



UN-REDD Programme¹

Guidelines on Free, Prior and Informed Consent



¹ The [UN-REDD Programme](#) is a United Nations Collaborative initiative on Reducing Emissions from Deforestation and forest Degradation (REDD) in developing countries. The Programme was launched by Secretary-General Ban Ki-moon and Jens Stoltenberg, Prime Minister of Norway on 24 September 2008 to assist developing countries prepare and implement national REDD+ strategies, and builds on the convening power and expertise of the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP).

Please note this is a 'Working Final' version of the document, meaning that there will be periodic updates to this version based on the application of these Guidelines, increased information and experience related to the application of FPIC more generally, and continued input and feedback from practitioners, experts, partners and colleagues. In the meantime, the application and interpretation of the Guidelines in their current form is encouraged, in order to test usability and improve on a continual basis. For more information, questions or comments, please contact jennifer.laughlin@undp.org.

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1. Introduction

"Indigenous Peoples" (as defined in Annex I)² and "Forest Dependent Communities"³ are essential to the success of REDD+ given that the majority of the world's remaining forests in developing countries are located where they live, often within their ancestral and customary lands, and where in most cases they have for centuries played a historical and cultural role in the sustainable management of these forests with relative success. Inadequate mechanisms for effective participation of Indigenous Peoples and Forest Dependent Communities in land use decisions could seriously compromise the delivery of both local and global benefits and the long-term sustainability of REDD+ investments.

Recognizing the critical role of Indigenous Peoples and Forest Dependent Communities to the long-term sustainability and effectiveness of REDD+, the UN-REDD Programme has prioritized stakeholder engagement from its inception. Following a series of extensive consultations with Indigenous Peoples and Forest Dependent Communities, the UN-REDD Programme developed Guidelines on Stakeholder Engagement, which have since been harmonized with guidance from the Forest Carbon Partnership Facility (FCPF) on the same topic. These Joint FCPF UN-REDD [*Guidelines on Stakeholder Engagement for REDD+ Readiness with a Focus on the Participation of Indigenous Peoples and Other Forest Dependent Communities*](#) (hereafter called "*Joint Guidelines*") focus on principles for effective participation and consultation and concrete guidance on planning and implementing consultations.

A key component of effective stakeholder engagement and consultation is the right to free, prior, and informed consent (FPIC). This document therefore takes the *Joint Guidelines* one step further by outlining a normative, policy and operational framework for UN-REDD Programme Partner Countries to seek FPIC. This will in turn support UN-REDD Programme Partner Countries to apply UN-REDD Programme guidelines and principles, undertake effective consultations and seek consent at the community level as and when appropriate, as determined by the Partner Country in consultation with relevant rights-holders and consistent with their duties and obligations under international law.

² In some countries, it is controversial to use the term "indigenous" or to self-identify as "indigenous". Also, the terminology to describe the distinct collectives differs one country from the next. There may be local terms such as "tribal people", "first peoples", "ethnic minorities", "traditional communities", "Native Americans", and "scheduled tribes" etc. There also may be occupational and geographical labels such as "hunter-gatherers", "pastoralists", "nomadic or semi-nomadic", "hill people", etc.. For all practical purposes, and specifically for purposes of the application of these Guidelines, the term "Indigenous Peoples" will be used to encompass all of these collectives. The issue is not what a people is called nor whether the state in question has recognized them as an Indigenous People, but whether the collective satisfies the most commonly accepted definitions of Indigenous Peoples elaborated in Annex I.

³ For purposes of these Guidelines, *Forest Dependent Communities* shall refer to such communities that would not satisfy the commonly accepted definitions of Indigenous Peoples found at Annex I, irrespective of whether they themselves choose to identify themselves as such.

This document is based on recommendations received during three regional consultations on FPIC and grievance mechanisms⁴, held in Viet Nam (June 2010), Panama (October 2010), and Tanzania (January 2011); and also responds to feedback received from the UN Special Rapporteur on the Rights of Indigenous Peoples⁵ (February 2011). The Guidelines have been revised most recently based on recommendations arising from comments on the UN-REDD Guidelines on FPIC during the public consultation period (1 December 2011 – 20 January 2012), the Expert Workshop on the UN-REDD FPIC Guidelines in Geneva (10-11 February 2012)⁶, and the lessons learned from FPIC pilot experiences undertaken by the UN-REDD Programme Viet Nam and the UN-REDD Programme Indonesia, as presented at the *Second UN-REDD Programme Regional Workshop on FPIC Shared Learning* in Bogor, Indonesia (19 – 20 April 2012).⁷

The Guidelines also draw on the historical experience of select cases relevant to the integration of FPIC into national strategies and activities, including the following lessons learned:

- National level policies and procedures detailing requirements for engagement of Indigenous Peoples and Forest Dependent Communities as a precondition of project approval can assist proponents in engaging with these groups.
- If designed in a culturally appropriate manner that is compatible with Indigenous Peoples', and as applicable, Forest Dependent Communities' own governing structures, national or subnational processes can help support customary and traditional rights to lands, territories, and resources when faced with competing use interests.
- An unwillingness to recognize and respect Indigenous Peoples' and Forest Dependent Communities' rights to lands and resources and effective participation in the decisions that affect them can make FPIC processes more difficult and limit prospects for achieving successful conservation or sustainable management outcomes.
- Consent is an ongoing process and is more achievable when the planning process is responsive to community needs. All parties should approach FPIC as an iterative process rather than a one-time decision.
- Negotiations may be more successful when they incorporate the Indigenous Peoples' and Forest Dependent Communities' perspective of what constitutes equitable benefit-sharing.
- The failure to obtain consent from Indigenous Peoples and Forest Dependent Communities for a given protected area proposal does not necessarily preclude their continued commitment to conservation objectives. Additionally, continued engagement can lead to alternative solutions for which they would provide consent.⁸

⁴ For more information, see: [Asia- Pacific workshop report](#); [Latin America and the Caribbean workshop report](#); [Africa workshop report](#)

⁵ [Special Rapporteur on the Rights of Indigenous Peoples, Professor James Anaya](#)

⁶ Click [here](#) for all documents related to this Workshop, including the Final Report.

⁷ See report: [FPIC for REDD+ in the Asia Pacific Region: Lessons Learned, Challenges and Recommendations](#), UN-REDD Programme, 2012; and Annex V.

⁸ [FPIC and UN-REDD: Legal and Practical Considerations](#), Center for International Environmental Law (CIEL), 2010, prepared for the UN-REDD Programme. Note that the referenced to "continued engagement" is meant to connote an engagement in good

While international law has now recognized that free prior informed consent is a human right that must be respected and protected by States (circumstances discussed below), these Guidelines further recognize that there is as of yet, no single internationally agreed definition of FPIC nor a one-size fits all mechanism for its implementation. These Guidelines are possible, however, because there is a sufficient and growing consensus around what FPIC is comprised of, and regarding the bare minimum measures that a State must take to guarantee its respect, protection and enjoyment. That said, the Guidelines make room for variances across regions, countries, peoples, communities and circumstances, while remaining vigilant to ensure that in tailoring the application of the Guidelines to specific contexts, the very nature and purpose of the right itself is not undermined.

1.1 Objective

The aim of this document is to outline a normative, policy and operational framework for UN-REDD Programme Partner Countries to seek FPIC, as and when appropriate, as determined by the Partner Country in consultation with relevant rights-holders.

1.2 Scope of Users

The primary users of these Guidelines will be UN-REDD Programme Partner Countries (who as States are the ultimate duty bearers in this context under international law), including those with National Programmes⁹ as well as those receiving targeted support.¹⁰ The Guidelines apply to national level activities supported by the UN-REDD Programme. They also apply to activities supported by any of the three UN partner agencies to the UN-REDD Programme (FAO, UNDP, UNEP) in their role as a Delivery Partner under FCPF.

1.3 Scope of Application

International law, including various international and regional human rights treaties, as well as international jurisprudence and State practice, have now repeatedly affirmed the human right of Indigenous Peoples to Free, Prior and Informed Consent (FPIC) on matters that affect their rights and interests and the corresponding duties and obligations of States to respect, protect, and guarantee the

faith, not a relentless engagement designed to pressure a given people or community to change their mind about a consent previously withheld.

⁹ Partner countries are responsible for implementing National Programmes with technical and financial backstopping from the three founding UN partner agencies (FAO, UNDP, UNEP).

refer to partner country governments and UN-REDD Programme staff supporting the implementation of the programme in the country.

¹⁰ Targeted support is demand-driven specific support under one or more of the UN-REDD Programme's six work areas. All UN-REDD Programme partner countries are eligible to receive targeted support, depending upon availability of funds and capacity of the three agencies. In practical terms, targeted support means specific technical advice and other capacity strengthening support that a country may request on a critical REDD+ readiness aspect it has identified, which is not covered through other multilateral or bilateral initiatives and where the UN-REDD Programme has comparative advantage to provide such support. It can be provided in the form of backstopping of National Programmes, or other specific technical support under the Global Programme on a critical aspect of REDD+ readiness in a country, which is not available through National Programmes or through other initiatives.

enjoyment of that right. (See 1.4 and the Legal Companion to the UN-REDD FPIC Guidelines (hereafter called the *Legal Companion* [\[hyperlink\]](#)) for an extensive, but not exhaustive list of international affirmations and precedents).

The unambiguous recognition of this right in international law is the product of, among other things: decades of extensive advocacy by Indigenous Peoples and their supporters; numerous legislative and judicial interventions worldwide; increased understandings regarding their historic and contemporary circumstances, systematic discrimination, cultures, and needs; as well as a growing collaborative relationship between Indigenous Peoples and States in the protection and promotion of human rights and the pursuit of sustainable rights-based economic development and conservation.

In line with this, the **Guidelines require States to recognize and apply the right of FPIC to Indigenous Peoples.**

The Guidelines acknowledge the right of Forest Dependent Communities to effectively participate in the governance of their nations. To ensure this, at a minimum the **Guidelines require States to consult Forest Dependent Communities in good faith regarding matters that affect them -preferably and *with a view to agreement*.**

Appreciating that international law, jurisprudence and State practice is still in its infancy with respect to *expressly* recognizing and requiring an affirmative obligation to implement the right of FPIC for all Forest Dependent Communities, **the Guidelines do not require FPIC to all Forest Dependent Communities.**

That said, the Guidelines soberly recognize that in many circumstances, REDD+ activities may impact Forest Dependent Communities, often similarly as Indigenous Peoples, and that the circumstances of certain Forest Dependent Communities may rise to a threshold such that it should be seen as a requirement of States to apply the right of FPIC when an activity may affect the communities' rights and interests.

As such, these **Guidelines require States to evaluate the circumstances and nature of the community in question, on a case by case basis, to determine when the right to FPIC may be required.**

The **Guidelines strongly urge and encourage, Partner Countries to seek good faith consultation with Forest Dependent Communities with a view to agreement.** If the objective is to achieve successful conservation in areas concerning these communities, local buy-in, agreement, and participation are always preferred. **The UN-REDD Programme will look to see if the Partner Country has pursued not just consultation, but also FPIC -- if not as a matter of right, than at least as a matter of social responsibility, good governance, and good business.**

For the purposes of these Guidelines, the term rights-holders will refer to the community(ies) that the Partner Country is seeking consent from.

1.4 Normative Framework: Human Rights-Based Approach

The UN-REDD Programme follows a human rights-based approach to programming and policy. This approach is outlined in the [UN Common Understanding on the Human Rights-Based Approach to Development Cooperation](#) (2003).¹¹ The Common Understanding reiterates the UN commitment to further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments by ensuring that these instruments guide all development cooperation and programming. The Common Understanding underlines the essential role of development cooperation in supporting the capacity of duty-bearers (e.g. States) to meet their obligations and of rights-holders to claim their rights (e.g. Indigenous Peoples and Forest Dependent Communities).

The duty of States to consult with Indigenous Peoples and Forest Dependent Communities with a view to agreement, the legal obligation to obtain the FPIC of Indigenous Peoples, and the growing call to secure FPIC from Forest Dependent Communities as well, is a corollary of a myriad of universally accepted human rights, including the right to self-determination, right to participation, right to property, right to cultural integrity and right to equality, that are contained in numerous international human rights instruments.¹² An extensive compilation of these instruments, as well as international jurisprudence and evidence of State practice can be found in the *Legal Companion*.

What the *Legal Companion* demonstrates is that the specific mandate and obligation for States, the UN and its programmes to respect, protect, and promote the right to FPIC, particularly in the case of Indigenous Peoples, is affirmed in numerous international and regional instruments -- both *expressly* in the texts, and as arising from the State duties and obligations with respect to other rights as affirmed by the decisions of the human rights bodies authorized to interpret these instruments.

For example, the [Convention concerning Indigenous and Tribal Peoples in Independent Countries \(ILO No. 169\)](#) (1989) (hereinafter "ILO Convention 169"), expressly provides that Indigenous Peoples must be consulted "whenever consideration is being given to legislative or administrative measures which may affect them directly" and that such consultations "shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent."¹³ It further

¹¹ *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies*. UNDG, 2003. For more information on the Common Understanding, please see <http://hrbportal.org/>

¹² Including in the statements and decisions, respectively, of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Inter-American Court of Human Rights, [A/HRC/12/34](#), para. 41

¹³ Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169), entered into force Sept. 5, 1991, Art. 6(1)(a) & (2) (hereinafter "ILO Convention 169"). Note that Article 35 further provides that any State party to ILO Convention 169 that has ratified other instruments requiring consent would need to comply with those instruments and their respective Committee jurisprudence requiring the same.

provides that "[w]here the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent."¹⁴

The [Convention on Biological Diversity](#) (1992) also expressly affirms a right to FPIC. Article 8 (j) states that "[a]ccess 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."

Other international instruments, such as the [International Covenant on Civil and Political Rights \(ICCPR\)](#) (1976), the [International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#) (1966), and the [Convention on the Elimination of all Forms of Racial Discrimination \(CERD\)](#) (1965), do not expressly mention Indigenous Peoples or FPIC, but their UN monitoring bodies (human rights committees) have unambiguously and repeatedly interpreted their various provisions affirming the right to cultural, right to equal treatment before the law, and right to self-determination, etc., among others, to include the right of FPIC and the duty and obligations of States to secure FPIC in a myriad of circumstances. As reflected in the multiple observations and decisions of these committees, provided in the *Legal Companion*, per these treaties Indigenous Peoples' possess a right, effectuated through their own freely identified representatives or institutions, to give their prior informed consent generally when their rights may be affected, as well as in connection with specific activities, including: mining and oil and gas operations; logging; the establishment of protected areas; dams; agro-industrial plantations; resettlement; compulsory takings; and other decisions affecting the status of land rights.¹⁵

Indeed, the [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#) (2007) include no less than seven (7) provisions expressly recognizing the duty of States to secure FPIC from indigenous peoples in circumstances involving ranging from population relocations, the taking of "cultural, intellectual, religious and spiritual property", any damages, takings, occupation, confiscation and uses of their 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

¹⁴ ILO Convention 169, *supra note 13*, Art. 16(2).

¹⁵ See e.g., *Angela Poma Poma v. Peru*, CCPR/C/95/D/1457/2006, 24 April 2009, para. 7.6; Concluding observations of the Human Rights Committee, *Togo*: CCPR/C/TGO/CO/4, 11 March 2011, para. 21; *Panama*, CCPR/C/PAN/CO/3, 17 April 2008, para. 21; Concluding observations of the Human Rights Committee, *Colombia*: CCPR/C/COL/CO/6, 4 August 2010, para. 25; *Colombia*, 30/11/2001. E/C.12/1/Add.74, par.12, 33; Letter to the Permanent Mission of the Philippines, UN CERD Urgent Action and Early Warning Procedure, 24 August 2007, p. 2.; General Recommendation XXIII on Indigenous Peoples, adopted by the Committee on the Elimination of Racial Discrimination at its 51st session, 18 August 1997, para. 4(d); *Australia*: CERD/C/AUS/CO/14, 14 April 2005, para. 11; *Guyana*: CERD/C/GUY/CO/14, 4 April 2006, para. 17 & 19; *Guatemala*: CERD/C/GTM/CO/11, 15 May 2006, para. 19; *Suriname*: Decision 1(67), CERD/C/DEC/SUR/4, 18 August 2005, para. 3; *Cambodia*: CERD/C/304/Add.54, 31 March 1998, paras 13, 19; *Botswana*: UN Doc. A/57/18, 23 August 2002, paras. 292-314; *Botswana*: CERD/C/BWA/CO/16, 4 April 2006, para. 12; *India*: CERD/C/IND/CO/19, 5 May 2007, paras. 19 & 20; *Indonesia*, CERD/C/IDN/CO/3, 15 August 2007, para. 17; *Laos*: CERD/C/LAO/CO/15, 18 April 2005, para. 18; *Australia*: CERD/C/AUS/CO/14, 14 April 2005, para. 11; *United States of America*, A/56/18, 14 August 2001, paras. 380-407; *Peru*, 15/08/2002. A/57/38 (Part III), par. 484, 485.

and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources".¹⁶

While declarations are often described as non-binding aspirational document, in the case of the UNDRIP, it cannot be discounted so easily. The instrument elaborates on the application to Indigenous Peoples of human rights already affirmed extensively in treaties ratified by the majority of States.¹⁷ As such, to the extent that the duties and obligations as expressed therein are already binding on States, they merely need to look to the declaration to assist them in understanding how such rights might be protected for Indigenous Peoples as collectives, as well as their individual members.

International courts and human rights commissions in the African and Americas region in particular have also made it clear that binding *regional* human rights treaties and conventions such as the [African Charter on Human and Peoples Rights \(Banjul Charter\)](#) (1981) as well as the [American Convention on Human Rights](#) (1969) and the [American Declaration on the Rights and Duties of Man](#) (1948), all recognize a right to FPIC.

State practice and the emerging consensus around FPIC can further be evidenced in the growing number of public statements, reports, guidelines, and policies of multiple UN and other international institutions and special rapporteurs acknowledging the right of FPIC. A number are detailed in the *Legal Companion* and they include, for instance, the [United Nations Development Group \(UNDG\) Guidelines on Indigenous Peoples Issues](#) (2008) which are based on several existing international instruments regarding Indigenous Peoples, including the UNDRIP and ILO Convention 169. The UNDG Guidelines provide a policy and operational framework for implementing a human rights based approach to development for and with Indigenous Peoples. Included as a key result of such an approach is the application of the principle of FPIC in development planning and programming.

The UN Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples, also issued a "[Final report on the study on indigenous peoples and the right to participate in decision-making](#)" opining that:

The duty of the State to obtain indigenous peoples' free, prior and informed consent entitles indigenous peoples to effectively determine the outcome of decision-making that affects them, not merely a right to be involved in such processes. Consent is a significant element of the decision-making process obtained through genuine consultation and participation. Hence, the

¹⁶ United Nations Declaration on the Rights of Indigenous Peoples adopted by General Assembly Resolution 61/295 on 13 September 2007, Arts. 10, 11(2), 19, 28(1), 29(2), 30(1), 32(2) (hereinafter "UNDRIP").

¹⁷ Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural, including the Right to Development, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James P. Anaya, A/HRC/9/9 (11 Aug. 2008), Chapter III, paras. 34 - 43 (noting that while "clearly not binding in the same way that a treaty is, the Declaration relates to already existing human rights obligations..and hence can be seen as embodying to some extent general principles of international law...insofar as they connect with a pattern of consistent international and state practice, some aspects of the provisions of the Declaration can also be considered as a reflection of norms of customary international law."

duty to obtain the free, prior and informed consent of indigenous peoples is not only a procedural process but a substantive mechanism to ensure the respect of indigenous peoples' rights.¹⁸

Further, in the context of REDD+, although the term 'FPIC' is not expressly referred to in the [Cancun Agreements or in its Appendix containing the safeguards](#), the right to FPIC is addressed indirectly

because the text "note[s]" that the General Assembly has adopted UNDRIP (which itself set out the right to FPIC). The application of FPIC is a means to meet the Cancun Agreements requirement of countries to promote and support "respect for the knowledge and rights of indigenous peoples and members of local communities" and to ensure "the full and effective participation of relevant stakeholders, *inter alia*, indigenous peoples and local communities"¹⁹.

In addition to the strong normative case for FPIC, it also makes 'good business sense' to ensure the right to FPIC, as appropriate (see box below).

Conclusions reached in WRI Report (2007) on why FPIC makes good business sense

- When businesses get it right, achieving consent can benefit both the community and the project.
- The 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
- Community opposition can arise from impacts that are generated at any stage in the project cycle. As a result, FPIC must be ongoing.
- 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.
- The risks of failing to achieve community consent are not borne exclusively by the project sponsor, which itself may suffer reputational harm. Other stakeholder, such as shareholders, financiers, and host governments can also have their interests adversely affected by conflicts that may result from the failure to achieve community support of a project.
- Mere engagement or consultation may not be sufficient to fully address these risks. Consultations that do not resolve a community's reasons for opposition or achieve consent will provide little assurance against potentially costly and disruptive conflict.

Source: Sohn, J., (ed.) (2007), *Development Without Conflict: The Business Case for Community Consent*, World Resources Institute, p. 3.

¹⁸ Extract from UN Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples, *Final report on the study on indigenous peoples and the right to participate in decision-making*. Expert Mechanism advice No. 2 (2011): Indigenous peoples and the right to participate in decision making. UN Doc. A/HRC/18/42, 17 August 2011, at para. 21.

¹⁹ Cancun Agreements, paras. 69 and 72; and Appendix I, paras. 2(a), (c) and (d).

2. Defining Free, Prior and Informed Consent

The following further describes the meaning of Free, Prior and Informed Consent as applied to Indigenous Peoples, and the bare minimum required of States to see this right respect, promoted and protected. In circumstances where the conditions described above exist with respect to Forest Dependent Communities and warrant more than just consultation but actual consent, the process and definitions provided below should apply to such circumstances.

FPIC is the collective right of Indigenous Peoples to participate in decision making and to give or withhold their consent to activities affecting their lands, territories and resources or rights in general. Consent must be freely given, obtained prior to implementation of activities and be founded upon an understanding of the full range of issues implicated by the activity or decision in question; hence the formulation: free, prior and informed consent.²⁰ Consent processes must be conducted in accordance with the traditions, customs and values of the people concerned.²¹

This right of FPIC applies to REDD+ discussions regarding potential changes in resource uses that could impact the livelihoods of Indigenous and other Forest Dependent Communities. Under these circumstances, consistent with international human rights instruments and other treaty obligations, potentially impacted peoples have the right to participate in and consent to or withhold consent from a proposed action. International law provides that Indigenous Peoples should have the right to withhold consent at key decision-making points occurring both prior to and during a proposed activity.²² FPIC applies to proposed actions (decisions, activities, projects, etc.) that have the potential to impact the lands, territories, and resources upon which Indigenous Peoples depend for their cultural, spiritual and physical sustenance, well-being, and survival.²³

The duty of States to consult with Indigenous Peoples in decisions affecting them is aimed at protecting their universally recognized human rights and most often in the case of the rights to their lands,

²⁰ Colchester, M. and MacKay, F. (2004). *In Search of Middle Ground: Indigenous Peoples, Collective Representation and the Right to Free, Prior and Informed Consent*, Forest Peoples Programme, pp. 8-14.

²¹ See eg, *Endorois Case*, *supra* note 21, at paras. 226 and 291, available at <http://www.minorityrights.org/9587/press-releases/landmark-decision-rules-kenyas-removal-of-indigenous-people-from-ancestral-land-illegal.html> (hereinafter "*Endoris Case*") (interpreting state obligations under the Banjul Charter and providing that in the case of "any development or investment projects that would have a major impact within the Endorois territory, the State has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions." ILO Convention 169, *supra* note 13, para. 6(1)(a) ("Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions"); *Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of 12 August 2008. Series C No. 185, para. 37 (interpreting the American Convention on Human Rights and providing that "when large-scale development or investment projects could affect the integrity of the Saramaka people's lands and natural resources, the State has a duty not only to consult with the Saramakas, but also to obtain their free, prior, and informed consent in accordance with their customs and traditions.") (hereinafter "*Saramaka Interpretation Judgement*")

²² Perrault, A., Herbertson, K. and Lynch, O. (2007). *Partnerships for Success in Protected Areas: The Public Interest and Local Community Rights to Prior Informed Consent (PIC)*, Georgetown International Environmental Law Review XIX:3, p. 477.

²³ Center for International Environmental Law (CIEL), (2010) [FPIC and UN-REDD: Legal and Practical Considerations](#), for the UN-REDD Programme.

territories and resources, at preserving their very physical and cultural survival.²⁴ FPIC can have the effect of reversing the historical pattern of exclusion from decision-making in order to avoid the future imposition of important decisions on Indigenous Peoples, allowing them to continue to live as distinct communities on lands to which their cultures remain attached.²⁵

As the *Legal Companion* demonstrates FPIC has been affirmed and elaborated upon in multiple binding regional and international instruments as well as the interpretative decisions of their monitoring bodies. Indigenous Peoples have a right to be consulted on matters that may affect them, and these consultations should be conducted with a view to agreement.²⁶

2.1 Defining the Elements of FPIC

The below definitions build on the elements of a common understanding of free, prior and informed consent endorsed by the UNPFII at its Fourth Session in 2005²⁷.

Free

Free refers to a consent given voluntarily absent "coercion, intimidation or manipulation".²⁸ Free 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:

- Stakeholders determine process, timeline and decision-making structure;
- Information is transparently and objectively offered at stakeholders' request;
- 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 stakeholders; and
- All community members are free to participate regardless of gender, age or standing.

Prior

Prior means a consent sought sufficiently in advance of any authorization or commencement of activities".²⁹ Prior refers to a period of time in advance of an activity or process when consent should be sought, as well as the period between when consent is sought and when consent is given or

²⁴ See *Saramaka People v. Suriname*, Merits, Reparations and Costs. Judgment of 28 November 2007. Series C No. 172, at paras. 91, 121, 129 (hereinafter "*Saramaka Merits Judgment*"); See also, *Saramaka Interpretation Judgment*, *supra* note 21 at para. 37.

²⁵ [A/HRC/12/34](#), para. 41.

²⁶ ILO Convention 169, *supra* note 13, at para. 6(1)(a) & (2); *Saramaka Merits Judgment*, *supra* note 24, at paras. 129, 130, & 133.

²⁷ Report of the *International Workshop on Methodologies Regarding Free Prior and Informed Consent* E/C.19/2005/3, endorsed by the UNPFII at its Fourth Session in 2005.

²⁸ *Ibid.* at 46(i).

²⁹ *Ibid.* at 46(i).

withheld. Prior means at the “the early stages of a development or investment plan, not only when the need arises to obtain approval from the community”.³⁰

- 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 Indigenous Peoples and other Forest Dependent Communities;
- 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 Indigenous Peoples 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

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, constant, and transparent;
- Be delivered in appropriate language and culturally appropriate format (including radio, video, graphics, documentaries, photos, oral presentations);
- Be objective, covering both the positive and negative potential of REDD+ activities and consequences of giving or withholding consent;
- Be complete, covering the spectrum of potential social, financial, political, cultural, environmental impacts, including scientific information with access to original sources in appropriate language;
- Be delivered in a manner that strengthens and does not erode indigenous or local cultures;
- Be delivered by culturally appropriate personnel, in culturally appropriate locations, and include capacity building of indigenous or local trainers;
- Be delivered with sufficient time to be understood and verified;
- Reach the most remote, rural communities, women and the marginalized; and
- Be provided on an ongoing and continuous basis throughout the FPIC process.

Consent

Consent refers to the collective decision made by Indigenous Peoples and other Forest Dependent Communities, if applicable, and reached through the customary decision-making process of the affected peoples or communities. The collective right to give or withhold consent applies to all projects, activities, legislative and administrative measures and policies (and their associated processes and

³⁰ *Saramaka Merits Judgment*, *supra* note 24, at para. 133.

phases) that may affect the rights of Indigenous Peoples including direct impact on the lands, territories, resources, and livelihoods of Indigenous Peoples and where applicable, other Forest Dependent Communities. Consent must be sought and granted or withheld according to the unique formal or informal political-administrative dynamic of each community.

Consent is:

- A freely given decision that may be a “Yes” or a “No,” including the option to reconsider if the proposed activities change or if new information relevant to the proposed activities emerges;
- A collective decision determined by the affected peoples (e.g. consensus, majority, etc.) 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 REDD+. It is not a one off process.

While the objective of consultation processes shall be to reach an agreement (consent) between the relevant parties, this does not mean that all FPIC processes will lead to the consent and approval by the Indigenous Peoples or Forest Dependent Community in question. At the core of the right of the Indigenous Peoples to choose to engage, negotiate and decide to grant or withhold their FPIC, is the acknowledgement that under certain circumstances, the project proponents must accept that the Project will not proceed and/or that they will be required to cease engagement if the affected peoples decide that they do not want to commence or continue with negotiations or if they decide to withhold their consent to the Project. In the later case, the project proponent has no right to continue to pursue the peoples in question until they say 'yes'.

3. UN-REDD Programme Policy on Applying Free, Prior and Informed Consent

3.1 What is Required of UN-REDD Programme Partner Countries?

As outlined in the draft UN-REDD National Programme Guidelines,³¹ the FCPF and UN-REDD Readiness Preparation Proposal (R-PP) Template,³² and the *Joint Guidelines*, Partner Countries are required to develop consultation and participation plans for engagement of stakeholders. This is consistent with the increasing adoption at the domestic level of such plans, policies and laws that have been called for pursuant to international treaties and conventions.³³

³¹ The National Programme Guidelines are designed to provide guidance to National Authorities, UN Agencies and Project Teams concerning activities to be undertaken, procedures, roles and responsibilities, and decisions made, during the National Programme cycle. As such, it will serve as operational guidance for formulating and implementing UN-REDD National Programmes from design to implementation to closing.

³² The R-PP template is available in English, French and Spanish at www.forestcarbonpartnership.org. See Sections 1b and 1c of the R-PP Template on “Information Sharing and Early Dialogue with Key Stakeholder Groups” and “Consultation and Participation Process”, respectively.

³³ See Philippines, E/C.12/PHL/CO/4, 1 December 2008, para. 6 (interpreting the Covenant on Economic, Social and Cultural Rights and providing that the “The Committee also notes with satisfaction the various legislative, administrative and policy measures adopted by the State party to recognize, protect and promote the individual and collective rights of the indigenous peoples living in the territory of the State party, including... (b) The Free and Prior Informed Consent Guidelines...”)

National Programmes should ensure that FPIC is incorporated into these consultation plans during the NPD Scoping/Finalization and/or R-PP Formulation phase, and carried out in the NPD implementation/Readiness Preparation phase. See the table below for indicative steps for ensuring provisions for the application of FPIC are considered and incorporated into the national REDD+ process.

In accordance with the guidance provided in the *Joint Guidelines*, prior to the development of a REDD+ programme/activity, Indigenous Peoples living in voluntary isolation who may be affected should be identified in consultation with the relevant entities at the national, sub-national and/or local level to ensure that the programme/activity is developed in a way that avoids contact with these communities, including any attempts to contact them for purposes of consultation or obtaining their consent. Indigenous Peoples living in voluntary isolation are considered to have exercised this right and as a result of their condition decided to withhold their consent and choose not to enter into consultations. This decision should be respected and all contact avoided.³⁴

Indicative steps for ensuring provisions for the application of FPIC are considered and incorporated into the national REDD+ process

Stage	Activity
NPD Scoping + Finalization / R-PP Formulation	The NPD/R-PP should outline the following the National Programme's proposal to undertake the following in the Readiness Phase: ○ A process for consulting on key issues related to the national application of FPIC; ○ A process to determine who gives consent (e.g. through a rights-holder mapping); ○ A process to determine the possible activities requiring FPIC (e.g. through relevant impact assessments); ○ A process to determine when (timing) the FPIC will be sought; ○ A process to determine operational steps for applying FPIC (e.g. develop a national methodology/guidelines for applying FPIC) Note: In cases where the NPD or R-PPs have already been approved, Partner Countries should incorporate a proposal for these activities retroactively into their NPD/R-PP, as part of their stakeholder engagement plans and/or SESA, for review by the National Programme Steering Committee (or equivalent).
NPD Implementation / Readiness Preparation	● Undertake activities as outlined in NPD/R-PP (as outlined above) ● Develop National FPIC Guidelines / Methodology, including the following elements, based on a consultation process (as outlined above):

Ecuador: CERD/C/ECU/CO/19, 15 August 2008, para. 16, (interpreting the Convention on the Elimination of all Forms of Racial Discrimination and welcoming the adoption of the Consultation and Participation Act...that require[s] prior and informed consent...[and] urg[ing] the State party to enforce" the Act.

³⁴ See [Draft Guidelines on the Protection of Indigenous Peoples in Voluntary Isolation and in Initial Contact of the Amazon Basin and El Chaco](#), for more guidance and information.

	○ International and national legal basis for FPIC in the country ○ Principles for undertaking FPIC processes ○ Mapping of rights-holders ○ Which activities will require FPIC ○ How FPIC will be applied at the community level (discreet activities with impacts to specific communities) ○ How FPIC will be applied at the national level (concerning policy, legal or administrative measures with impacts on several non-specific communities) ● Incorporate National FPIC Guidelines / Methodology into National REDD+ Strategy ● National REDD+ Strategy must recognize the rights of Indigenous Peoples and where applicable, Forest Dependent Communities (as identified in the rights-holder mapping) to among others, FPIC. ● In the development of National REDD+ Strategies, where specific policies and determinations are being formulated in the development of the National Strategy and may affect Indigenous Peoples rights, especially their rights to own, use and control their lands, resources and territories, to ensure their traditional livelihoods or survival, or to be free from forced relocations, FPIC through representative institutions is required (prior to finalizing the National REDD+ Strategy).
Implementation of National REDD+ Strategy	● Application of National FPIC Guidelines

Indicative Steps for Developing National FPIC Guidelines

1. *Identify the relevant principles for the guidelines*
 - The country's international law obligations
 - Any obligations under national law
 - UN-REDD Programme FPIC Guidelines
2. *Identify any existing processes for consultation and consent concerning relevant stakeholders' land and land use planning or natural resource development, and analyze the strengths and weaknesses of these processes*
 - For example, are they being properly followed? Where is the existing system breaking down?
 - Are these systems effective in protecting the rights of indigenous peoples and other rights-holders?)
3. *Develop first draft of FPIC guidelines*
 - Ensure that there is a process of public consultation and validation by stakeholders on the guidelines.
 - Include any actors which are likely to be involved in implementing the guidelines, such as local or national forestry authorities.
4. *Field test draft FPIC guidelines at a pilot site*
 - This should preferably be done where there is a concrete proposal which requires consent from the local
5. *Independently evaluate the field test*
6. *Amend the draft FPIC guidelines, as necessary*
 - Undertake a validation process with all stakeholders
7. *Consider how the FPIC guidelines could be formalized*
 - For example, by adopting the right to FPIC in legislation, and consider how the guidelines could be integrated into a broader regulatory scheme for REDD+.

3.2 When is FPIC Required?

It is for Partner Countries and relevant rights-holders to determine which activities require FPIC consistent with the State's duties and obligations under international law. The specific characteristics of the consultation procedure that is required will necessarily vary depending upon the nature of the proposed measure and the degree to which it may impact underlying rights.³⁵

The UNDRIP recognizes several situations in which the State is under an obligation to seek the consent of the Indigenous Peoples concerned. Particularly relevant to UN-REDD Programme, States must consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to:

- i. relocating an indigenous population from their lands,*
- ii. taking "cultural, intellectual, religious and spiritual property",*
- iii. causing "damages, takings, occupation, confiscation and uses of their lands, territories and resources";*
- iv. "adopting and implementing legislative or administrative measures"; and*
- v. approving "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".³⁶*

As mentioned above, the relevant UN monitoring bodies have interpreted a number of binding conventions and treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) as affirming that States must secure FPIC fromr Indigenous Peoples through their own freely identified representatives or institutions, more generally with respect to ***any decisions "directly relating to their rights and interests"*** and in connection to: ***mining and oil and gas operations (extraction of subsurface resources); logging; the establishment of protected areas; construction of dams; development of agro-industrial plantations; resettlement; compulsory takings; and any other decisions affecting the status of their land rights.***³⁷

The Convention on Biological Diversity provides that FPIC is required ***before "access[ing] traditional knowledge, innovations and practices of indigenous and local communities,***³⁸

³⁵ [A/HRC/12/34](#), para. 47

³⁶ UNDRIP, *supra* note 16, at Arts. 10, 11(2), 19, 28(1), 32(2).

³⁷ See *supra* note 15 and the *Legal Companion*.

³⁸ Convention on Biological Diversity, art. 8(j).

The African Court of Human Rights, interpreting State obligations under the Banjul Charter has found that States are required to secure FPIC in the event of **"any development or investment projects that would have a major impact" within the territory of indigenous peoples.**³⁹

In the same vein, the Inter-American Court of Human Rights has held that consent was required in the cases of **"development, investment, exploration or extraction plan[s]" (defined as "development and investment plans[s]"** and specifically **"large-scale development or investment projects that have a significant impact on the right of use and enjoyment of [tribal] ancestral territories,"**⁴⁰ The Court also described it in terms of **"major development or investment plans that may have a profound impact on the property rights,"**⁴¹

The Inter-American Commission on Human Rights has also affirmed the need for FPIC in cases involving **relocation of Indigenous Peoples.**⁴² Similarly, in *Awes Tingni Community v. Nicaragua*, the Inter-American Court found in favor of the community where the Nicaraguan government had granted a **natural resource concession on community lands** without consent⁴³ and violated the community's property rights over their communal lands (which were not officially titled or otherwise recognized by the State).⁴⁴

The International Finance Corporation has found it useful to specifically enumerate the activities that require FPIC in the latest draft of its Policy and Performance Standards related to Indigenous Peoples. The new standards state that not only must consultation be undertaken, but also the FPIC of Indigenous Peoples must be obtained, **if the proposed activities — (i) are to be located on or make commercial use of natural resources on lands subject to traditional ownership and/or under customary use by Indigenous Peoples; (ii) require relocation of Indigenous Peoples from traditional or customary lands; or (iii) involve commercial use of Indigenous Peoples' cultural resources.**⁴⁵

In light of the above, a first step for Partner Countries in determining whether consent should be sought is to carefully consider, in collaboration with the affected peoples or communities, whether the proposed activity/policy will significantly impact on the lands, territories and/or resources of Indigenous Peoples and/or other relevant rights-holders. If it will, FPIC will likely be required. In doing so, consistent with international law and jurisprudence such as those cited above, the Partner Countries might consider that what constitutes a significant impact could be that which merely "affects indigenous peoples rights and interests" as opined repeatedly by the Human Rights Committee as well

³⁹*Endorois Case*, *supra* note 21, at para. 226 and 291, available at <http://www.minorityrights.org/9587/press-releases/landmark-decision-rules-kenyas-removal-of-indigenous-people-from-ancestral-land-illegal.html> (interpreting state obligations under the Banjul Charter):

⁴⁰ *Saramaka Merits Judgment*, *supra* note 24, para. 129 & 137.

⁴¹ *Saramaka Merits Judgment*, *supra* note 24si, para. 137.

⁴² *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin*, OEA/Ser.L/V/II.62, doc.26. (1984), 120.

⁴³ As detailed in the Inter-American Commission on Human Rights findings in Report No. 27/98 (March 1998); *see also Mayagna (Sumo) Awes Tingni Community v. Nicaragua*, Judgment of August 31, 2001, Inter-Am. Ct. H.R., (Ser. C) No. 79 (2001) (hereinafter "*Awes Tingni*"), para 25 (quoting para.142 of the IACHR report).

⁴⁴ *See Awes Tingni*, *supra* note 43, at paras. 2, 25.

⁴⁵ [IFC Performance Standard 7 – V2 Indigenous Peoples](#), para 16. Note that these standards go into effect on January 1, 2012.

as the CERD Committee (see *Legal Companion*). It should be considered as well what was affirmed by the Inter-American Court of Human Rights:

there are acceptable levels of “impact” a proposed development plan may have on Indigenous Peoples]..., as long as that impact does not amount to a denial of their survival... [W]hen the Court uses the term ‘survival’ it does not refer only to the obligation of the State to ensure the right to life of the victims, but rather to take all the appropriate measures to ensure the continuance of the relationship of the Saramaka People with their land or their culture”.⁴⁶

In terms of determining what lands, territories, and resources might be subject to the consent standard, it is important to recognize that communal property rights based on traditional use, culture, and customary laws must be respected whether or not they are explicitly recognized by the national government.⁴⁷ Furthermore, in the case of the Saramaka peoples, the Court was very clear that “[u]ntil **the demarcation and titling of indigenous peoples’ lands are completed**, the State must refrain from acting or authorising others to affect the existence, value, use or enjoyment of such territory ... “unless the State obtains the free, prior and informed consent of the [indigenous]...people.”⁴⁸

In order to support Partner Countries to determine which activities may require FPIC, the UN-REDD Programme is looking into introducing a means to assess and manage human rights risks and impacts associated with UN-REDD Programme activities, such as a human rights impact assessment (HRIA). An HRIA could support Partner Countries to identify potentially affected stakeholders and their composition including who the rights-holders are and which rights they are entitled to. As a starting point, the UN-REDD Programme will review and learn from the [International Finance Corporation’s \(IFC\) Guide to Human Rights Impact Assessment and Management](#), and other relevant tools.

⁴⁶ Saramaka Interpretation Judgment, *supra* note 21, at para. 29.

⁴⁷ See, e.g. *Awes Tingni*, *supra* note 43, at paras. 140-155. (the Mayagna Community “has communal property rights to land and natural resources based on traditional patterns of use and occupation of ancestral territory. There rights ‘exist even without State actions which specify them’. Traditional land tenure is linked to a historical continuity, but not necessarily to a single place and to a single social conformation throughout the centuries.” See para. 140(a)). See *Endorois Case*, *supra* note 21, at para. 209, which concluded “(1) traditional possession of land by indigenous peoples has the equivalent effect as that of a state-granted full property title; (2) traditional possession entitles indigenous peoples to demand official recognition and registration of property title; (3) the members of indigenous peoples who have unwillingly left their traditional lands, or lost possession thereof, maintain property rights thereto, even though they lack legal title, unless those lands have been lawfully transferred to third parties in good faith; and (4) the members of indigenous peoples who have unwillingly lost possession of their lands, when those lands have been lawfully transferred to innocent third parties, are entitled to restitution thereof or to obtain other lands of equal extension and quality.”

⁴⁸ *Saramaka Merits Judgment*, *supra* note 24, at para. 194(a).

Examples of Activities that Require FPIC

- Proposed activity/policy that would include the removal of Indigenous Peoples or other Forest Dependent Communities (as appropriate) from traditional or customary lands/territories;
- Proposed activity/policy that would include the removal Indigenous Peoples or other Forest Dependent Communities cultural, intellectual, religious, and spiritual property;
- Proposed activity/policy that would include takings, confiscation, occupation, use or damage of the lands, territories and/or resources of Indigenous Peoples or other Forest Dependent Communities;
- Decisions regarding the conduct of activities that shall be implemented on the lands/territories of Indigenous Peoples or other Forest Dependent Communities including the extraction of subsurface resources (such as mining and oil and gas operations); logging; the establishment of protected areas; construction of dams; development of agro-industrial plantations; resettlement; compulsory takings; and any other decisions affecting the status of their land rights.
- Decisions regarding benefit-sharing arrangements, when benefits are derived from the lands/territories/resources of Indigenous Peoples or other Forest Dependent Communities;
- Decisions related to the adoption of "implementing legislative or administrative measures," that may affect the lands/territories/resources of Indigenous Peoples or other Forest Dependent Communities.
- Decisions regarding land tenure on the lands/territories of Indigenous Peoples or other Forest Dependent Communities;
- Decisions on creating national parks and protected areas, as well as regarding forest and land-use zoning of forest reserves and/or sustainable forest management zones on the lands/territories of Indigenous Peoples or other Forest Dependent Communities;

3.3 What level is FPIC applied?

Given that an FPIC process often concerns a specific proposed activity with potential impacts to a specific community, and that consent is given or withheld collectively by the community, FPIC is most often applied at the community level.

As mentioned in the table above, however, components of a national REDD+ strategy may have implications on the rights of Indigenous Peoples or Other Forest Dependent Communities (e.g., proposed legislation related to changes in land tenure or agreements on benefit sharing etc.) and therefore at least those components require some form of consent.

Therefore, in the development of national REDD+ strategies, Partner Countries must guarantee effective, good faith consultations with indigenous peoples with a view to reaching agreement in the validation phase. However, where specific policies and determinations are being formulated in the development of the national strategy and may affect indigenous peoples rights, especially their rights to own, use and control their lands, resources and territories, to ensure their traditional livelihoods or survival, or to be free from forced relocations, FPIC of Indigenous Peoples other Forest Dependent Communities through representative institutions shall be required under these Guidelines.

Where specific policies and determinations are being formulated in the development of the national strategy and may have more direct impact on specific indigenous communities, representation of these communities should be ensured.

Consent at the national level (e.g. for a national REDD+ strategy) does not remove the right to give or withhold consent at the community level for a specific proposed activity (after the approval of a national REDD+ strategy).

3.4 Who Seeks Consent?

The National Implementing Partner⁴⁹, as designated in the NPD⁵⁰ is responsible for seeking consent. The National Implementing Partner should designate more specifically who (e.g. ministry, department, institution, local authority) is responsible for seeking consent for each activity identified as requiring consent in the Consultation Plan. The duty and responsibility to secure FPIC ultimately belongs to the State. This obligation cannot be delegated to a third party/private party.

3.5 Who Gives Consent?

Partner Countries are required to seek FPIC from Indigenous Peoples and where the circumstances warrant, other Forest Dependent Communities, which will be affected by the decision/policy/activity in question. In determining who is an Indigenous Peoples for purpose of identifying from who the consent must be secured, the Partner Country should refer to the definitions of Indigenous Peoples in Annex I. As evident by Annex I, the Partner Country's own recognition or identification of the community as "Indigenous Peoples" shall not be the dispositive factor. As such, the determination shall not be

⁴⁹ As stated in Financial Regulation 27.02 of the UNDP Financial Regulations and Rules, an implementing partner is "the entity to which the Administrator has entrusted the implementation of UNDP assistance specified in a signed document along with the assumption of full responsibility and accountability for the effective use of UNDP resources and the delivery of outputs, as set forth in such document." By signing a project document an implementing partner enters into an agreement with UNDP to manage the project and achieve the results defined in the relevant documents. Categories of possible implementing partners include: government entities (eligible government entities include: a ministry of the government; a department within a ministry; a governmental institution of a semi-autonomous nature, such as, the central bank, a university, a regional or local authority or a municipality); United Nations agencies; civil society organizations; approved inter-governmental organizations that are not part of the UN system.

⁵⁰ Or, where relevant, the FCPF and UN-REDD Readiness Preparation Proposal (R-PP) Template.

dependent on whether the national government has recognized the subject community as Indigenous Peoples.⁵¹

Partner Countries should engage Indigenous Peoples and other Forest Dependent Communities through their own representative institutions and those representatives chosen by the people themselves in accordance with their own procedures.⁵² While respecting the norms, values and customs of the peoples and communities in question and the consultation and decision-making methods they utilize, it is strongly encouraged that all customary and formal rights-holders be represented in the decision-making process, especially women⁵³.

It is recommended that the Partner Country secure from the Indigenous Peoples or if applicable, Forest Dependent Communities, the identification of the specific individuals or entities with the authority to negotiate as well as those individuals or entities with the authority to make decisions on behalf of the people or community. Bear in mind that those with the authority to negotiate may not always be the same individuals or entities with the power to decide.

3.6 Outcome of the FPIC Process

The FPIC process and outcome should be well-documented in writing and made publicly available. The written document should clarify if consent was provided or withheld and it should affirm that the decisions therein are binding and enforceable.

Note, it is important to document the *whole* FPIC process, including ideas, questions and concerns raised, so that it is possible to review the whole process in the event that things go wrong and a grievance or dispute arises. But, documenting sensitive issues can be difficult. The community should be asked what is sensitive and what is not, and what it is permissible to document.

It is also important to revert back to the local community to inform them of the outcome of the FPIC consultation. Not all people in the community might have participated in the consultation, yet all community members should be informed of the outcome, regardless of whether or not they participated in the decision.

The territories and resources of Indigenous Peoples or the Forest Dependent Communities in question which are not subject to the consent should not be included in the proposed REDD+ policy/activity.

⁵¹ See Annex I for more information regarding the identification of Indigenous Peoples.

⁵² Cameroon, CERD/ C/CMR/CO/15-18, 30 March 2010 (interpreting State obligations under the Convention on the Elimination of all Forms of Racial Discrimination, and affirming that States must "[c]onsult the indigenous people concerned and cooperate with them through their own representative institutions, in order to obtain their free and informed consent, before approving any project that affects their lands, territories or other resources, in particular with regard to the development, use or exploitation of mineral, water or other resource "; *Saramaka Interpretation Judgment*, *supra* note 21 at paras. 18-22; also UNDRIP, *supra* note 16, art. 19.

⁵³ See Annex VI for more information on Effective and Equitable Gendered Participation and Representation in Decision Making.

Communities may choose to grant their consent on the basis of certain conditions (e.g. benefits continue to be derived from the project, restrictions on access to certain areas, limitations on contact with certain sectors of society or members living in voluntary isolation, etc). If these conditions are not met, the community may review and either reaffirm or refuse consent. This option may be invoked at any stage of programme implementation. Consent is an iterative process.

Given the significant time and resources that may have been invested during the process, the Indigenous Peoples or the Forest Dependent Community, should not be able to withdraw consent arbitrarily; thus, if the conditions upon which the original consent was based are being met, ongoing consent is implied. If there is disagreement over whether conditions are being met or not, communities can express their grievance with the relevant national-level grievance mechanism.

4. Operational Framework for Seeking Free, Prior, and Informed Consent

Below is an outline of steps that should be undertaken by the Partner Countries when seeking FPIC in a community or territory.⁵⁴

a. Partner Countries, in collaboration with relevant rights-holders, and taking into account the duties and obligations under international law, will undertake an FPIC Scoping Review, including the following components:

- A description of the proposed policy or activity;
- A description of the rights-holders, their governance structures and how they wish to be engaged, including the institutions and individuals that are empowered to represent them;
- A description of the legal status of the land, territory and resources concerned, including a description of the geographical area under formal, informal and/or customary use by the rights-holders, including maps and methodology used to establish the maps;
- An assessment of the social, environmental, and cultural impacts of the proposed policy/activity on the rights-holders, including the specific impacts that have required the Partner Country to seek FPIC and how these impacts will be mitigated; and
- Resources allocated for seeking FPIC.

Special attention should be made by Partner Countries to support community efforts to describe many of these items in their own terms, including traditional uses of natural resources and community-based property rights.⁵⁵

⁵⁴ See Annex V for Indicative Steps for a REDD+ Process to Respect the Right of Communities to FPIC (RECOFTC and GIZ, 2011)

⁵⁵ The case of the *Saramaka People v. Suriname* illustrates that indigenous and tribal peoples may have rights to resources even when national laws provide otherwise. As such, the National Implementing Partner and/or National Programmes may find it helpful to ask Indigenous Peoples and other forest dependent communities to assist in the identification of their traditional land and resource uses with respect to proposed REDD activities.

Consultations on the FPIC Scoping Review should be undertaken until it has been mutually agreed upon.

b. Once the FPIC Scoping Review has been mutually agreed upon, the Partner Country, in consultation with the rights-holders, should develop an FPIC Proposal that outlines the proposed process to seek FPIC, including the following components:

- Capacity and information needs of the National Implementing Partner and/or rights-holders that need to be addressed before the FPIC process can take place;
- A designation of whether the process will require a facilitator, and if so, who it should be⁵⁶;
- Where and how the consultations will take place;
- A timeline for the proposed consultation process to seek FPIC;
- The appropriate language and media for information sharing and distribution;
- How decisions will be taken by the community in accordance with their traditions and customs;
- The geographical territory and communities that the decision will cover;
- How FPIC will be given, recognized and recorded;
- The role of others in the process (if any), including local government officials, UN agencies, institutions, donors, independent observers (strongly recommended) and other stakeholders;
- Methods of verifying the process, including, where relevant, participatory monitoring arrangements;
- Terms and frequency of review of the agreement(s) to ensure that conditions are being upheld; and
- Process for voicing complaints and seeking recourse on the FPIC process and proposed policy or activity.

Mechanisms for ongoing dialogue, participation, decision-making and consent throughout the various phases of the activity or project should be established and identified clearly between the State and affected people and communities, including how those processes will be maintained throughout, for example, the development, assessment, planning, implementation, oversight, monitoring, dispute resolution, and closure stages of the project. Such processes can avoid misunderstandings in the future.

As long as the Indigenous Peoples or Forest Dependent Community in question maintain their interest in negotiating (as there is no legal requirement that they negotiate), the consultations on the FPIC Proposal should be undertaken until it has been mutually agreed upon. The FPIC Scoping Review and FPIC Proposal should be combined into one document and signed (or agreed upon in a culturally appropriate manner) by all relevant parties. Once this document has been signed/agreed upon, the FPIC process can proceed as outlined in the Proposal.

⁵⁶ See Annex VI for more information on the potential role of facilitators in the FPIC process.

- c. **An independent evaluation should be undertaken** by an institution, to be mutually agreed by all relevant rights-holders, to verify that the process was aligned with the definition of each of the terms of FPIC Process outlined in section 2 above.⁵⁷

5. National-level Grievance Mechanisms

As outlined in Attachment 4 of the R-PP:

The complexity of issues and diversity of stakeholders engaged may lead to numerous questions, inquiries, and potentially grievances about the REDD-plus strategy or process. A grievance mechanism is part of the country's REDD+ management framework. Such a mechanism needs to be available to stakeholders early in the R-PP implementation phase, in order to be ready to handle any request for feedback or complaint that stakeholders may have about Readiness activities.

A grievance mechanism is a process for receiving and facilitating resolution of queries and grievances from affected communities or stakeholders related to REDD-plus activities, policies or programs at the level of the community or country. Typically, these mechanisms focus on flexible problem solving approaches to dispute resolution through options such as fact finding, dialogue, facilitation or mediation. Designed well, a feedback and grievance mechanism should improve responsiveness to citizen concerns, help identify problems early, and foster greater trust and accountability with program stakeholders. Additionally data on complaints or feedback can be used to improve program performance.

Effective grievance 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 impeding other administrative or legal remedies. Effective grievance redress mechanisms are also typified by a number of characteristics, such as multiple grievance uptake locations and multiple channels for receiving grievances; prompt, clear, and transparent processing guidelines (including reviewing procedures and monitoring systems); the availability of a variety of dispute resolution approaches for flexible response to specific grievances; and an effective and timely system for informing complainants of the action taken. If appropriate, the grievance mechanism should provide special provisions for women, and the youth.

The national-level grievance mechanism established in the context of REDD+ will be critical to ensuring grievances and disputes are addressed in proper manner, including in FPIC processes. To better support Partner Countries, the UN-REDD Programme is preparing a Guidance Note that will outline in more detail indicative principles and methodology for establishing national-level grievance mechanisms. This note will be shared publicly by November 2012.

⁵⁷ For more information, see: [FPIC Verification and Evaluation Toolkit](#) (prepared by RECOFTC and the UN-REDD Programme in the Asia/Pacific Region); and an example [Evaluation and Verification of the Free, Prior and Informed Consent Process under the UN-REDD Programme in Lam Dong Province, Vietnam](#).

Annex I: Identifying Indigenous Peoples⁵⁸

There is no one definition of Indigenous Peoples, but the term⁵⁹ has become a general denominator for distinct peoples who, throughout history, have been pursuing their own concept and way of human development in a given socio-economic, political and historical context. Often for centuries, these distinct groups of peoples have tried to maintain their group identity, languages, traditional beliefs, worldviews and way of life and, most importantly, the control and management of their lands, territories and natural resources with which they have a special connection, and upon which their physical and cultural survival as Indigenous Peoples typically depends. In many cases these individuals self-identify as Indigenous Peoples and often their existence pre-date those that colonized the lands within which they were found.

Who are Indigenous Peoples?

The international community has not adopted a common definition of Indigenous Peoples, but the prevailing view today is that no formal universal definition is necessary for the recognition and protection of their rights. Indeed, while the draft American Declaration on the Rights of Indigenous Peoples has deliberated on possible definitions --a task arguably easier when addressing a single continent whose historic experiences with indigenous peoples have greater internal consistency-- the matter was discussed and treated differently in the context of the United Nations Declaration on the Rights of Indigenous Peoples in light of the multitude of experiences spanning across the continents and the globe. Representing the prevailing view, the UN Draft Declaration on the Rights of Indigenous Peoples was affirmatively endorsed now by 145 States (with two objections and 11 abstentions) and provided no definition of the term.

The absence of a definition with listed criteria or factors has not been a hindrance, however, as there are a number of definitions and descriptions that have emerged over time and become commonly accepted and utilized. For instance, the famous *Study on the Problem of Discrimination against Indigenous Populations* (the “Martínez Cobo Study”) offered one of the earliest “working definition” still referred to by many today. The Cobo report provided that:

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present nondominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of

⁵⁸ Adapted from excerpt from [UN Resource Kit on Indigenous Peoples Issues](#), United Nations, New York, 2008

⁵⁹ In almost all indigenous languages, the name of a group simply refers to “people”, “man” or “us”. In many cases, the group name also includes the name of the place with which the group identifies (people of X, Y places) or adjectives such as “free”, “stand up”, or “black”, “red” and so forth. In any event, it is clear that the term “indigenous” has been adopted by many “indigenous” peoples as an instrument mostly used at the international level to advance their rights and improve their situation.

their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”⁶⁰

The text of ILO Convention 169 says that it applies to:

- Tribal peoples whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.
- Peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.⁶¹
- The Convention also states that self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.⁶²

The ILO Convention 169 raises the matter of "self-identification" as the "fundamental criterion".

The *Working Paper on the Concept of "Indigenous People"* prepared by the Working Group on Indigenous Populations lists the following factors that have been considered relevant to the understanding of the concept of "indigenous" by international organizations and legal experts, but again repeating the notion of self-identification:

- Priority in time, with respect to the occupation and use of a specific territory;
- The voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions;
- Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and
- An experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist.⁶³

Self-identification as indigenous or tribal is considered a fundamental criterion and this is the practice followed in the United Nations and its specialized agencies, as well as in certain regional

⁶⁰Cobo, J. M. (1986/7). Study of the Problem of Discrimination Against Indigenous Populations. UN Doc E/CN.4/Sub.2/1986/7.

⁶¹ILO Convention 169, *supra* note 13, at Art. 1(1).

⁶²ILO Convention 169, *supra* note 13, at Art. 1(2).

⁶³Daes, E. A. (1996). *Working Paper on the Concept of "Indigenous People"*, prepared for the Working Group on Indigenous Populations. UN Doc E/CN.4/Sub.2/AC.4/1996/2.

intergovernmental organizations.⁶⁴ Article 33 of the UN Declaration on the Rights of Indigenous Peoples refers to the rights of Indigenous Peoples to decide their own identities and membership procedures.

Understanding who Indigenous Peoples are

- They identify themselves as Indigenous Peoples and are, at the individual level, accepted as members by their community;
- They have historical continuity or association with a given region or part of a given region prior to colonization or annexation;
- They have strong links to territories and surrounding natural resources;
- They maintain, at least in part, distinct social, economic and political systems;
- They maintain, at least in part, distinct languages, cultures, beliefs and knowledge systems;
- They are resolved to maintain and further develop their identity and distinct social, economic, cultural and political institutions as distinct peoples and communities; and
- They typically form non-dominant sectors of society.

In some countries, it is controversial to use the term “indigenous”. In some cases, however, the notion of being indigenous has pejorative connotations and people may choose to refuse or redefine their indigenous origin. Such choices must be respected, while at the same time any discrimination based on Indigenous Peoples’ cultures and identity must be rejected. This different language use is also reflected in international law. In some countries, it is controversial to use the term “indigenous” or to self-identify as “indigenous”. Also, the terminology to describe the distinct collectives differs one country from the next. There may be local terms such as “tribal people”, “first peoples”, “ethnic minorities”, “traditional communities”, “Native Americans”, and “scheduled tribes” etc. There also may be occupational and geographical labels such as “hunter-gatherers”, “pastoralists”, “nomadic or semi-nomadic”, “hill people”, etc. For all practical purposes, and specifically for purposes of the application of these Guidelines, the term “Indigenous Peoples” will be used to encompass all of these collectives. The issue is not what a people is called nor whether the state in question has recognized them as an Indigenous People, but whether the collective satisfies the most commonly accepted definitions of Indigenous Peoples elaborated here -- even where the political situation has dissuaded a people or community to identify themselves as indigenous or prevented them from understanding the rights implications in doing so.

How to identify Indigenous Peoples

The most fruitful approach is to identify, rather than attempt to define, Indigenous Peoples in a specific context. Indigenous Peoples’ representatives themselves have taken the position that no global definition is either possible or desirable. Identification is a more constructive and pragmatic process,

⁶⁴ There are two additional resources that are particularly relevant in the specific context of Africa: the definition included in the *Report of the African Commission on Human and Peoples’ Rights Working Group on Indigenous Populations/Communities*, adopted by the African Commission at its 28th session (available from <http://www.iwgia.org/sw2186.asp>) and the *Response Note to the “Draft Aide-mémoire of the African States on the UN Declaration on the Rights of Indigenous Peoples”*, prepared by the African Group of Experts (available from: <http://www.iwgia.org/sw21505.asp>).

based on the fundamental criterion of self-identification. The identification of Indigenous Peoples must thus be undertaken with the full participation of the peoples concerned. The purpose of the exercise is to gain a better understanding of the specific situations of exclusion, discrimination and poverty faced by particular groups of peoples so that public policies can address these issues by developing targeted programmes and inclusive processes.

Below is a list of some practical questions suggested for consideration when working on matters involving Indigenous Peoples in the preparation of development frameworks. Local indigenous organizations and leaders, and academic constituencies in addition to government, may be well placed to help answer these questions. The list is neither exhaustive nor mandatory, but provides elements for consideration and reflection as part of any preparatory work.

Identifying Indigenous Peoples

- Are there peoples identifying themselves as indigenous?
- Are there local terms that identify Indigenous Peoples?
- If so, are they recognized in legislation (the Constitution or other laws, for example)?
- What term is used in the national policy discourse and mainstream media with regard to these groups of peoples to distinguish them from the dominant societal group?
- Are there provisions in relevant laws regarding these groups' collective rights as peoples/communities or any other specific group rights?
- Who are these groups and what are these provisions?
- What is their general situation compared to the mainstream dominant society?
- Has a census been conducted in recent years in the country?
- If so, are these peoples reflected in the census?
- If so, how are they identified as a specific group of people? By self-identification or other criteria?
- Is any other disaggregated data on these specific groups of people available or can it be generated?

Indigenous Peoples often have much in common with other marginalized segments of society, i.e., lack of or very poor political representation and participation, lack of access to social services, and exclusion from decision-making processes on matters affecting them directly or indirectly. However, the situation of Indigenous Peoples is different because of their history and their intimate relationship with their lands, territories and resources which, in many cases, not only provide them with the economic means for living but, more importantly, sustain them as peoples along with their culture. As distinct peoples, Indigenous Peoples claim the right to self-determination, including the right to control their own political, social, economic and cultural development as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, ILO Convention 169, and other international human rights instruments. Furthermore, many Indigenous Peoples have a profound spiritual relationship with their land and natural resources. Indigenous Peoples' rights to manage their traditional lands, territories and relevant resources are fundamental for their physical and spiritual survival. However, all too often, indigenous communities have been displaced and dislocated from their ancestral lands in the name of development, by oil and gas or other natural resource exploitation projects, the construction of dams, conservation parks, roads or other national development priorities, which have been designed without the FPIC of Indigenous Peoples—and indeed, often without any form of consultation with them at all.

Annex II: Types of Participation⁶⁵

Types of Participation⁶⁶	
Information Sharing	After getting permission to consult, this activity will commence immediately and will mostly be a one way flow of information, e.g., from government to public, or public to government. Objectives are to keep actors informed, provide transparency, and build legitimacy. This can be done through simple outreach approaches (e.g., website, fact sheets, press releases, presentations). This information sharing will be done in a culturally appropriate way so that it is accessible by Indigenous Peoples and Forest Dependent Communities. Preliminary information from the project proponent or Partner Country should at a minimum include: (i) an identification of the project proponent and all other interested parties (i.e. investors, partners, third party beneficiaries); (ii) proof of their status as a legal entity; (iii) a full description of the proposed project including its intended scope, duration, the preliminary assessment of social and environmental impacts, expected benefits and risks to the affected peoples and other communities, (iv) a full description with supporting documentation of how the project will fully comply with national and international law and best practices, and (v) a point of contact for the project proponents.
Consultation	Two-way flow of information and the exchange of views. This involves sharing information, garnering feedback and reactions, and in more formal consultation processes, responding back to stakeholders about how their recommendations were addressed (including if they were not, why not). Information exchanges may occur through meeting with individuals, public meetings, workshops, soliciting feedback on documents, etc. This is done with a view toward achieving agreement. It shall be done in a culturally appropriate way when dealing with Indigenous Peoples and Forest Dependent Communities and in a manner that respects their norms and traditions related to communications and decisions-making. Good faith consultations mean a constant exchange of information between the Parties such that any agreement reached is done knowingly by all parties and the parties have the opportunity to be heard and to have their questions and requests for clarifications addressed. To avoid miscommunications, the perpetuation of faulty assumptions and misunderstandings, and to ensure the proper documentation of the consultation and negotiation processes, the Parties may agree on mechanisms to summarize their

⁶⁵ Adapted from: Foti, J., with L.deSilva, H.McGray, L.Shaffer, J.Talbot, J.Werksman (2008). [Voice and Choice: Opening the Door to Environmental Democracy](#), World Resources Institute; and Daviet, F. (2011). [A Draft Framework for Sharing Approaches for Better Multi-Stakeholder Participation Practices](#), for FCPF and the UN-REDD Programme.

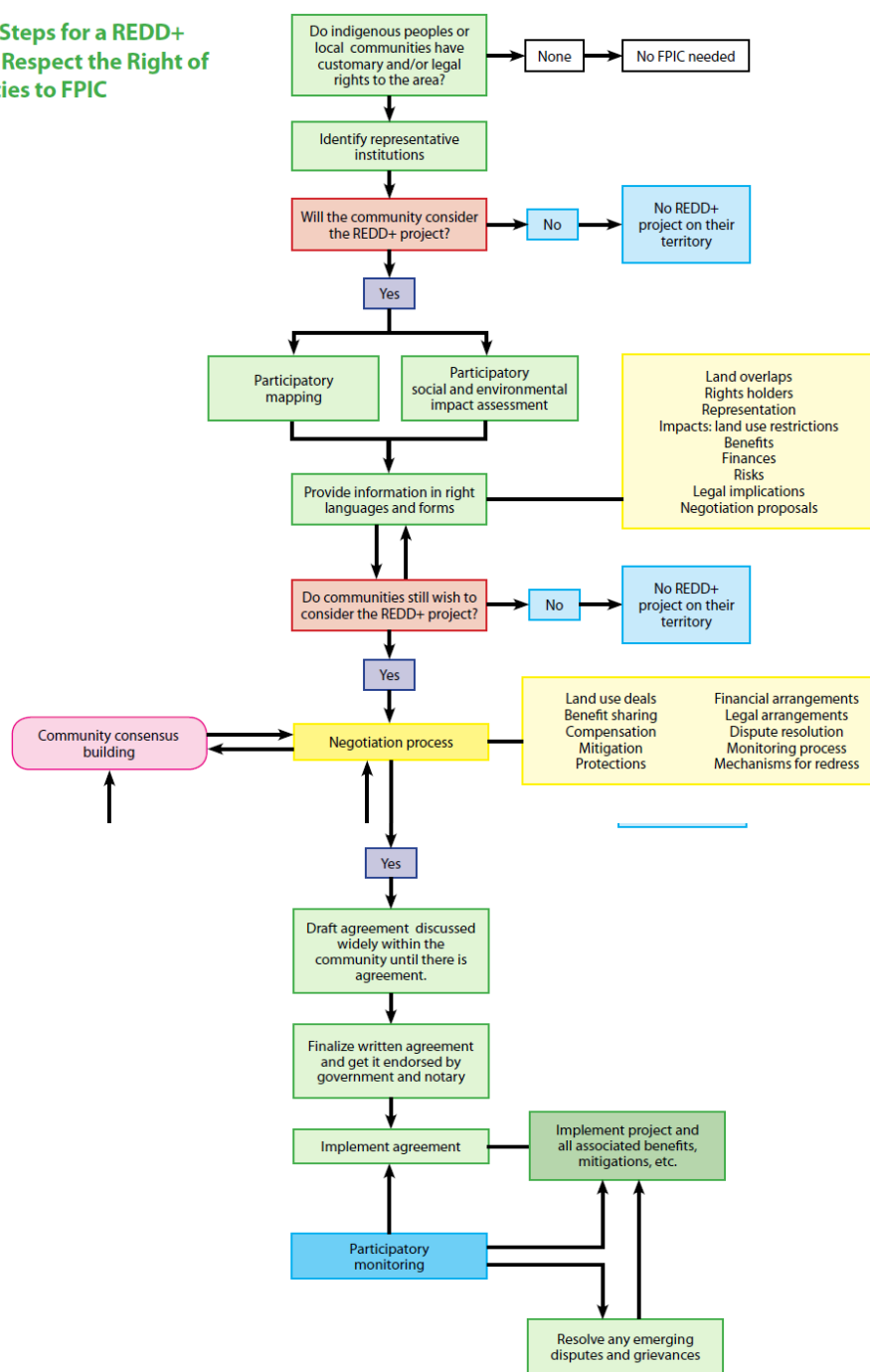
⁶⁶ With its permission, substantial text in this section was reproduced from Forest Peoples Programme's publication "[Key Elements to the Initiation, Performance and Maintenance of Good Faith Consultations and Negotiations with Indigenous and Tribal Peoples and Communities](#)".

	exchanges and any mutual understandings reached at meetings (e.g. the drafting of Meeting Minutes). The documentation of these exchanges could even be acknowledged by the delegations attending the respective meetings with copies maintained by all Parties.
Collaboration	Collaboration should begin with each Party clearly outlining how its decision-making processes functions. This includes, at a minimum, an identification of all individuals and entities that need to take part in the process for each party (e.g. a Board of Directors, a project manager, a Council of Elders), those with ultimate decision-making power as opposed to simply the power to participate in negotiations, the timing typically required by each Party to arrive at decisions, and information relevant to the duration of the terms of each Party's authorized decision makers (i.e. if elections of a new company board or community council are pending, such disclosures shall be made). Indeed, collaboration entails moving beyond collecting feedback to involving external actors in problem-solving, policy design, and monitoring and evaluation. Approaches may include advisory committees, joint missions, and joint implementation activities. In such initiatives, likely affected rights-holders such as Indigenous Peoples and Forest Dependent Communities shall be equitably represented in said activities, committees, and missions.
Joint decision-making	Collaboration where there is shared control over a decision made. Shared decision-making is useful when the external actor's knowledge, capacity, and experience are critical for achieving policy objectives. As referenced above in "collaboration" it is helpful if the parties exchange their ideas and customs around decision making and agree on a reasonable timeline.
Consent	Consent refers to a freely given decision from the Indigenous Peoples or Forest Dependent Community based on full, prior and objective information. A decision made by the people or community in question, through their designated representatives and in accordance with their traditions, customs and norms. It is a collective decision that will determine how and if an activity or action will be carried out. To ensure the integrity of the process, respect for the indigenous peoples customs, and security in the decisions taken, early on it can be helpful if both the project proponent and affected people identify themselves, their representatives and specifically the individuals or entities with the authority to negotiate as well as those individuals or entities with the authority to make decisions on behalf of the Party. Those with the authority to negotiate may not always be the same individuals or entities with the power to decide. Our contemporary history demonstrates that seeking consent from the wrong individuals (not those that represent the collective as designated by the people in question), can lead to a decision without credibility or durability.
Empowerment	Transfers control over decision-making, resources, and activities from the initiator to others, including stakeholders and rights holders. This is when external actors, and

preferably the holders of the rights and interests in the lands, resources or territories in question, acting autonomously and in their own interests, can carry out policy mandates without significant government involvement or oversight (e.g., local natural resource management zones). One mechanisms to increase the opportunities for empowerment is to ensure that the Indigenous Peoples or Forest Dependent Community in question have the capacity to secure advisors and legal counsel of their choice to accompany them in the consultation and negotiation process, especially on technical or legal matters. It is often the case that it benefits the Partner Country and/or project proponent to finance the reasonable costs related to securing independent legal counsel and technical advisor to directly serve the communities in question such that they can more effectively contribute to and evaluate legal, social and environmental assessments related to the proposed project and addressing all other matters necessary for them to participate in the consultations in a fully informed and effective manner.

Annex III: Indicative Steps for a REDD+ Process to Respect the Right of Communities to FPIC⁶⁷

Indicative Steps for a REDD+ Process to Respect the Right of Communities to FPIC



⁶⁷ Excerpt from [Free, Prior, and Informed Consent in REDD+: Principles and Approaches for Policy and Project Development](#), RECOFTC and GIZ, February 2011.

Annex IV: The Role of Facilitators in Supporting the FPIC Process

Facilitators should be sensitive to the cultural context, with technical knowledge of the issue under consideration. Facilitators are mutually accountable to the UN-REDD Programme, the government and the community; they must be neutral, trustworthy and competent.

Facilitators, in cooperation with the Government and stakeholders, are responsible for ensuring, among other things, that the following key arrangements are part of the FPIC process:

- Full, accurate information is communicated that is easily understandable for everyone, including thru innovative and creative forms, in the most appropriate language and medium, to communicate issues, as well as access to other sources of information;
- Decision-making process is determined by the community without interference;
- Timeline to undertake the decision-making process is decided by the community;
- Respect for the customary laws and practices of the community in question;
- The language in which they wish to be addressed, including the language used for written materials and to convey decisions, is determined by the community;
- Additional information be sought from community members and they should be encouraged to verify information;
- Transparent, accurate, and complete information is communicated; positive and negative and potential short-term and long-term impacts, risks and benefits are described;
- Information reaches all community members, albeit consistent with the community's mechanisms for information sharing;
- A secure, culturally appropriate and trusted decision-making environment.

Facilitators should support the Indigenous Peoples or Forest Dependent Community to determine and document the collective decision-making process:

- Use, build on, or improve existing transparent and participatory consultation and consent processes (e.g., raising hands, voting, signing, deferring to leaders, etc.);
- Document process, discussion, comments, questions asked for decision, the decision, and/or terms of agreement;
- Maintain a record of the result/decision (disaggregated by gender, income level, if possible), announce the result, and hold a self-evaluation process (e.g., village head signs) - if information is disaggregated, record the relevance of this disaggregation to the decision, and to follow-up activities;
- Respect at all times that role as a facilitator, which is not a mediator, or a decision-maker

Facilitators should support capacity building for the community to effectively review agreement conditions to ensure that they are met, including the delivery and proper distribution of benefits agreed.

Lessons from engagement facilitators in FPIC pilots in Vietnam and Indonesia include:

- The selection and training of suitable FPIC facilitators is critical to the success of the FPIC process, but it is not always easy to get the right candidates. Consideration should be given to language skills, ethnicity, gender, experience in consultation processes, age profile (some elders prefer to speak to older facilitators), and knowledge of REDD+.
- Facilitators will often have very low capacity initially. Training facilitators takes time and money, as they are unlikely to be familiar with the issues to start with. Establishing a systematic way to train *and maintain* a team of experienced FPIC facilitators may help to reduce the cost of doing FPIC over the long term.
- Training on both the substance of climate change and REDD+ issues must take place, as well as training in facilitation and FPIC skills.
- Communicating complex issues associated with REDD+ is even more difficult when speaking a person's second language. Communication in a person's first language is essential, and this will normally mean that it is necessary to recruit facilitators from the local area who can communicate without the need for translation.

Tools and Resources

[Guidance for community-level FPIC process facilitators](#), WISE Inc., Philippines

[A Manual for Interlocutors to Conduct FPIC Village Consultation meetings](#), UN-REDD Programme, Viet Nam, 2010

Annex V: Lessons learned from FPIC pilot experiences, UN-REDD Programme Vietnam and UN-REDD Programme Indonesia

Lessons learned from the FPIC trial in Central Sulawesi, Indonesia

- The audience in the consultations should be segmented so that the most appropriate communication materials can be used for different members of the local community. For example, written materials will be more suitable for people with higher levels of literacy. In Lembah Mukti village, the [comic books](#) explaining the forest rehabilitation proposal were particularly popular.
- FPIC guidelines are best tested in a location where there is a concrete proposal that requires community consent (in the case of Lembah Mukti village, it was the replanting programme proposed by the Forest Management Unit). This can be contrasted with the FPIC pilot carried out in Lam Dong Province, Viet Nam, where villagers were asked generally if they agreed to a program of proposed UN-REDD activities, but a subsequent evaluation found that villagers did not really understand what was being proposed.
- It takes time and repetition to communicate a REDD+ proposal effectively, which can be quite complex for a local community to understand. Using a concrete proposal, such as tree-planting, can be an easier way to explain a REDD+ project.
- Using trained facilitators from the village's own community can accelerate understanding because the process of building confidence between the facilitator and community is faster.
- A community may refuse permission to engage in consultations, as happened with Talaga village. Where this occurs, this decision must be respected.

Lessons learned from the FPIC pilot in Lam Dong Province, Viet Nam⁶⁸

- **Adequate time needs to be allowed for awareness-raising:** This issue was also raised many times during the FPIC Workshop in Bogor. The concept of climate change and REDD+ is complex and difficult to grasp, particularly for local officials and communities with less education.
- **Adequate time must be given to absorb information and for internal discussion:** There must be sufficient separation between the early visits to introduce the idea of REDD+ to the community and the time when they are asked to make a decision.
- **Local FPIC events can be very time-consuming and complex:** Local communities may tend to be distrustful of new initiatives and need time to absorb information. It is recommended that the same facilitator/interlocutor make at least three visits to a village before any decisions are made.
- **Engagement with local authorities needs to be managed carefully and flexibly:** There is a tension between engaging local authorities who may play a very visible role in negotiations, while at the same time ensuring that the consultation remains “free” (without coercion).
- **Local facilitators are essential for effective awareness-raising and discussion**
- **Documenting FPIC decisions can be challenging:** Indigenous peoples and local communities may fear submitting written statements or signing documents, but only relying on verbal agreements leaves open the possibility of future disagreements. A compromise may be needed.
- **Managing expectations of villagers is important:** Understandably, many villagers focus on short-term benefits and will ask “when will we see some benefits?” and “how much?”. Although consultations need to be “prior”, they should not be so far in advance of an activity that villagers lose interest in a proposal.
- **A mechanism for addressing grievances and disputes should be identified/established at the outset:** This was not done in the FPIC pilot in Lam Dong Province and was an omission.

⁶⁸ These lessons are set out in more detail in a [Fact Sheet on Work on Free, Prior Informed Consent in Viet Nam](#), UN-REDD Programme, Viet Nam.

Annex VI: Stakeholder Engagement: Effective and Equitable Gendered Participation and Representation in Decision Making⁶⁹

Women and men's specific roles, rights and responsibilities, as well as their particular use patterns and knowledge of forests, shape their experiences differently. As such, gender-differentiated needs, uses and knowledge of the forest are critical inputs to policy and programmatic interventions that will enable the long-term success of REDD+ on the ground. To ensure that national REDD+ systems and programmes are inclusive and resilient, specific attention must be paid to the specific roles, requirements and contributions of women and men at every stage of policy and programme development, from design through implementation and evaluation.

A gender-responsive REDD+ stakeholder engagement strategy recognizes the role of women as primary users of forest resources in REDD+ policy and programme design, implementation and evaluation. Data from the health, nutrition and education sectors show that engaging both women and men **in consultations** advances an understanding of women's practical needs and therefore the relevance of the consultations' outcomes. Moreover, whenever possible while maintaining respect for the the customary laws and practices of the community or people in question, a Participatory REDD+ initiative would take appropriate steps to ensure that women have appropriate and adequate representation **in decision-making** has been shown to better address their strategic needs, resulting in greater uptake of the desired shifts in behaviour.

Participatory REDD+ interventions that effectively engage both women and men in decision-making could also result in a greater likelihood of sustained change in the way forest resources are used, thereby contributing to the sustainability of the REDD+ mechanism. If women are to be involved in decision-making, their full and effective participation may depend on additional training.

Gender-responsive participatory processes include the use of women-only interviews and gender-specific focus groups and group consultations. These approaches enable women to fully participate and make their voices heard with minimal distortion of message. Other methods to support women's engagement that are not meeting-based are also worth contemplating.

It is important to note, however, that this is not a box-ticking exercise: getting women into meetings, ensuring that they actively participate in those meetings and finally enabling women as decision-makers requires addressing the asymmetries of power and other cultural norms that influence gender equality.

Ultimately, increasing the role of women in consultations can help increase implementation efficiency, increasing women's full and effective participation will increase efficacy, and increasing women's roles as decision-makers will increase sustainability.

⁶⁹ Adapted from [The Business Case for Mainstreaming Gender in REDD+](#), UN-REDD Programme, 2011.

Annex VII: Tools and Resources

FPIC - General

- [FPIC for REDD+ in the Asia Pacific Region: Lessons Learned, Challenges and Recommendations](#), UN-REDD Programme, 2012
- [Putting Free, Prior and Informed Consent into Practice: A Training Manual](#), RECOFTC, 2012
- [Free, Prior, and Informed Consent in REDD+: Principles and Approaches for Policy and Project Development](#), RECOFTC and GIZ, 2011
- [Guide to Free, Prior and Informed Consent](#), Oxfam, 2010
- [Free, Prior and Informed Consent: Making FPIC work for forests and peoples](#), Colchester, M. 2010. The Forests Dialogue, New Haven, CT, USA.
- [The Forests Dialogue \(TFD\) Dialogue Stream](#), New Haven, CT, USA.
- [FPIC and UN-REDD: Legal and Practical Considerations](#), Center for International Environmental Law (CIEL) prepared for the UN-REDD Programme, 2010.
- [Guidance for community-level FPIC process facilitators](#), WISE Inc., Philippines
- Proposed Protocol for a Consultation and Consent Process with the Indigenous Peoples of Paraguay (prepared by FAPI with support from FPP and UNDP) ([EN](#), [SP](#))

FPIC Pilot, UN-REDD Programme Indonesia

- [Policy Recommendation: Free, Prior Informed Consent \(FPIC\) Instrument for Indigenous Community and or Local Community who will be Affected by REDD+ Activities](#), UN-REDD Programme Indonesia, 2011
- [Draft Guidelines for Implementation of Free Prior Informed Consent \(FPIC\) in UN-REDD Project in Central Sulawesi](#), UN-REDD Programme Indonesia, 2011

FPIC Pilot, UN-REDD Programme Viet Nam

- *Lessons Learned: Viet Nam UN-REDD Programme, Phase 1*", UN-REDD Programme, prepared by Vickers, B., and Nguyen Hang, (forthcoming publication in 2012)
- [FPIC Verification and Evaluation Toolkit](#), RECOFTC and the UN-REDD Programme - Asia/Pacific Region, 2010
- [Evaluation and Verification of the Free, Prior and Informed Consent Process under the UN-REDD Programme in Lam Dong Province, Vietnam](#), RECOFTC, 2010
- [A Manual for Interlocutors to Conduct FPIC Village Consultation meetings](#), UN-REDD Programme Viet Nam, 2010
- [Fact Sheet on Work on Free, Prior Informed Consent in Viet Nam](#), UN-REDD Programme Viet Nam, 2010

Grievance Mechanisms

- [Addressing Grievances from Project-Affected Communities: Guidance for Projects and Companies on Designing Grievance Mechanisms](#), International Finance Corporation (IFC), Good Practice Note, Number 7, September 2009
- [A Guide to Designing and Implementing Grievance Mechanisms for Development Projects](#), The Office of the Compliance Advisor/Ombudsman for the International Finance Corporation (IFC) Multilateral Investment Guarantee Agency (MIGA), 2008
- Feedback Matters: Designing Effective Grievance Redress Mechanisms for Bank-Financed Projects [Part 1: The Theory of Grievance Redress](#), and [Part 2: The Practice of Grievance Redress](#), the World Bank.

Indigenous Peoples and Consultations

- [Forest Peoples: Numbers across the world](#), Forest Peoples Program (FPP), 2012
- [REDD+ Community Protocols: A Community Approach to Ensuring the Local Integrity of REDD](#), Natural Justice, 2011.
- [A Draft Framework for Sharing Approaches for Better Multi-Stakeholder Participation Practices](#), Florence Daviet, WRI for FCPF and the UN-REDD Programme, 2011
- [Draft Guidelines on the Protection of Indigenous Peoples in Voluntary Isolation and in Initial Contact of the Amazon Basin and El Chaco](#), Human Rights Council Expert Mechanism on the Rights of Indigenous Peoples, Second Session, 2009.
- [UN Resource Kit on Indigenous Peoples Issues](#), United Nations, 2008
- [Key Elements to the Initiation, Performance and Maintenance of Good Faith Consultations and Negotiations with Indigenous and Tribal Peoples and Communities](#), Forest Peoples Program (FPP), 2008