>
UN	<i>United Nations</i>
UNDRIP	<i>United Nations Declaration on the Rights of Indigenous Peoples</i>
UNPFII	<i>United Nations Permanent Forum on Indigenous Issues</i>
WVI	<i>World Vision International</i>

Acknowledgements

This manual on Free Prior and Informed Consent has been jointly prepared by The Food and Agriculture Organization of the United Nations (FAO); Action Against Hunger (ACF); Action Aid (AA); Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ); International Federation of Red Cross and Red Crescent Societies (IFRC); Agencia Española de Cooperación Internacional para el Desarrollo (AECID); and World Vision International (WVI).

This manual is the result of more than a year of work and consultations with several experts. The production of the manual was coordinated by Yon Fernández de Larrinoa, Team Leader FAO Indigenous Peoples Team with support and inputs from Andre Arriaza, Munkhbolor (Bolor) Gungaa, Francisco Jesús Reche Angulo and Emma McGhie, FAO experts in the Indigenous Peoples Team. Carol Kalafatic, senior consultant on Indigenous Peoples' issues, provided most of the technical content. Several experts from partner organizations provided valuable comments and edits to the manuscript, in particular: Catherine Gatundu (AA); Bratindi Jena (AA); Paola Valdetaro (ACF); Raphael Laguesse-Pauguay (ACF); Amador Gómez (ACF); Kiflemariam Amdemariam (IFRC); Friederike Kramer (GIZ); Stella Marraccini (GIZ); Britta Krueger (GIZ); and Andre Nswana (WVI).

In addition, the Manual was enriched with contributions from the FAO task force on Free Prior and Informed Consent (FPIC); the FAO Interdepartmental Working Group on Indigenous Peoples; the FAO Regional Focal Points on Indigenous Peoples; the Guatemala UN Country Team; and The Mountain Partnership and Aigine Cultural Research Center.

We would like to thank the following people, who in one way or another have collaborated to make this manual a reality: Alberta Guerra (AA); Ruchi Tripathi (AA); Antoine Bouhey (AA); Natxo Bellés (AECID); Eva Buendia (AECID); Anna Belen Revelles (AECID); Nathalie Bovin (IFRC); Marion Aberle (GIZ); Bojan Auhagen (GIZ); Lena Fey (GIZ); Markus Bernd Liss (GIZ); Andreas Drews (GIZ); Stella Marraccini (GIZ); Stefan Ehrentraut (GIZ); Olivier Longue (ACF); Walter Middleton (WVI); Douglas Brown (WVI); and Laurent Thomas; Marcela Villarreal; Francesco Pierri; Rolf Hackbart; William Settle; Mark Davis; Nadia Correale; Zofia Mroczek; Richard Moon; Mariangela Bagnardi; Clare Sycamore; Daniela Morra; Francesca Romano; Valeria Gonzalez Riggio; Paola Palestini; Chiara Pili; Sameer Karki; Florence Poulain; Jessica Sanders; Daniela Kalikoski; Martina Buonincontri; Bruna Bambini; Indira Joshi; Daniel Beltrán; Jeffrey Campbell; Caroline Devit; Amanda Bradley; David Morales; Andrew Nadeau; Beatrice Ghirardini; Fabiana Biasini; Mario Acunzo; and James Garber, all from FAO.

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Pastoral farmers of the Maasai tribe attending a meeting with extension workers and technicians from FAO.
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NIGER.
Cattle census and accelerated poverty reduction project.
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Introduction

This Free, Prior and Informed Consent (FPIC) Manual is designed as a tool for project practitioners (herein referred as project managers) for a broad range of projects and programmes (hereinafter to be referred to as projects) of any development organization, by providing information about the right to FPIC and how it can be implemented in six steps.

The development of this manual has been the result of a consultative process that began in July 2015 between FAO and a number of its partner organizations such as Action Against Hunger, Action Aid, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), International Federation of Red Cross and Red Crescent Societies (IFRC), Agencia Española de Cooperación Internacional para el Desarrollo (AECID) and World Vision.

FPIC is a principle protected by international human rights standards that state, ‘all peoples have the right to self-determination’ and – linked to the right to self-determination – ‘all peoples have the right to freely pursue their economic, social and cultural development’. Backing FPIC are the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on Biological Diversity and the International Labour Organization Convention 169, which are the most powerful and comprehensive international instruments that recognize the plights of Indigenous Peoples and defend their rights.

This manual deeply rooted in a human rights based approach, is designed to assist development organizations to respect the right to FPIC when developing and implementing projects affecting Indigenous Peoples.

The manual contains a six-step procedure to facilitate the FPIC process while showing its benefits, as well as providing the regulatory framework to be used when mainstreaming Indigenous Peoples’ rights within organizations’ policies and standards.

It is also worth mentioning that this manual does not aim to substitute the role of the state as the primary duty bearer.

It is important to note that this is a ‘Working Final’ version of the document, meaning that there will be periodic updates to this version based on the application of this Manual, increased information and experience related to the application of FPIC in the field, and continued input and feedback from the different stakeholders involved. For more information, please contact Indigenous-Peoples@fao.org.

SECTION 1

Fundamentals

1.1. Who are Indigenous Peoples?

The development of a single definition of Indigenous Peoples that is applicable to all of them in the world, has proved to be extremely difficult, due to the diversity between regions and countries, and the differences in background, culture, history and conditions of indigenous communities. However, in accordance with international legal agreements such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Labour Organization (ILO) Convention 169 and the *Policy on Indigenous and Tribal Peoples* by the Food and Agriculture Organization (FAO), Indigenous Peoples share the following characteristics:

- They self-identify as indigenous and in some cases are recognised by other groups, or by State authorities, as having a distinct collective identity;
- They have ancient historical ties with respect to living in and using a specific territory;
- Their cultural distinctiveness is voluntary and handed down through generations. This may include aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions; and
- They have experienced or are experiencing subjugation, marginalization, dispossession, exclusion or discrimination.

It should be noted that the recognition or identification of certain collectivities as

“Indigenous Peoples” shall not be dependent on whether the national government has recognized them as such.

The term “Indigenous Peoples” in plural was internationally agreed by Indigenous Peoples to encompass diverse collectives that also fit the characteristics outlined in the working definition (above). It can include tribes, first peoples/nations, aboriginals, ethnic groups, adivasi, janajati, or occupational and geographical terms like hunter-gatherers, nomads, peasants, and hill people.

1.2. What is Free, Prior and Informed Consent? Who has the right to it?

All Peoples have the right to self-determination. It is a fundamental principle in international law, embodied in the Charter of the United Nations and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The standard, Free, Prior and Informed Consent (FPIC), as well as Indigenous Peoples’ rights to lands, territories and natural resources are embedded within the universal right to self-determination. The normative framework for FPIC consists of a series of international legal instruments including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Labour Organization Convention 169 (ILO 169), and the Convention on

Biological Diversity (CBD), among many others, as well as national laws (*please see section 3 for additional details*).

Box 1

Article 1. International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

FPIC is a specific right that pertains to Indigenous Peoples and is recognized in the UNDRIP. It allows them to give or withhold consent to a project that may affect them or their territories. Once they have given their consent, they can withdraw it at any stage. Furthermore, FPIC enables them to negotiate the conditions under which the project will be designed, implemented, monitored and evaluated.

Organizations contributing to this manual hold the view that all project-affected peoples have the right to be part of decision-making processes in ways that are consistent with the principles underlying the right of FPIC. It is recommended that organizations seeking FPIC contribute to progressively enable peoples to exercise their right to self-determination and the capacity of states (at all levels) to provide for the exercise of that right.

FPIC is not just a result of a process to obtain consent to a particular project; it is also a process in itself, and one by which Indigenous Peoples are able to conduct their own independent and collective

Box 2

A view on the need to apply FPIC to all communities (by Action Aid)

I. FPIC is an essential tool/approach to protect the rights (human, environmental, land and customary) of all affected communities, especially the most vulnerable ones.

II. Prior to project implementation, FPIC ensures that the identification of affected communities, using participatory assessments to understand and document the socio-demographics, and the historical, political, and cultural dynamics of the area.

III. The FPIC process guarantees the equal consideration of the various perspectives held within affected communities, through inclusive decision-making processes.

discussions and decision-making. They do so in an environment where they do not feel intimidated, and where they have sufficient time to discuss in their own language, and in a culturally appropriate way, on matters affecting their rights, lands, natural resources, territories, livelihoods, knowledge, social fabric, traditions, governance systems, and culture or heritage (tangible and intangible).

Lastly, it is also important to underline that the FPIC process does not guarantee consent as a result. The result of an FPIC process can be any of the following outcomes: consent from the Indigenous Peoples' community on the proposed activity; consent after negotiation and change of the conditions under which the project will be planned, implemented, monitored and evaluated; or the withholding of consent. It is also important to bear in mind that consent, once given, can also be withdrawn at any stage.

Box 3**Participation is a Human Right**

While participation has the potential to bring tremendous benefits to development projects or programs, the concept of participation is also firmly rooted in human rights principles and international law.

Participation is based on the key human rights principles of individual autonomy and self-determination as part of basic human dignity. Human dignity differs conceptually from ideas often traditionally used in development, such as 'satisfaction' or 'welfare,' in stressing active choice as opposed to making people "passive recipients of benefit".

Participation at all stages of development is grounded in the first article of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which states that all peoples have the right to self-determination and that "by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Participation is then further emphasised in the right to participation in public affairs articulated in ICCPR Article 25.

Furthermore, according to the Declaration on the Right to Development, people not only have an inalienable right to development, but also to "active, free and meaningful participation" in said development. This would include every facet of development work, from government-initiated infrastructure projects, to World Bank Education for all projects and initiatives, to NGOs implementing projects.

According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), this right involves expressing policy ideas, choosing policies, and implementing, monitoring and evaluating policy. Expert involvement in these stages should be transparent and presented in such a way that is understood by all parties. In order to ensure that people can participate, a minimum level of economic security must be ensured, capacity building activities (including human rights education) must occur and civil society should be allowed to flourish through

guaranteeing freedom of association and other civil and political rights.

Thus, rights to freedom of expression and information, freedom of association and assembly, and the right to participate in cultural life are key rights not just in and of themselves, but for ensuring meaningful participation.

Several other international conventions have strengthened participation for particular groups, including women, disabled people, children, minorities and indigenous peoples. One area in which significant progress has been made in recognizing the right to participation has been with indigenous peoples.

Historically, indigenous peoples have been forced off their ancestral lands to make way for large infrastructure projects, resource extraction ventures, or other so-called development initiatives. Without access to the land on which they depend, many end up in extreme poverty. In recognizing the unique identity of indigenous peoples, international law affirms that they have the right to decide their own future to ensure their cultural and physical survival. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) declares indigenous people's particular rights to "free, prior, and informed consent" (FPIC) in matters which affect their lives and livelihood (UN General Assembly, 2007).

There are several populations that are often marginalized from participation in decision-making. These include women, the poor, ethnic or religious minorities. Article 2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities affirms that "persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life" (UN General Assembly, 1992b). The right to participate has also been included in several conventions regarding specific topical areas, most notably health and the environment.

1.3. Key elements in Free, Prior and Informed Consent

All elements within FPIC are interlinked, and they should not be treated as separate elements. The first three elements (*free, prior and informed*) qualify and set the conditions of consent as a decision-making process. In short, consent should be sought before any project, plan or action takes place (*prior*), it should be independently decided upon (*free*) and based on accurate, timely and sufficient information provided in a culturally appropriate way (*informed*) for it to be considered a valid result or outcome of a collective decision-making process.

The definitions below build on the elements of a common understanding of free, prior and informed consent endorsed by the United Nations Permanent Forum on Indigenous Issues (UNPFII) at its Fourth Session in 2005, and from the UN-REDD Programme Guidelines on Free, Prior and Informed Consent.

⇒ **Free** refers to a consent given voluntarily and without coercion, intimidation or manipulation. It also refers to a process that is self-directed by the community from whom consent is being sought, unencumbered by coercion, expectations or timelines that are externally imposed. More specifically:

- Rights-holders determine the process, timeline and decision-making structure;
- Information is offered transparently and objectively at the request of the rights-holders;
- The process is free from coercion, bias, conditions, bribery or rewards;
- Meetings and decisions take place at locations and times and in languages and formats determined by the rights-holders; and

- All community members are free to participate regardless of gender, age or standing.

⇒ **Prior** means that consent is sought sufficiently in advance of any authorization or commencement of activities, at the early stages of a development or investment plan, and not only when the need arises to obtain approval from the community. It should be noted that:

- Prior implies that time is provided to understand, access, and analyze information on the proposed activity. The amount of time required will depend on the decision-making processes of the rights-holders;
- Information must be provided before activities can be initiated, at the beginning or initiation of an activity, process or phase of implementation, including conceptualization, design, proposal, information, execution, and following evaluation; and
- The decision-making timeline established by the rights-holders must be respected, as it reflects the time needed to understand, analyze, and evaluate the activities under consideration in accordance with their own customs.

⇒ **Informed** refers mainly to the nature of the engagement and type of information that should be provided prior to seeking consent and also as part of the ongoing consent process. Information should be:

- Accessible, clear, consistent, accurate, and transparent;
- Delivered in the local language and in a culturally appropriate format (including radio, traditional/local media, video, graphics, documentaries, photos, oral presentations, or new media);
- Objective, covering both the positive and negative potential of the proposed activities and consequences of giving or withholding consent;

- Complete, including a preliminary assessment of the possible economic, social, cultural and environmental impacts, including potential risks and benefits;
- Complete, including the nature, size, pace, duration, reversibility and scope of any proposed project, its purpose and the location of areas that will be affected;
- Delivered by culturally appropriate personnel, in culturally appropriate locations, and include capacity building of indigenous or local trainers;
- Delivered with sufficient time to be understood and verified;
- Accessible to the most remote, rural communities, including youth, women, the elderly and persons with disabilities, who are sometimes neglected; and
- Provided in an ongoing and continuous basis throughout the FPIC process, with a view to enhancing local communication and decision making processes.

⇒ **Consent** refers to the collective decision made by the rights-holders and reached through the customary decision-making processes of the affected Indigenous Peoples or communities. Consent must be sought and granted or withheld according to the unique formal or informal political-administrative dynamic of each community. Indigenous peoples and local communities must be able to participate through their own freely chosen representatives, while ensuring the participation of youth, women, the elderly and persons with disabilities as much as possible. In particular consent is:

- A freely given decision that may be a “Yes”, a “No”, or a “Yes with conditions”, including the option to reconsider if the proposed activities change or if new information relevant to the proposed activities emerges;

- A collective decision (e.g. through consensus or majority) determined by the affected peoples in accordance with their own customs and traditions;
- The expression of rights (to self-determination, lands, resources and territories, culture); and
- Given or withheld in phases, over specific periods of time for distinct stages or phases of the project activities. It is not a one-off process.

Box 4

An example of bad practice - from the field

After a flood, the Government asked an organization to provide emergency assistance in the form of tools, seeds, and livelihood support to the affected areas. One of these areas was inhabited by Indigenous Peoples. When officers in the technical division requested FPIC implementation, the project manager replied that it had been already completed as they had the agreement by the administrative authority in the region.

The technical officers explained to the project manager that this was exactly the opposite of FPIC, and that the letter by one administrative authority was not a substitute of FPIC. A true FPIC process meant disclosing the terms of the project in the local language with the community, involving the youth, women, the elderly and persons with disabilities, and allowing sufficient time for them to discuss in their local language. It also meant allowing for the Indigenous community to revert back to the project manager with a consolidated consent or withheld consent to the proposed interventions, and proposals of how they would participate during the implementation of the project.

Information provided by FAO

1.4. When is Free, Prior and Informed Consent (FPIC) required?

FPIC is required prior the approval and/or commencement of any project that may affect the lands, territories and resources that Indigenous Peoples customarily own, occupy or otherwise use in view of their collective rights to self-determination and to their lands, territories, natural resources and related properties.

This manual is intended as a practical approach to this right. Project developers should carefully consider as well local communities who in many cases co-habit the areas with Indigenous Peoples. In some instances, project managers will also face the situation where state institutions do not recognise FPIC. In such cases it is important to involve the authorities in the process and indicate the benefits while linking discussions to the International Legal Framework and eventual recognition by the country through declarations, conventions and/or treaties (please refer to annex 5).

1.5. What are the benefits of the FPIC process?

Development activities can be carried out based on needs and priorities, and in line with the rights of Indigenous Peoples

which per se represents an incomparable benefit for all stakeholders involved in any given project intervention.

Inclusive participation throughout all stages of a project helps to maintain consent, minimizes risks (such as disputes and other forms of conflict, harm to Indigenous Peoples and their territories, or damage to the reputation of the implementing organization), allows the building of a trust-

Box 5

Examples of project interventions that affect Indigenous Peoples and require FPIC

- A project aims to improve the livestock productivity and irrigation of farms located upstream on a river. The project's waste management methods could affect the water quality and therefore the health of Indigenous Peoples, and the water diversion for improved irrigation could impact Indigenous Peoples by reducing the volume of water accessible to them and their lands, or the fish and animal habitat on which they customarily rely.
- An aquaculture project will introduce a new fish variety that would be more affordable for consumers to buy. If the project's fish escape or are accidentally released into wild fish habitat, they could destroy the habitat, inter-breed with and affect the genetic integrity of the wild fish stocks that are vital to Indigenous Peoples' food security and nutrition, cultural practices and the exercise of their customary fishing and subsistence rights.
- A project aims to plant some monoculture plantations as a means of reforestation with cash crops and to improve the livelihoods of small farmers and landless peasants. The resulting loss of biodiversity (from replacing instead of improving the remaining forest and its management), and the impacts on the environment due to, e.g., the majority of the project's pesticides and herbicides affecting non-targeted species (and human communities) in areas *outside* of the immediate project area, could affect Indigenous Peoples' food systems, health and livelihoods.

based relationship, informs project managers on how to better target beneficiaries' needs and expectations, and strengthens possibilities for future collaboration.

For Indigenous Peoples themselves, FPIC is a tool to ensure that their priorities are taken into account. The process allows them to be well informed about all aspects of the project that will affect them, to exercise control and manage their lands and territories, and to command respect for their cultural identity and self-determination, especially regarding their right to development as distinct peoples. ■

Box 7

Benefits of FPIC

"Like a deep mountain lake, each FPIC process is a reflection of its surroundings, and no two are alike. When respected, it provides many benefits to everyone, and though it is not an easy hike, the view is worth the climb".

Box 8

Case from the field - Niyamgiri, India

In 2013, the Supreme Court of India issued a precedent-setting directive re-affirming the rights of forest-dwelling indigenous or tribal peoples, including their customary use of their forests and natural resources, as recognized in the Forest Rights Act of 2006. The directive emphasized the importance of tribal peoples' traditional decision-making processes (Gram Sabha or Village Council meetings) and their ultimate authority to give or withhold consent to bauxite mining activities by Vedanta/Sterlite, Ltd. in their homelands and its areas rich in biodiversity, medicinal plants and spiritual significance – namely, the range of densely forested hills known as Niyamgiri (the abode and embodiment of Niyam Raja, the living deity of the Dongria and Kutia Kondh tribal communities), in Odisha.

As a result, 12 Gram Sabha were organized for broad participation. The Gram Sabha took place over a period of more than a month in heavy rains and during a busy cultivation schedule. Women were the majority in most of the gatherings. Well before the Gram Sabha, Action Aid facilitated the process of FPIC for the community members by distributing information related to the mining activities, in leaflet, pamphlet

and poster formats in the local language, and by meeting with and orienting village members – ensuring the "Prior and Informed" aspects of FPIC. The State and Central governments assisted, and the Supreme Court decision ensured the "Free" aspect of FPIC by prohibiting project proponents from being anywhere near council meetings, in this way, ensuring that the decision would be uninfluenced by them.

The Gram Sabha unanimously decided that the mining in Niyamgiri would infringe on the cultural, religious, community and individual rights of local forest dwellers. The decision by the Gram Sabha to withhold consent of the mining activities protected the peoples' customary uses of Niyamgiri and, in turn, set a precedent for peoples throughout the country struggling to protect their homelands and sacred sites.

Words from the Gram Sabha: "Niyamgiri hill range is our resource and Niyam Raja is our God. The hills offer us food, water and livelihood throughout the year and we are not going to abandon it".

Information adapted from a report provided by Action Aid.

SECTION 2

Implementing Free, Prior and Informed Consent (FPIC)

An FPIC process will vary according to the specific local context in which a project is to be developed. It may also be the case that the Indigenous Peoples affected already have their own FPIC guidelines. That said, in any given

FPIC process, it is equally important to assess the qualitative aspects as well as the time devoted to it, with the following six key steps that any project manager must consider within different phases of the project cycle:



The above process will need human and financial resources, and time, though it should not entail higher additional costs than the ones associated with

the process of stakeholder engagement that any project or programme should undertake in proportion to the project scale (see annexes for more details). ■

STEP 1

2.1. IDENTIFY THE INDIGENOUS PEOPLES CONCERNED AND THEIR REPRESENTATIVES

You want to know who you will be interacting with and what kind of decision making structure the community(ies) follow. Are they going to consider the project? Do not forget the role of the state and if there are applicable laws in relation to FPIC.

1 Find out which Indigenous Peoples could be affected by the project,

by using diverse sources of information such as: Indigenous peoples' self-governance entities; community-based organizations; national or regional confederations, councils and organizations; universities and research institutions; non-profit organizations and NGOs; and official national censuses (if available).

2 Carry out interviews and talks in and around the project area to identify indigenous communities in order to understand their language, customs, land usage patterns and their rights regarding the territory (see Annex 3 for more information). Document and disaggregate data for each of the respective Indigenous Peoples' communities that could be affected. Identify women affected by the project, and any challenges to their participation in the interviews.

3 Cross-check the existence of mobile communities that migrate seasonally across a territory depending on their mode of livelihood. Examples include hunter-gatherers, pastoralists,

shifting agriculturalists and temporary labourers.

Also, bordering communities may also have claims to the land within the project area or to the resources affected by the activities therein (e.g. water), or they may make seasonal use of these resources or have other forms of tenure relationships with people living inside the targeted project area.

4 Approach the Indigenous Peoples' self-governance systems and structures

traditional chiefs, specialized councils and autonomous governments and parliaments, if any, in order to identify their representatives who are individuals and institutions of their own choice, and who are accountable and legitimate to those they represent, in consultation, negotiation, decision-making and consent-seeking. In case there are none, it is recommended to follow a participatory approach with the whole community.

5 Explain whom you represent, your mandate and the nature of the project, your intention to respect FPIC in relations with the community, and a draft timeline of the steps that could lead from initial talks to negotiation, and to a final decision by the community.

6 Encourage broader community participation where the chosen mode of representation excludes women, youth, the elderly, disabled or other marginalized groups, prior to each stage of negotiation and discussions. Request separate talks to reach consent with particular groups, but do not assume that these groups or their views are homogeneous. Sometimes special measures might be required to create safe spaces

that are also convenient for women to participate. In some cases local communities cohabit with Indigenous Peoples in a particular area. In those instances, it is recommended to involve the multiple communities in the FPIC process, provided that they are in agreement.

7 Research local laws in relation to Free, Prior and Informed Consent (FPIC) in order to (i) involve local authorities and (ii) be prepared before approaching Indigenous Peoples' self-governance systems and structures (see Annex 5 for more information). ■

Box 9

Indigenous Peoples' governance systems

Many Indigenous Peoples have governance systems that are still intact, and function with varying degrees of autonomy in relation to the national government. Examples include the governance systems of the Kuna in Kuna Yala (Panama), who

are governed by a Kuna General Congress and have legislators who participate in the National Assembly, or the Sami in northern Norway, Sweden, Finland, and Russia, who have representative Sami Parliaments in their respective countries.

STEP 2

2.2. DOCUMENT GEOGRAPHIC AND DEMOGRAPHIC INFORMATION THROUGH PARTICIPATORY MAPPING

You want to know where Indigenous Peoples live, what their land and natural resources are and what usage they have, and what their customary rights are in order to undertake successful rights-holder engagement for your project.

“Participatory mapping is a group-based qualitative research method that gives participants freedom to shape discussion on a given topic with minimal intervention from researchers. Mapping can generate a rich understanding of the connections between people, places and organizations over space and/or time” – National Center for Public Engagement.

1 Conduct a participatory mapping and documentation of land usage, natural resources,

communication channels/media, and customary rights as part of the initial project assessment. If it is unclear which community members are appropriate to engage with at such an early stage, the team should conduct a preliminary mapping that will be developed later on with the appropriate participation from the Indigenous community.

② Ensure all communities affected are equally involved in the participatory mapping, as well as in the rest of the FPIC process. The maps must be made with the full awareness and agreement of, and under the control of, the communities and other parties involved. They must also be verified with neighbouring communities to avoid exacerbating or triggering land disputes.

③ Document land usage and natural resources (geographic and demographic information), considering Indigenous Peoples culturally distinct

Box 10

Ascertain the legal status of the land

The purpose of this step is to determine who has rights over the targeted area of the project both in state and under customary rights law. This is not linked with the rights to FPIC, and is particularly relevant where customary rights are not recognised and where multiple rights holders, both formal and informal, have claims on the same land. The legal status should be examined for all parts of the targeted project area as well as bordering zones as this might impact the project.

Box 11 What are customary rights?

Customary rights derive from customary law, a set of usually unwritten rules that draw their authority from tradition. Customary laws govern a wide range of issues, including family relations, property law, and use and ownership of land and natural resources. Customary land tenure refers to the systems that many rural communities use to express and regulate ownership, management, use, access and transfer of land and the natural resources therein. Customary tenure is often intricately bound with local conceptions of kinship, generational descent and broader social definitions of the role and rights of individuals and groups within the community.

Customary laws and rights derive from the community rather than the state (statutory law), and although on the ground, the two systems frequently overlap, customary rights are not always recognized or given equal weight by the state. Customary rights

may be informal (without formal state recognition), or they may be formal where they are given the force of law by ratified international treaties, by national constitutions, by statutory laws and ordinances, or through court decisions. Customary land rights vary significantly across communities depending on their locations, social organization and modes of livelihood. In some communities, land and natural resources may be collectively owned, used and managed on an egalitarian basis (sometimes referred to as the 'commons' of customary tenure). Frequently, rights are 'nested' – for example, where individual or family farmlands are held within wider communal territories. Lands and natural resources also have social, cultural, spiritual, economic, environmental and political value to Indigenous Peoples and other communities with customary tenure systems.

understanding of their territory and landscape and bearing in mind that certain culturally sensitive areas could be “off-limits” for detailed discussion, and some areas could be subject to issues for which it is recommended to ascertain its legal status.

④ Identify Indigenous Peoples or project team “non-negotiables”, which could include, for example, geographic areas in their territories that are off-limits for conducting a project (such as sacred, spiritual, burial areas, archaeological or historical sites or areas where medicinal plants are harvested); the sharing of traditional knowledge; the introduction of certain technologies; etc.

⑤ Identify customary rights, spiritual practices or traditional ethical codes, and relevant legal frameworks that should be considered for project formulation and implementation, through community members and through known and trusted individuals from inside or outside of the Indigenous Peoples’ community who usually provide legal support to them. For example, the community may count on judges within their own customary juridical system, or on an outside attorney who focuses on land and governance issues, or on legal scholars who support the community’s engagement with outsiders. ■

STEP 3

2.3. DESIGN A PARTICIPATORY COMMUNICATION PLAN AND CARRY OUT ITERATIVE DISCUSSIONS THROUGH WHICH PROJECT INFORMATION WILL BE DISCLOSED IN A TRANSPARENT WAY

You want the concerned Indigenous Peoples’ to be duly informed in a transparent manner so they can freely decide on the project that your organization would like to implement – this step will shape your FPIC agreement.

① Communicate effectively with the Indigenous Peoples throughout all stages of the process as per the informed aspect of FPIC. Consider the diverse levels of literacy and interest in the technical aspects of the

project, which will require diverse ways of communication. Ensure that the process is as participatory as possible, and keep community members informed at every step.

② Develop a participatory communication plan that includes: information needs, communication channels and media (ranging from traditional/local media to ICTs), and communication activities. Apply the Communication for Development Approach and Methods to design the communication activities of the FPIC process. Also ensure:

- Timely provision of materials in formats and languages accessible and intelligible to the

Indigenous Peoples, preferably in their own language; and

- Respect of traditional and customary protocols and dynamics, including norms for both verbal and non-verbal communication. These norms for non-verbal communication can include body language, personal space, eye contact, and pointing with the chin or the mouth instead of with hands or fingers.

3 Carry out effective iterative discussions¹

after approaching Indigenous Peoples with regard to developing a project that could affect them, and once they agree to enter into discussions. Bear in mind the following actions to enable fruitful discussions:

- **Agree with the Indigenous Peoples’ on the most convenient time and place for discussions** in their territory, where they may feel safer and more able to express themselves than in an unfamiliar place, and where they have the support of their community to discuss the issues. This includes the right to privacy in negotiations and deliberations for them to discuss and decide freely.
- **Convey to the affected communities their right to say “no” or “we don’t know”**, making clear that they are not obliged to make a decision if they are not completely sure. Inform them that they can accept, reject, partially accept, or choose not to give an opinion on a proposal, and can request as much time as they need to decide what is best for them.
- **Document the proceedings and outcomes of the discussions and make them available to all parties.** Institutions or individuals selected

¹ An iterative discussion is one that is repeated several times in progression towards a goal, using the results from the previous talks as a basis for subsequent review, discussion and analysis. The purpose of having iterative discussions in an FPIC process is to share, in a multi-directional process, all relevant information pertaining to the proposed project with relevant actors and rights-holders. With this information, communities are better placed to discuss any modifications necessary to secure their consent, and to decide whether a project should or should not go ahead.

Box 12

Stakeholder engagement

FAO is committed to ensuring meaningful, effective and informed participation of stakeholders in the formulation and implementation of FAO programmes and projects. “Stakeholder” refers to project affected communities and national and local authorities, and where appropriate, other stakeholders.

FAO will consult with project-affected representative communities and/or groups and civil society representatives. Stakeholder engagement, including with Indigenous Peoples, disadvantaged and vulnerable groups, is required in designing, implementing and monitoring individual projects and sub-projects.

Stakeholder engagement is an on-going process that involves in varying degrees the identification and consultation of stakeholders, disclosure, and establishment of a mechanism by which people can make comments on project proposals and performance or raise grievances.

The need for and nature of any specific consultation will be determined on the basis of the stakeholder identification. For example, where Indigenous Peoples are present in a proposed project area or have a collective interest, FAO will undertake special consideration as stipulated in its Environmental and Social Safeguard.

FAO will maintain adequate documented evidence of stakeholder engagement.

by the Indigenous Peoples for decision-making in the FPIC process will not necessarily be the same as the ones who were involved in the preliminary discussions, therefore documenting each proceeding will help to retain consistency in matters discussed even if the participants change. ■

STEP 4

2.4. REACH CONSENT, DOCUMENT INDIGENOUS PEOPLES' NEEDS THAT ARE TO BE INCLUDED INTO THE PROJECT, AND AGREE ON A FEEDBACK AND COMPLAINTS MECHANISM

You want to reach suitable consent by all parties involved in your project before its activities can commence.

1 **Agreements reached must be mutual and recognized by all parties**, taking into consideration customary modes of decision-making and consensus-seeking. These may include votes, a show of hands, the signing of a document witnessed by a third party, performing a ritual ceremony that makes the agreement binding, and so forth.

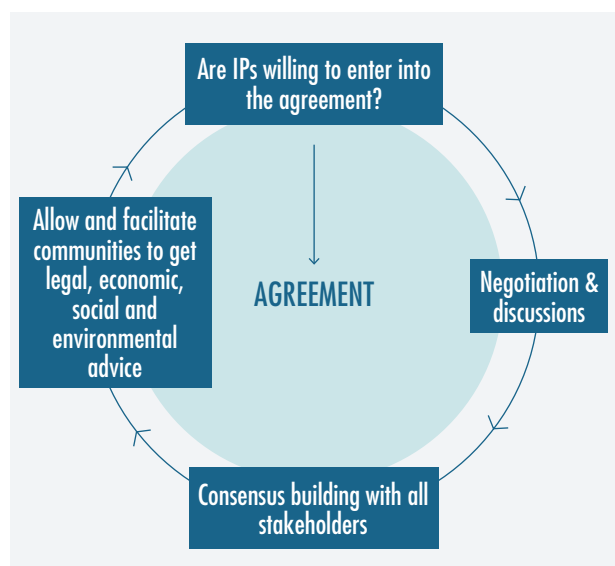
2 **Document the agreement process and outcome** in forms and languages accessible and made publicly available to all members of the community, providing for stakeholder review and authentication. The written document should clarify if consent was given or withheld and affirm that the decisions therein are binding and enforceable. It should also include the issues raised, so that it is possible to review the whole process in the event of a grievance or dispute. For sensitive issues, the affected community should be asked what is permissible to document.

3 **Identify additional needs** to be included in the project during discussions with Indigenous Peoples, as well as the associated risks and possible modifications to remediate or eliminate potential negative impacts of the project. Once the risks are identified, it can be useful to work closely with indigenous peoples to identify indicators that can

measure the possible negative impacts of the project during its implementation.

4 **When a community is opposed to certain parts of a project**, the project manager needs to clarify which parts are acceptable and which parts need to be adapted or abandoned. This would include modifying objectives so all parties are fully satisfied. How well the project manager listens to and incorporates Indigenous Peoples' concerns and solutions into the agreement can make a significant difference in the final outcome of the project.

5 **Where consent is withheld**, establish the causes and the conditions that would need to be met for Indigenous Peoples communities to give their consent, whether the community will consider renegotiation, and the terms and timing of an eventual renegotiation. The right of Indigenous Peoples to refuse any renegotiation also needs to be respected.



The agreement should include the following:

- Signatory parties and/or customary binding practice that will be used to close the agreement, indicating the chosen representatives, their role in the community, how they were chosen, their responsibility and role as representatives;
- Mutually agreed substantive evidence of consent;
- Summary of project information (duration, area of influence, objectives);
- Communication arrangements:
 - *the best way to communicate with the representatives (language spoken, level of literacy, any etiquette to be followed in the case of communicating with an elder or with a spiritual/religious figure);*
 - *how the representatives will ensure that they speak for the community as a whole, taking into consideration possibly marginalized groups such as women, youth, the elderly or disabled individuals;*
 - *how the dialogue will be shared with constituents and how their inputs will be solicited for decisions in progress;*
- Agreed feedback and complaints mechanism, and provision of access to remedy;
- Monitoring and evaluation plan;
- Terms for withdrawal of consent; and
- Independent verification provisions.

Monitoring and evaluating the agreement

Jointly define modes of monitoring and verifying agreements as well as their related

procedures: how these tasks will be carried out during project implementation, and the commission of independent periodic reviews (if considered) at intervals satisfactory to all interest groups.

The above includes Indigenous Peoples' input in the design of the monitoring approach, the activities to be monitored, the monitoring methods, how diverse views will be solicited and how results will be recorded and shared with the wider community. Indigenous Peoples' communities should agree on the methods for participatory monitoring and feedback, with full knowledge of the human and financial resources required and available.

Feedback and complaints mechanism

Make available appropriate and inclusive channels for feedback and complaints to Indigenous Peoples and their representatives throughout each phase of the project. Feedback ensures timely information regarding, for example, whether targeting was correct, projects are being implemented appropriately, and what impact they are having, whether intended or unintended, positive or negative. Feedback channels not only respect the right of Indigenous Peoples to have a say, but also very often improve the efficiency and effectiveness of any given project.

In an FPIC process, a feedback and complaints mechanism is fundamental to Indigenous Peoples' operationalization of their right to give or withhold consent, especially during project implementation. By establishing a mutually agreed mechanism, an organization can promptly and transparently address concerns that may arise throughout the life of a project, and support the quality assurance imperatives for project management.

Effective feedback and complaints redress mechanisms should address concerns promptly and fairly, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected stakeholders, and at no cost and without retribution or the impeding of other administrative or legal remedies.

How to implement the feedback and complaint mechanism with Indigenous Peoples' communities:

- **Agree on how to receive and register feedback and complaints.** This could be through a panel or committee of key representatives and independent advisors, periodic interviews with community members by independent entities, a collection box for written and anonymous feedback, and so forth. Be aware of the underlying power dynamics at play in this process to ensure that the agreed mechanism can be accessed by all groups within the community – especially those marginalized and most vulnerable. Where customary feedback and complaints mechanisms exist and the communities choose to follow them, this process should be respected as it will make it relevant and meaningful to them.
- **Agree on how to review and investigate complaints.** This should include systems to track and respond to complaints, and relevant time-frames for the complaints-resolution process.
- **Agree on resolution options that are satisfactory to all parties.** These may include forms of compensation, sanctions or restitution.
- **Agree on how feedback and complaints resolution will be monitored and evaluated by all parties.**
- **Inform communities about government adjudication processes and access to justice** in case the complaints cannot be resolved without outside assistance.

Box 13

FAO Commitment on accountability to affected populations

A feedback and complaints mechanism, when well-constructed and carried out, is a means for an organization to ensure a safe and confidential way for people to raise concerns and receive some kind of response. These can range from everyday problems with the quality of the services to serious complaints, such as corruption, misuse of assets, staff misconduct or sexual exploitation and abuse.

Obstacles such as social or cultural restrictions, including those related to gender or a disability, literacy limitations or lack of access to the systems used to make a complaint should not exclude community members from being able to raise a concern, and access points should be designed with all segments of the community in mind. Complaints and feedback systems need to be tailored to each context with particular attention to the communications environment. Reliable response mechanisms complete the feedback loop by ensuring that complainants receive a timely response to their concerns – even if it means explaining to the complainant the reasons why his/her specific concern cannot be addressed. In order to be effective, these mechanisms need to be carefully explained to communities in ways that account for cultural differences and nuances.

- **Formalize, document and publicize the feedback and complaint process** according to customary norms, and/or through its declaration and registration at an official institution (e.g. a regional or local government office) in forms and languages accessible to all parties, and publicize it.

Note: It is recommended that a local feedback and complaints mechanism be supplemented by a corporate grievance mechanism (when existing) as a last provision for grievances that are not solved locally.

Provision of access to remedy and conflict resolution, and exit strategy

Providing access to conflict resolution mechanisms is essential to fulfil the right to remedy for actors who feel other parties have violated their rights. As with anticipating and establishing feedback and complaints mechanisms, conflict resolution mechanisms should be discussed and developed early on rather than left until eventual disputes occur or consent breaks down.

Access to remedy and conflict resolution is given through:

- **Identification of a professional mediator,** conflict resolution expert or ombudsman to mediate the process with no conflicts of interest and in a manner that is acceptable to all parties, allowing ample time and resources for the process to achieve fair outcomes.
- **Halting operations in the project area** for the duration of the dispute resolution and remedy-seeking process. *This should be included as a specific clause within the final project agreement.*

Certain situations can arise in which the project needs to be suspended. These include facing an

unexpected technical obstacle or a severe breakdown in the relationship with the Indigenous Peoples, who could eventually withdraw their consent. Other situations include natural disasters, military or paramilitary violence, humanitarian crisis, etc.

Box 14

The right to remedy

Under international law, the violation of human rights gives rise to a right to remedy and reparation for the victim(s). Reparation is intended to relieve the suffering of and afford justice to victims "by removing or redressing to the extent possible the consequences of the wrongful acts and by preventing and deterring violations". In human rights law, the availability of effective remedies is a right in and of itself that complements other recognized rights. Remedies include: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

When a remedy is needed this needs to be documented in forms and languages accessible to all parties, and possible actions include:

- Return or restitution of lands, territories and resources, and other property and intangible resources, taken or affected without the consent of communities;
- Restoration of damaged ecosystems and/or resources;
- Payment for the relinquishment of rights;
- Improved benefits for smallholders and workers;
- Payment in cash or kind for ceded lands or use of lands;

- Compensation for damages and infringements of rights, for losses of livelihood and income and for losses of intangible heritage;
- Payment of the costs of securing reparations, engaging in negotiations and seeking advice;
- Agreement either to permanently suspend operations in the disputed area and/ or proceed with a newly negotiated agreement involving all the requirements of an FPIC process;
- Formal guarantees of non-repetition; and

- Formal procedures and sanctions in the case of repetition.

Agree exit strategy in advance by defining which situations would trigger the halting of activities and an exit from the area where the project is being carried out. The agreement should also include how the project would be stopped if feasible (i.e., gradually or abruptly), how to verify that the stoppage takes place in an agreed manner, and how the project could be revisited and re-started in the future. ■

STEP 5

2.5. CONDUCT PARTICIPATORY MONITORING AND EVALUATION OF THE AGREEMENT

You want to ensure that the agreement reached is properly monitored and evaluated by all interested parties in a transparent and effective manner.

The participation of communities in the monitoring and evaluation of a project within their territories should be guaranteed and provided in the terms and conditions of the binding agreement reached by all parties.

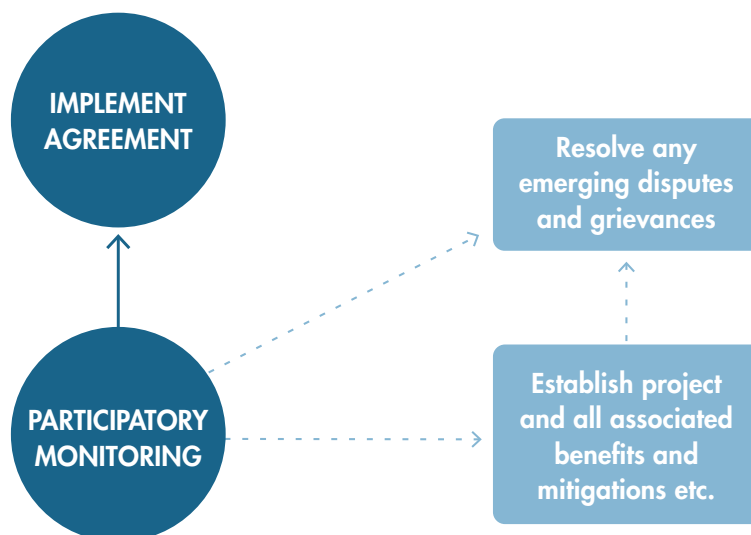
As the Free, Prior and Informed Consent is an ongoing process, the project manager should make sure that the communities affected by the project are informed regularly about its progress, and that they are given frequent opportunities to ask questions, raise concerns and inspect activities taking place on their land.

Key aspects that ensure an effective monitoring process throughout the lifespan of a project that involves Indigenous Peoples are:

- Use of independent monitors acceptable to all parties.
- Inclusion of diverse voices across the spectrum of rights-holders and other stakeholders, including marginalized groups such as women, the poor, the landless and youth i.e., to ensure their rights are equally respected.
- Offering respondents anonymity, and maintaining anonymity of inputs where requested.
- Soliciting feedback on findings. Public sessions can be held to share and discuss the findings of the verification process. This gives community members an opportunity to confirm or contest the findings and to request that a different team repeat the process, if necessary.

- Specificity about how problems will be addressed, and at what stage grievance processes will be triggered, should problems emerge during monitoring.

- Establishment of the conditions under which the consent process can be reinitiated and the agreement renegotiated.
- Having a written record of all related activities.



Ensure participation of individuals from the Indigenous Peoples' community in the project task force also, and be flexible in case the Indigenous Peoples decide to make changes to the community members who are part of it.

When incorporating Indigenous individuals in the project team, the project manager should strive for broad participation on the basis of gender and age, bearing in mind Indigenous Peoples' own cultural protocols. ■

STEP 6

2.6. DOCUMENTING LESSONS LEARNED

During the FPIC process, and after it has been completed, it is important to document any lessons learned that can improve future actions. This can better guide the actions of the organization in future projects and diminish future risks and challenges.

For the indigenous community, this documentation underscores the commitment of the organization to respect Indigenous Peoples'

rights, and reinforces the trust-based relationship. For this reason, the team should work together with the community to document what was learned throughout each stage of the FPIC process, including both strengths and weaknesses.

This stage also helps to bring a sense of closure and can even facilitate possible future collaborations. ■

SECTION 3

Reflecting FPIC in your organization

3.1. *The FPIC regulatory framework*

Free, Prior and Informed Consent (FPIC) is a universal norm of international law as per: UNDRIP, the ILO Convention 169, and the Convention on Biological Diversity (CBD). Other relevant, legally binding instruments include: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the American Convention on Human Rights; and the African Charter on Human and Peoples' Rights (ACHPR).

The legal companion to the UN-REDD Programme Guidelines on Free, Prior and Informed Consent demonstrates that the specific duties and obligations of States— and by extension the UN and its programmes— to respect, protect, and promote FPIC, particularly in the case of Indigenous Peoples, is affirmed in numerous international and regional instruments. The most important ones are:

Box 15

International Human Rights Instruments - "Declaration" and "Convention"

These are treaties and other international documents relevant to international human rights law and the protection of human rights in general. They can be classified into two categories:

Declaration: In the United Nations (UN) system, it is a statement by member states that is not legally binding. It sets out the principles that governments agree to aim to work towards. It can become binding if incorporated into national laws.

Convention: Legally binding instrument concluded under international law.

The United Nations Declaration on rights of Indigenous Peoples (UNDRIP), endorsed by 143 countries at the UN General Assembly in 2007, is considered as the minimum standard for the treatment of Indigenous Peoples around the world. The Declaration includes provisions expressly recognizing the duty of States to secure FPIC from Indigenous Peoples in the following circumstances: population relocations; the dispossession of “cultural, intellectual, religious and spiritual property”; “confiscated, taken, occupied, used or damaged” lands, territories and resources; before “adopting and implementing legislative or administrative measures”; and “prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources”.

The International Labor Organization Convention 169, ratified by 22 countries, as of 2015, and also known as Indigenous and Tribal Peoples Convention, was the first document to recognize the aspirations of Indigenous Peoples in their own economic and political institutions, economic development, and the maintenance of their identities, languages and religions, and values and customs. This convention is binding and guarantees the rights of indigenous peoples to their land and to be involved in any decisions that affect their resources and livelihoods.

The Convention on Biological Diversity (CBD), signed by 150 governments in 1992 at the Rio Summit and ratified by 196 countries by 2015, protects indigenous knowledge by allowing its use only with prior approval. It also affirms explicitly the principle of prior informed consent. The Programme of Work on the implementation of Article 8(j) and related provisions of the Convention on Biological Diversity states that “access to traditional knowledge, innovations and practices of indigenous and local communities should be subject to prior informed consent or prior informed approval from the holders of such knowledge, innovations and practices”.

Both the ICCPR and ICESCR protect peoples’ right to self-determination. While these universally binding instruments do not explicitly mention the principle of FPIC, the Human Rights Committee that monitors compliance with the ICCPR and the Committee on Economic, Social and Cultural Rights that monitors compliance with the ICESCR have frequently interpreted these covenants as requiring FPIC as an expression of self-determination.

The Committee on the Elimination of Racial Discrimination that monitors compliance with

the ICERD has also been vocal in relation to Indigenous Peoples’ rights to lands and has repeatedly called upon states to recognize and protect these rights and to apply FPIC. ILO 169 prohibits the removal and/or relocation of indigenous and tribal populations from their territories without their free and informed consent. The standard of ‘approval and involvement’ in the CBD has also been equated with FPIC, and affirmed in the CBD’s Akwé: Kon voluntary guidelines.

Box 16**The African Charter on Human and Peoples Rights**

Established by the African Union, the African Charter on Human and Peoples Rights is a binding instrument ratified by 43 out of 54 countries in Africa. It refers to the principle of FPIC that widens the applicability to women and people's customary rights. Resolution 224 of the charter calls for states to: "ensure independent social and human rights impact assessments that guarantee Free, Prior Informed Consent (FPIC)", with a particular focus on women, indigenous and people's customary rights. Assessments must consider the "impact on community existence, including livelihoods, local governance structures and culture". This is a powerful instrument that can be enforced through the African Court of Human and People's Rights.

However, in this context it is ultimately the responsibility of the state to adequately implement FPIC and adhere to court decisions. One of the activities of the Economic Community of West African States (ECOWAS – a multi-country group of 15 states) – is in developing guiding principles and policies for the mining sector. FPIC is called for in cases where mineral (including petroleum) or hydrocarbon projects affect local communities. ECOWAS' directive states that: "companies shall obtain free, prior and informed consent (FPIC) of local communities". The principles are binding on member states to integrate FPIC into law, and ensure adequate implementation and remedies.

Box 17**The Tirana Declaration**

This declaration was issued by the International Land Coalition (ILC) at a conference involving 150 representatives of civil society organizations, social movements, grassroots organisations, international agencies and governments. Principle 4 of the declaration states that: "We denounce all forms of land grabbing... including those not based on free prior and informed consent

(FPIC)." The declaration's guidelines and principles are not legally binding. However, these instruments encompass best practice standards; are highly relevant as advocacy tools; and can be drawn upon by international legal experts as law evolves, particularly with pressing contemporary global issues requiring clear legal frameworks, such as climate change.

3.2. FPIC integration through the human rights-based approach

The UN system, as well as its development partners, bases its interventions on a human rights-based approach, which is a conceptual framework for the process of human development that is normatively based on international standards and operationally directed to promote and protect human rights. This approach seeks to analyse inequalities that are at the heart of development problems, and to redress discriminatory practices and unjust distributions of power that impede development progress.

FPIC is deeply rooted in this human rights-based approach as it prioritizes Indigenous Peoples' effective participation in determining how best to achieve meaningful and positive outcomes to meet their needs and aspirations, particularly using parameters that emanate from their respective cultures.

Under a human rights-based approach, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established by international law. This helps to promote the sustainability of development work, empowering people themselves—especially the most marginalized—to participate in policy formulation and hold accountable those who have a duty to act.

While there is no universal formula for a human rights-based approach, UN agencies have nonetheless agreed on a number of essential attributes:

- As development policies and programmes are formulated, the main objective should be to fulfil human rights.
- A human rights-based approach identifies rights-holders and their entitlements and corresponding duty-bearers and their obligations,

and works towards strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations.

- Principles and standards derived from international human rights treaties should guide all development cooperation and programming in all sectors and in all phases of the programming process².

Box 18

FAO and FPIC

In line with the international legal framework indicated in 2.1, *FAO Policy on Indigenous and Tribal Peoples* formulated in 2010, requires the organization to make all due efforts to respect, include and promote indigenous issues in relevant work. The core principles of the policy are: self-determination; the respect for indigenous knowledge, cultures and traditional practices that contribute to sustainable and equitable development; and Free, Prior and Informed Consent. The policy is operationally reflected in FAO Environmental and Social Guidelines and the Guide to the Project Cycle.

² Information on the human rights-based approach extracted from <http://hrbaportal.org/faq>.

Box 19 NGOs and FPIC

Oxfam supports and advocates for FPIC for all Indigenous Peoples and local communities. In 2016, together with other 450 organizations and communities, Oxfam launched LandRightsNow: A Global Call to Action on Indigenous and Communities Land Rights. LandRightsNow is a major international campaign that aims at doubling the area of land owned by Indigenous Peoples and local communities by 2020. The respect of FPIC by governments, the private sector and the financial institutions, is one of the key recommendations of this campaign.

ActionAid promotes alternative development approaches that respond to people's aspirations and needs, and thereby recognises the importance of land and resource governance in addressing negative impacts. ActionAid is a proponent of the application of the principle of Free, Prior, Informed Consent (FPIC) as an essential prerequisite for land and resource-based projects, with the aim of ensuring affected communities are meaningfully involved in key decisions that impact their lives and livelihoods. Crucially, affected communities and community members, through the adequate application of FPIC, should be granted the genuine right to consent to such projects, and promote the protection of human rights.

Box 20 The Government of Philippines and FPIC

The 1987 Philippine Constitution guarantees the recognition of the rights of indigenous cultural communities over their ancestral domains including deciding priorities for their own development. Republic Act No. 8371 or the Indigenous Peoples Rights Act (IPRA) of 1997 was legislated to make these constitutional guarantees operational. The law recognizes the time immemorial possession of the Indigenous Peoples over their ancestral domain, which gave rise to the presumption of private ownership of these lands, including forests.

IPRA also recognizes the right of Indigenous Peoples to self-determination, of which Free and Prior Informed Consent (FPIC) is an expression. The FPIC requirement under Section 59 of IPRA states:

All department and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production sharing agreement, without prior certification from the National Commission on Indigenous Peoples

(NCIP) that the area affected does not overlap with any ancestral domain. Such certificate shall only be issued after a field-based investigation is conducted by the Ancestral Domain Office of the area concerned: Provided, That no certificate shall be issued by the NCIP without the free and prior informed and written consent of the indigenous peoples concerned: Provided, further, That no department, government agency or government owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is pending application CADT: Provided, finally, That the indigenous peoples shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this process.

The IPRA law created the NCIP, an agency with frontline services for the Indigenous Peoples, attached to the Office of the President. The NCIP issues guidelines for the implementation of IPRA, some of which are the NCIP Administrative Orders laying down the FPIC Guidelines of 2002 and 2006.

3.3. Ensuring consistency when applying FPIC in an organization

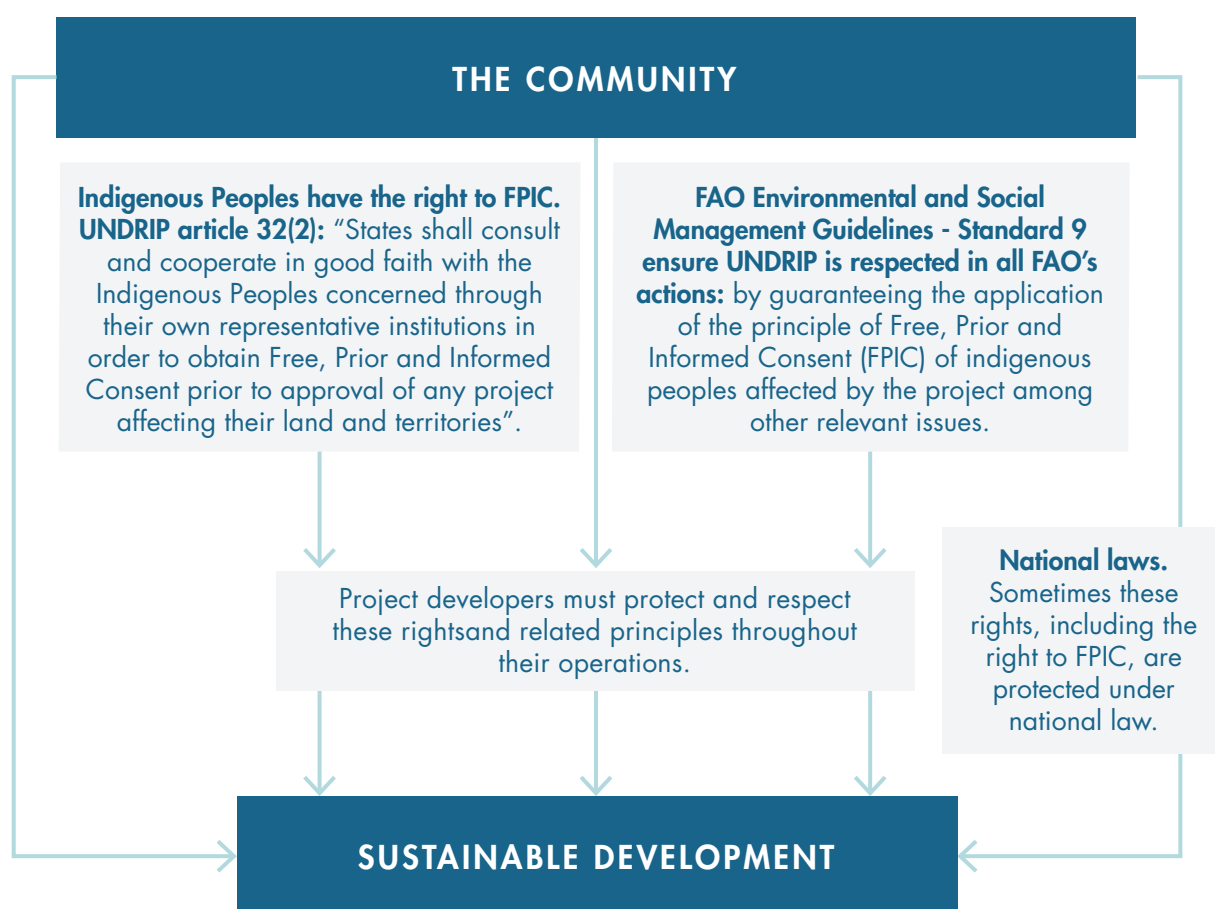
For consistency and harmonization, it is important to ensure that FPIC is incorporated at different levels within an organization in order to meet the regulatory framework described above. In general an organization should have the following in place:

- a. Policies and standards** that encourage FPIC mainstreaming for field interventions.
- b. Guidelines** that facilitate FPIC implementation as a process during the different phases of the project cycle (identification,

formulation, implementation and monitoring, and closure).

- c. A grievance, feedback and complaints mechanism** through which the organization can receive instances that indicate where and when to improve its performance (see section 3.7 for more details).

FPIC makes the work of the organization more transparent, participatory and based on the needs and indications of the people affected by the organization's actions. This sets the foundation for policies, as well as for project and programme guidelines, while also allowing the organization to speak with one coherent voice.



Source: Adapted from Oxfam, 2010.

Box 21**The Private Sector and FPIC**

Some of the conclusions reached in the World Resources Institute Report on why **FPIC makes good business sense** include that: business risks of going forward with a large-scale project in a community without its acceptance can threaten commercial or financial viability of the project; addressing issues of community concern before the project begins is likely to be more successful and cost-effective than responding to community opposition later on; and talks that do not resolve a community's reasons for opposition or achieve consent will provide little assurance against potentially costly and disruptive conflict. Companies with reputations for corporate good conduct are perceived to be more reliable as business partners and suppliers, and a better bet for investors.

Increasingly, private sector standards refer to the principle of FPIC for local communities depending on the industry to which the standards apply. The World Commission on Dams (WCD), established in 1998, states that FPIC should guide the building of dams in relation to situations that impact both upon indigenous peoples and ethnic minorities. Yet, there is minimal evidence of FPIC's applicability in dam cases, and no genuine regulatory mechanism to ensure companies undertake this process. Related to this, several academics, NGOs, and civil society more generally have raised important

issues about whether companies should be leading the process of FPIC for a number of reasons. Companies' vested interests mean they have a keen interest in gaining consent from communities, and allocating what should be a state duty to non-state actors such as corporations may enhance their legitimacy and increase their power to drive further land and resource exploitation.

The Forest Stewardship Council (FSC) is a multi-stakeholder membership organization dedicated to promoting responsible forest management worldwide, to which the private sector can refer when developing best practice standards for engaging in projects involving forests. FSC certification requires the application of FPIC for all projects as a key element of international human rights standards. The Roundtable on Sustainable Palm Oil (RSPO) is a not-for-profit body comprising stakeholders from seven sectors of the palm oil industry – oil palm producers, processors, traders, consumer goods manufacturers, retailers, banks/ investors, and NGOs – to develop and implement global standards for sustainable palm oil. The RSPO has developed a set of environmental and social criteria with which member companies must comply in order to produce certified sustainable palm oil (CSPO). RSPO criteria require FPIC for projects affecting Indigenous Peoples and local communities.

3.4. Resources required to ensure FPIC implementation.

FPIC mainstreaming within an organization requires human resources, the building of capacities and an established feedback and complaints mechanism.

➔ **Establish human resources capacity.** In general, an organization willing to integrate FPIC in their policies and guidelines will need professionals at their head office to develop the required policies and guidance material for project implementation, and more over to build the capacity of field personnel.

➔ **The feedback and complaints mechanism** in an FPIC process requires that the organization is able to address concerns that cannot be resolved through locally established feedback and complaints mechanisms in an independent and transparent manner.

Organizations should also provide a channel to resolve conflicts, and since FPIC is an on-going process that continues throughout the life of a project, an overarching structure for feedbacks and complaints can facilitate its incorporation into projects themselves.

Defined timeframes should accompany each step of a feedback mechanism to ensure that issues are addressed according to a schedule that suits parties involved. The overall process relies on accessible channels, trusted processes and clear steps that parties understand how to use.

➔ **Capacity building and guidance.** A successful FPIC process is accomplished when an organization has personnel able to implement the according policies and guides in their day-to-day actions. Therefore, as part of capacity building efforts, an organization should have available training plans and guidance to field practitioners in order to help them follow through effectively and efficiently in

implementing the human rights based approach at the basis of FPIC, an aspect that is covered in Section 2 of this guide: Implementing FPIC.

Box 22

FAO Feedback and Complaints Mechanism

FAO facilitates the resolution of concerns of beneficiaries of its programmes regarding alleged or potential violations of FAO's social and environmental commitments. For this purpose, concerns may be communicated in accordance with the eligibility criteria of the Guidelines for Compliance Reviews Following Complaints Related to the Organization's Environmental and Social Standards, which applies to all FAO programmes and projects.

Concerns must be addressed at the closest appropriate level, i.e. at the programme management/technical level, and if necessary at the Regional Office level. If a concern or grievance cannot be resolved through consultations and measures at the project management level, a complaint requesting a Compliance Review may be filed with the Office of the Inspector-General (OIG) who has the mandate to independently review complaints in accordance with the Guidelines for Compliance Reviews effective as of March 2015.

Box 23**GIZ Promising Practices****Integrating indigenous practices in biodiversity conservation in the Agusan Marsh, Mindanao, Philippines.****Lessons learnt**

A comprehensive legal framework, implementing regulations and a competent organization do not replace in-depth training and information at all levels. The understanding of indigenous rights it is usually not deeply embedded in the minds of most stakeholders. Basic trainings on indigenous rights, the IPRA and the FPIC Guidelines are therefore necessary.

Strengthening Indigenous Peoples in exercising their right to govern their ancestral domains can partially compensate for the organizational and structural weaknesses of the government or development agencies.

The joint design of a process for FPIC that is adapted to the particular context, and building a partnership with the community are a precondition for the success of any project. These elements can provide net benefit to any development programme related to Indigenous Peoples by sustaining its respective goals.

The FPIC process requires sufficient time and resources to achieve the desired effects. This should

be considered by development agencies involved especially in formulating objectives, activities and indicators. The project schedule has to be adapted to the particular circumstances (e.g. areas difficult to access) and the cultural characteristics of Indigenous Peoples. Language is an aspect of particular importance. The legal and human rights framework is mostly written in languages inaccessible to the indigenous community and sometimes also to government representatives. Cooperating partners need to ensure that relevant legal texts are accessible in local and indigenous languages.

In the case of Agusan Marsh, Mindanao, the FPIC process set the stage for the participatory research on indigenous biodiversity conservation practices. It has proven to be an adequate tool for this. An additional benefit is that the indigenous researchers and experts now make up a future pool for recruiting rangers, staff for biodiversity monitoring teams, multipliers and ambassadors of indigenous culture and biodiversity.

ANNEXES

1. KEY ASPECTS THAT ANY PROJECT MANAGER SHOULD KNOW ABOUT THE FPIC PROCESS IMPLEMENTATION

FPIC involves more than one meeting, often a series of them. It starts with an informative one, followed by additional (iterative) meetings and updates, and a final gathering to learn about the giving or withholding of consent.

- a)** Start the process with the disclosure of information about the project, using materials that are understandable by the traditional leader/s and community members. The information should be communicated in local languages and in culturally appropriate formats (for instance, oral messages in oral cultures). The understanding of information is key to FPIC.
- b)** Share information about the project impacts in ways that are honest and of good faith. Negative impacts should not be disguised or hidden. The office of the project proponents is not an appropriate environment for carrying out discussions or consultations in an FPIC process, because the community and its leaders could feel intimidated by exogenous environments, attitudes, languages or artefacts. This refers to the “free” concept in FPIC.
- c)** Strive for the widest possible participation of communities in decision-making, including youth,

women, the elderly and persons with disabilities, which are often neglected. This can reduce the chance that decisions made will subsequently be challenged or cause grievances within the community. At the same time, respect indigenous peoples’ right to be represented in the FPIC process through individuals and institutions of their own choice as well as to use their own customary decision-making and consensus-reaching processes.

- d)** Make available all materials and documentation of activities in good time and in forms and languages accessible and intelligible to them, preferably in their mother-tongue, with the assistance of translators.
- e)** Logistical issues, such as the cost and means of transportation and communications, must be taken into account in the organization of consultations, so that local communities are not disadvantaged in terms of participation.
- f)** Build relationships of mutual trust and understanding through transparent, two-way information sharing, proven accountability, wide-ranging discussion, repeated negotiation and good-faith engagement. Flexibility, informality, time and opportunities to get to know each other more personally are important ways of building mutual respect and open-mindedness. It is important that representatives of the organization and local communities have clear authority to

speak for, and make binding commitments on behalf, of their institution.

g) Acknowledge and apply cultural norms and expectations. This will be decisive in how indigenous peoples approach and participate in decision-making processes, and in achieving robust and legitimate outcomes that are satisfactory to both parties. These include modes of representation, decision-making mechanisms, time requirements, how agreements are made binding and what constitutes the negotiation process itself.

2. KEY ASPECTS TO CONSIDER WHEN CARRYING OUT INTERVIEWS AND CONSULTATIONS IN AND AROUND THE PROJECT AREA

- » The individuals, families, villages, clans and other social entities in the project area and its border zones;
- » the nature of existing relationships between these groups, which can consist of kin relations, but also wider socio-economic ties such as commercial, political, economic or cultural ties;
- » the geographic locations and total populations of the different groups identified;
- » the administrative units in which the communities live and exercise rights (e.g. region, district or province);
- » the nature of relations between the communities and the state in terms of governance and administration, exercise of customary law and recognition of land rights, especially based on customary rights; and how communities justify their claims to land and land use; which may include customary law, ancestry, inheritance, purchase, lease or state-sponsored settlement programmes;
- » the demographic characteristics of communities. These may include age groups, gender ratios, and groups of locals and migrants;
- » local forms of social organization, including, but not restricted to: individuals and institutions responsible for decision-making; the enforcement of customary laws; religious practices; economic activities; inter- and intra-community relations; political authority; and natural resource use and management;
- » local literacy levels. Where local communities, including their leaders, are illiterate or semi-literate, it will be important to ensure that all information transmitted to them is available in intelligible and appropriate forms and languages, and that all proceedings are audio-recorded for their reference. The use of diagrams, pictures and videos, in addition to face-to-face interaction, may also help make information accessible;
- » any past and/or ongoing conflicts or disputes between and within communities over land and natural resources, and their causes. Being aware of existing frictions helps in avoiding the conflation of different groups and allows for a better understanding of the different interests and perspectives at stake;
- » linguistic differences between local and official terms, and any relevant locally-specific terms. These may include the denomination of social groups and the terms used to describe rights, practices, decision-making structures and political organization. Keeping definitions clear helps avoid misunderstandings and is considerate towards local systems of knowledge and terminologies. Make sure interpreters have the ability to capture and convey nuances and local terms.

3. CHALLENGES FOR ITERATIVE CONSULTATIONS AND TIPS FOR CONDUCTING EFFECTIVE MEETINGS THAT EMPOWER COMMUNITIES

Main challenges that can arise during the iterative consultations:

- » The time needed to organize the meetings, including translating documents or conversations;

- » Key participants (traditional leaders, community representatives, etc.) might not be able to attend, causing delays or the postponement of meetings;
- » Strong disagreement on the conclusions reached in previous meetings;

Responding to these challenges with patience and flexibility can strengthen the relationship and generate trust between the project team and the Indigenous Peoples, which in the end can help overcoming impasses.

Empowering a community while implementing Free, Prior and Informed Consent process



Source: Action Aid

Tips for conducting effective meetings:

- » Find out what the values or approach should be with respect to talking in groups (e.g., eye contact, personal space, physical contact, pointing, voice volume, where people should sit or stand in a room, deference to certain individuals or groups of individuals, etc.).
- » Find out what their customary protocols are regarding how much time will be needed for opening and closing the meeting, breaks, which individuals should speak during the meeting, what order should they speak in, how to recognize when someone would like to speak, how will differences of opinion be recorded or resolved, how will consensus be reached, etc.
- » Ask what kind of translation are they most comfortable with (e.g., simultaneous or consecutive, and in which language).

4. PRELIMINARY RESOURCES, AND TIME REQUIRED TO CONDUCT FPIC

An effective FPIC process will need human and financial resources, and time, though it shouldn't entail much higher additional costs than the ones associated with the process of stakeholder engagement that any project or programme should undertake in proportion to the project scale.

Key required skills include involving professionals with an understanding of participatory community processes, indigenous peoples' traditional protocols for decision-making and communication, and who are able to gather information about the territorial issues, resources and customs.

It is also important to consider the possibility of hiring independent experts for verification procedures and for any mediation needs that may

arise during the FPIC process vis-à-vis the nature of the project, or at least look for collaboration on this aspect when no resources are available.

The financial resources required in an FPIC process are usually needed to cover the cost of experts, communication materials, capacity-building activities, independent verification, and technical and/or legal advice. In general these are the types of costs that are to be considered:

- » **Human resources** allocation vis-à-vis project/ programme needs and scale based on above mentioned required skills.
- » **Communication materials'** elaboration and translation into the local indigenous languages; to support in conveying meetings, and to publish in local newspapers the result of the FPIC process, whether consent has been given or withheld.
- » **Capacity building activities** for Indigenous Peoples to enable them to better consider the proposed project and/or involve them in the project design, implementation, monitoring and evaluation.

Factor time. The more vulnerable a community is, the more time may be needed for internal discussions, deliberations and final consent or withheld. The key elements to consider when determining time are:

- » Understanding of Indigenous Peoples' customs, their decision making process and concept of time.
- » Timeframe for project deadlines and how flexible you can be with those.
- » When and how Indigenous Peoples' will participate through the project phases (i.e. being part of a steering committee, receiving updates about project implementation and debating about it, etc.).

Factors affecting time and resources necessary to respect FPIC

The following are factors that during an FPIC process could have a direct incidence in the resources needed to conclude the process:

- the number of actors and interest groups involved in negotiation and decision-making and their geographic spread and accessibility;
- understanding the socio-cultural and legal contexts of the indigenous peoples;
- the effectiveness of existing leadership and social cohesion;
- the representativeness of existing leadership and access to decision-making by the youth, women, the elderly and persons with disabilities;
- availability of mechanisms for informing community members;
- the effectiveness of the process and level of disagreement within the community towards the proposed project and its potential benefits and/or risks;
- levels of literacy and education;
- enabling indigenous peoples' access to resources and expertise so they can effectively participate in the FPIC process;
- time constraints of indigenous peoples to attend meetings/access informational events, producing a low level of participation;
- the degree of complexity of land rights issues and overlapping claims among communities;
- the scale, design and impacts of the project in question;
- the degree of complexity of the participatory mapping process;
- disaggregating data about distinct indigenous peoples' communities that are pertinent to the project; and
- learning and following customary protocols (including ceremonial activities, indigenous peoples' management of time, etc.).

5. FRAMEWORK FOR RESEARCHING LOCAL LAWS ON FPIC

These questions are designed to help understanding whether Free, Prior and Informed Consent is included in any National law in the country where you work:

1. Has the country expressed support for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)?

Check whether your country is listed as supporting UNDRIP. If it is not listed then check the UN website: www.un.org/esa/socdev/unpfii/

2. Is there any legislation in the national laws of the country which gives support to FPIC?

- › **IF YES:** What do the provisions say? Look in detail at the legislation to see what is required under law. Who does it apply to? Check to see whether the legislation can apply to all project-affected communities, or whether it is specific to Indigenous Peoples. What procedures does the law require? Compare your country's laws to Article 32 of UNDRIP to see whether each aspect of FPIC is covered. Look closely at what procedures the law sets out.
- › **IF NO:** Is there any legislation in the National laws of the country which support s similar processes to FPIC? Look at whether the country has legislation which sets out similar processes to those of FPIC. These could be found in laws relating to infrastructure development e.g. planning legislation. What processes are required under law? Look in detail at the processes it sets out. What aspects of FPIC are required by law? Examples may include: community consultation procedures, planning requirements, the requirement for environmental and social impact assessment.

3. Is there any case law in your country which supports Free, Prior and Informed Consent (FPIC)?

- › **IF YES:** What have the courts decided? Look at cases of project-affected communities claiming their right to Free Prior and Informed Consent in any sector: mining, dam, logging. Look in detail at what the courts decided by reading their judgements.

Can it apply to your case? Look at the circumstances of cases which are similar to yours. Read about what the court said. Could similar reasoning could be applied in your situation.

- › **IF NO:** Are there case studies of similar projects in your country? If there have not been court cases, research whether other communities have been affected by large development projects. What actions did they take? There may be case studies which help you in protecting your rights.

Are there local community groups taking action against proposed development projects in your country? Check whether organisations in your local area have more information on where to find help for FPIC processes. It is important as well to:

4. Check what human rights and indigenous peoples rights organizations in the country are saying about the inclusion of FPIC and its implementation

5. Check with the UN Country Team what are the precedents of other UN organizations, Companies, and Ministries undertaking FPIC processes in the country.

6. FAO FREE, PRIOR AND INFORMED CONSENT CHECKLIST USED IN FIELD PROJECTS

	YES	NO	UNKNOWN	n/a
1) Does the project staff have the knowledge and competence to work with indigenous peoples in a culturally appropriate manner?/ Has the project staff been trained on how to interact with Indigenous Peoples?				
2) Has a detailed communication strategy for the dissemination of information been developed taking into account indigenous peoples' own mechanisms, language and locations?				
3) Have the individuals identified as legitimate leaders of the indigenous communities involved been met and consulted?				
4) Have the involved communities had sufficient time to get expert advice on the project? Have sufficient resources been facilitated for them to get expert advice on the project?				
5) Have adequate mechanism and procedures for effective participation in the FPIC process been established?				
6) Has a Participatory mapping analysis with relevant information been carried out?				
7) Have timely consultations (well prior to project design) been carried out?				
8) Have the indigenous communities involved been enabled to participate fully and effectively in project scoping, design, implementation, M&E, mitigation and determination of the need for further review and management of the project?				
9) Has project information (including environmental and social assessment document; environmental social management plan; and evaluation) been disseminated early and through appropriate means?				
10) Has the proper understanding of the information provided to the indigenous communities involved been verified?				
11) Is the consultation process documented?				
12) Has the documentation of the consultation process been disclosed in a timely matter and using appropriate languages, formats and locations?				
13) Has the consent been provided explicitly and recorded and affirmed in the format preferred by the community?				
14) Do the participatory monitoring and evaluation of the project include indicators that indigenous peoples determine to be relevant?				
15) Has the community been engaged in an adequate negotiation process on land and resources agreements, governance arrangements, legal and financial arrangements, employment and contracting opportunities, culturally appropriate benefits sharing, processes and mechanisms for monitoring, grievances and dispute resolutions, among other items?				



Indigenous women
in Bangladesh.
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7. CASE FOR A FULL-FLEDGED FREE, PRIOR AND INFORMED CONSENT (FPIC) PROCESS

(note: this is a fictitious example based on different real experiences)

Chisna Hill Tracks (CHT) is a geographically and socio-culturally distinct area located in south-eastern Brinland, and is home to a number of small ethnic communities, half of them are indigenous, which have traditionally lived and worked in this remote region.

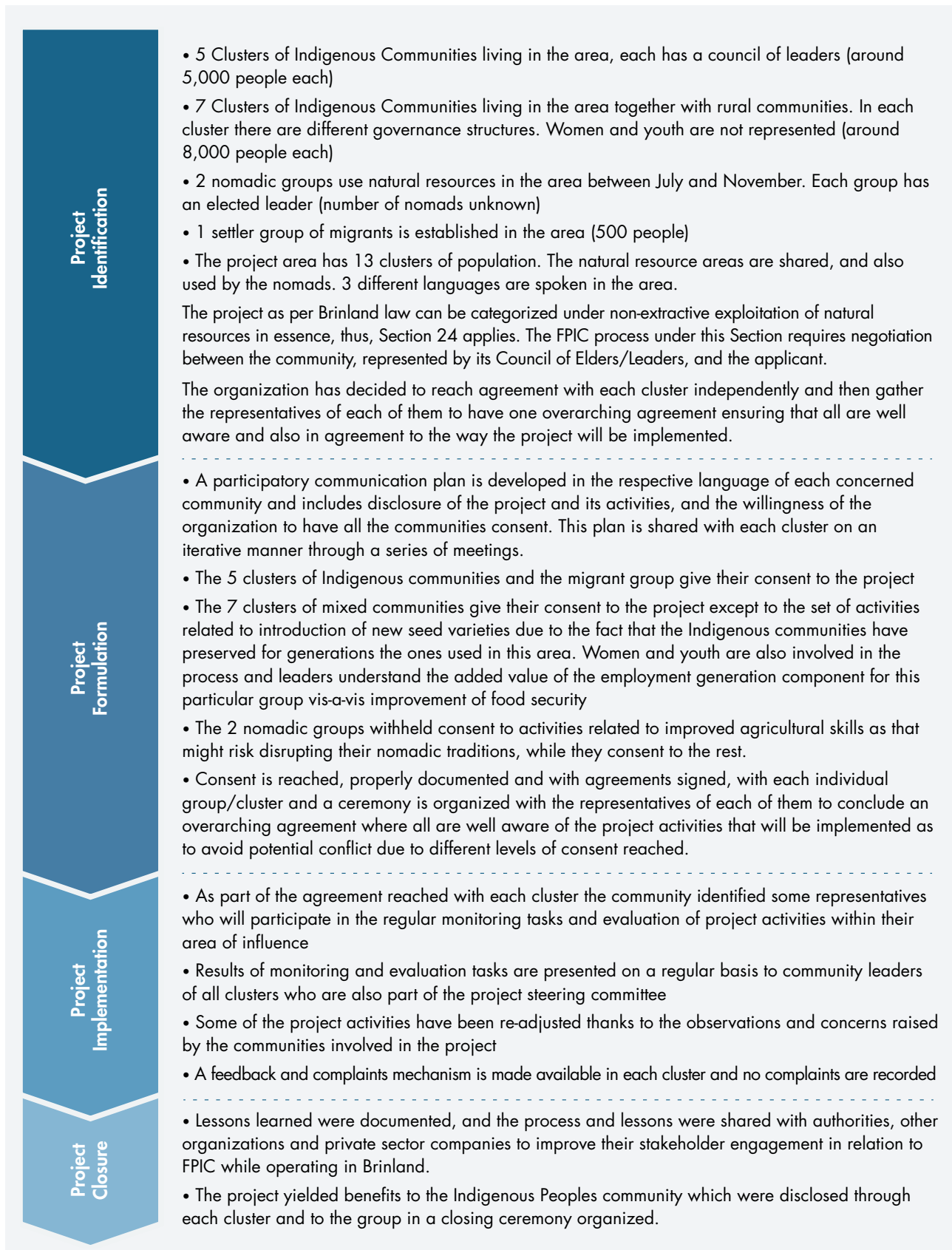
CHT has remained one of the most disadvantaged and vulnerable region in the country on many development indicators, such as income, employment, poverty, health, access to water and sanitation, education, infrastructure and delivery of basic services. Moreover the inward migration of population from bordering countries has

contributed to population pressure, exacerbating conflict over natural resource management and leading to some social tensions between the 'indigenous' and 'settler' populations.

The majority of the people in CHT depends on agriculture for their livelihoods and employment, with much being subsistence-oriented. About 36,000 households live below the lower poverty line and food insecurity is at 46%.

An organization plans to improve food security of extreme poor households in CHT through support to agro-processing and establishment of wider economic linkages and increased decent employment opportunities.

Among the different tasks required to prepare the project proposal and obtain funding from donors, the Organization carry out an FPIC process through the following steps:



8. GRIEVANCE MECHANISMS

A 2011 report from the UN Special Representative on business and human rights, John Ruggie, suggests that grievance mechanisms should be:

- a. Legitimate:** having a clear, transparent and sufficiently independent governance structure to ensure that no party to a particular grievance process can interfere with the fair conduct of that process;
- b. Accessible:** being publicized to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal;
- c. Predictable:** providing a clear and known procedure, with time frames for each stage; clarity on the types of process and outcome it can (and cannot) offer; and means of monitoring the implementation of any outcome.
- d. Equitable:** ensuring that aggrieved parties have reasonable access to sources of information, advice, and expertise necessary to engage in a grievance process on fair and equitable terms;
- e. Rights-compatible:** ensuring that its outcomes and remedies accord with internationally recognized human rights standards; and
- f. Transparent:** providing sufficient transparency of process and outcome to meet the public interest concerns at stake and should presume transparency wherever possible; non-State mechanisms in particular should be transparent about the receipt of complaints and the key elements of their outcomes.

Case Study: Free, Prior and Informed Consent, the “Gold Standard” for Participation

The highest level of participation is when local stakeholders have control over decision making and resources, where they partner with development agencies to design, plan, implement and monitor/evaluate programs, and when the local communities reserve the right to withhold consent for a project. Free, Prior and Informed Consent (FPIC) ensures that the relationship between the development agency and local community is one of the partnership. This case study comes from a briefing paper compiled by Amazon Watch, a watchdog group that focuses on the advancement of the rights of indigenous peoples in the Amazon Basin (The Amazon, 2012).

The indigenous peoples living throughout the Amazon in South America have been subjects of studies about FPIC in recent decades (Amazon Watch, 2011). Since indigenous populations are protected by international law, many groups have been able to hold industries and governments responsible for not guaranteeing FPIC. An example of success comes from the Kichwa people of the Sarayaku territory in the Ecuadorian Amazon. The Kichwa people have been battling oil companies and the Ecuadorian Government from encroaching on their tribal lands without consent for over ten years. They began their struggle with negotiations with the Ecuadorian soldiers and local, regional, and national leaders. After negotiations fell through, the tribal leaders sought assistance from local attorneys at Pachamama Foundation in Ecuador and later from the Center for Justice and International Law. Finally, using another key component of the HRBA, namely accountability, Kichwa delegations traveled to the Inter-American Court of Human Rights (IACtHR) in Costa Rica and made TV and radio appearances to plead their case.

As a result of their efforts, in April and July 2012 the Kichwa people won two major litigations: the Ecuadorian government acknowledged responsibility for allowing oil companies to illegally operate on indigenous lands, and the IACtHR ruled that the government not only has to obtain consent from local indigenous populations, but they are also responsible for paying restitution (The Amazon, 2012).

Consequently, knowing that they cannot rely on the government to ensure indigenous rights, many companies working within these indigenous homelands have begun to focus on achieving FPIC to both ensure the successful implementation of their operations and limit the risk of local resistance.

Lessons Learned, the “gold standard”

FPIC can be considered the “gold standard” because it allows for the highest form of participation of local stakeholders in development projects. The experience of the Kichwa peoples brings to light many important factors involved in

FPIC level participation: the importance of the state, knowledge, capacity, local decision-making bodies, independent and impartial accountability mechanisms and the right of people affected by a proposed project to withhold consent. Companies working in the Amazon cannot always rely on governments to protect indigenous rights, so incorporating FPIC is necessary. A more actively involved government could ensure that companies adhere to the FPIC framework and that the rights of indigenous peoples are respected. A major factor in FPIC is the knowledge and capacity of local stakeholders to participate. Experiences in the Amazon stress the importance of informing the indigenous populations about both the risks and benefits in the short and long-term, and making sure they understand all of the implications before they consent. Finally, including local decision making bodies and acknowledging their role in consenting or declining services is important; not including every member of an informal decision making body could result in conflicts over the project.

In order for FPIC and the right to participation to truly be meaningful, the right to refuse consent to development projects and programs must be respected.



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9. INFORMATION RESOURCES

- › The United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous People <http://www2.ohchr.org/english/issues/indigenous/rapporteur/>
- › The United Nations Permanent Forum on Indigenous Issues <http://www.un.org/esa/socdev/unpfi/>
- › Asia Indigenous Peoples Pact: www.aippnet.org
- › Catholic Agency For Overseas Development (CAFOD): www.cafod.org.uk
- › Forest People's Program: www.forestpeoples.org
- › Good practices in participatory mapping - International Fund for Agriculture Development (IFAD) <https://www.ifad.org/documents/10180/d1383979-4976-4c8e-ba5d-53419e37cbcc>
- › Respecting free, prior and informed consent - Practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition <http://www.fao.org/docrep/019/i3496e/i3496e.pdf>
- › Asia Indigenous Peoples Pact: Rights in Action: Free, Prior and Informed Consent (FPIC) for Indigenous Peoples (Video) <http://vimeo.com/66708050>
- › Asia Indigenous Peoples Pact and International Work Group for Indigenous Affairs: Training manual on Free, Prior and Informed Consent (FPIC) in REDD+ for indigenous peoples http://www.iwgia.org/publications/search-pubs?publication_id=593
- › Cultural Survival and Rainforest Foundation: Turning Rights into Reality: Issues to Consider in Implementing the Right to Free, Prior and Informed Consent <http://www.culturalsurvival.org/consent>
- › Forest Stewardship Council: Guidelines for the implementation of the right to free, prior and informed consent (FPIC) <https://ic.fsc.org/download.fsc-fpic-guidelines-version-1.a-1243.pdf>
- › Forest Peoples Programme (Resources Page) <http://www.forestpeoples.org/guiding-principles/freeprior-and-informed-consent-fpic>
- › Oxfam: Guide to Free Prior and Informed Consent <http://resources.oxfam.org.au/pages/view.php?ref=528&k=>
- › RECOFTC: Putting Free, Prior, and Informed Consent into Practice in REDD+ Initiatives, <http://www.recoftc.org/site/resources/Putting-Free-Prior-and-Informed-Consent-into-Practice-in-REDDInitiatives.php>
- › UN-REDD Programme: UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC) (Working Final version) http://www.un-redd.org/Launch_of_FPIC_Guidelines/tabid/105976/Default.aspx
- › National Center for Public Engagement <http://www.publicengagement.ac.uk/do-it/techniquesapproaches/participatory-mapping>
- › A GI-ESCR Practitioner's Guide - May 2014. <http://globalinitiative-escr.org/wp-content/uploads/2014/05/GI-ESCR-Practitioners-Guide-on-Right-to-Participation.pdf>

Free Prior and Informed Consent

**An indigenous peoples' right and a
good practice for local communities**

MANUAL FOR PROJECT PRACTITIONERS

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