

THE NATIONAL FORESTRY COUNCIL
AND UN-REDD PROGRAMME INDONESIA

**POLICY RECOMMENDATION:
FREE, PRIOR AND INFORMED
CONSENT (FPIC) INSTRUMENT
FOR INDIGENOUS COMMUNITIES
AND/- OR LOCAL COMMUNITIES
WHO WILL BE AFFECTED
BY REDD+ ACTIVITIES**



BASED ON MULTISTAKEHOLDER CONSULTATION PROCESS

UN-REDD
PROGRAMME
INDONESIA

dk dewan
kehutanan
nasional

1. An FPIC (*Free, Prior and Informed Consent*) process enables an indigenous/ local community to exercise their fundamental right to give or withhold consent to all proposed activities, projects, legislative or administrative measures, and policies that will take place in or impact their lands, territories, resources or livelihoods. FPIC has four elements, namely, - Free, Prior, Informed and Consent. The free element means that the community provides their consent (or decides to withhold it) without coercion from any other parties. The community is free from pressure and threat to express its decision; the community is not under the pressure of time or place to negotiate; the community is also free to choose any person who will represent them. Meanwhile, the prior element means that approval process is undertaken before the policy or activity is performed; the decision-making timeline established by the community must be respected, as it reflects the time needed to understand, analyze, and evaluate the activities under consideration. Finally, the informed element means that before a decision is taken, the community must have genuinely received complete information in a language and a media which are easily understood by the community. The information should be delivered by culturally appropriate personnel and include capacity building of indigenous or local trainers. The information should be complete and objective (include social, financial, political, cultural, and environmental impacts) and address both the potential benefits and the potential risks associated with the provision of consent.
2. FPIC has become an international mandate requiring REDD+ implementation to fulfill the rights of indigenous community and/- or local communities to decide how they will participate in REDD+ activities. Therefore, indigenous communities and local communities who will be impacted by REDD+ implementation are positioned as the main subjects of FPIC, particularly indigenous community and local communities whose lives are dependent on forest resources (forest dependent communities). In the context of FPIC, a local community is a community living in and around a forest and or a forest ecosystem who do not identify themselves as an indigenous community.
3. Nationally, in addition to fulfilling rights, FPIC is one of the instruments to guarantee that REDD+ implementation in Indonesia gives direct benefits to the indigenous community and the local community.
4. Considering the importance of an FPIC instrument for REDD+, the National Forestry Council in collaboration with UN-REDD Indonesia Programme held a National Workshop on Development of FPIC Concept for REDD+ and a series of

Focused Group Discussions (FGDs) to formulate a policy recommendation. The workshop and the FGDs were followed by elements of government, business community, academicians, NGOs, indigenous community or local community organisations. The policy recommendation is a crystallisation of various information and ideas presented during the workshop and the FGD. This recommendation is expected to serve as general guidelines for FPIC implementing agencies in Indonesia.

FPIC AND REDD+ IN INDONESIA

5. The main idea of REDD+ is to reduce net green house gas emission by slowing deforestation and forest degradation, maintaining carbon supply and increasing forest carbon stock without disrupting the growth of the local and national economy.
6. REDD+ implementation in Indonesia consists of reducing emission from deforestation and forest degradation, carbon stock enhancement, forest conservation, sustainable forest management and carbon stock enhancement with project proponent from the government, the private sector, indigenous and local community organizations and institutions, NGO and international development partners. The success of REDD+ will depend on the support of the indigenous and or local communities, particularly those living in and around the forest or forest ecosystem.

POLICY RECOMMENDATION ANALYSIS

7. There are several main argumentations as to why an FPIC policy in REDD+ is urgently needed in Indonesia. **Sociological Consideration.** It is estimated that over 25.000 villages in Indonesia are fully or partially located in forests (Ministry of Forestry: 2007, 2009). World Bank (2009) estimated that there were 54 million people whose livelihoods depend on forest resources. This shows that REDD+ will have a direct impact on the livelihoods of millions of people who live in and around the forest. People who live in and around the forest make up one of the largest groups of poor communities in Indonesia. It is important to understand that the indigenous and local communities do not live in the forest solely for economic purpose but also include spiritual and socio-cultural interest, particularly for indigenous people who have been living in and around the forest for generations. This is closely related to customary law/habitual

law based ownership and management which have been passed on for generations.

8. In order to develop a democratic public policy in respect of human rights and cultural diversity - as mandated by the 1945 Constitution - the existence, interest and aspiration of the indigenous and or local communities who live in and around the forest must be genuinely taken into consideration. Conflicts on forest utilisation which occur nearly throughout Indonesia¹ and poverty of the people who live in and around the forest, should serve as a material for reflection in planning public policy related to forest and forest ecosystem in general. In this context, FPIC is viewed from two angles: firstly, FPIC as an instrument for human rights and democratisation of development in the forest sector; secondly, this FPIC instrument has actually been living and developing in the community, having various terminologies and social mechanisms in accordance with the local culture.
9. **Legal Consideration.** Government of Indonesia has the legal obligation to involve the people in accordance with the Constitution of the Republic of Indonesia (Article 18B) to “acknowledge and respect the indigenous/traditional communities in accordance with their traditional law.” This is also in alignment with international principles on human rights such as participation and involvement/inclusiveness including full and effective participation, and contribution to and enjoyment of civil, economic, cultural and political developments. The right to FPIC is supported by the Government of Indonesia’s commitment to existing international instruments such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on Biological Diversity, the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), the Universal Declaration of Human Rights etc. The UNDRP reinforces the fundamental right to FPIC that development must not be performed without consent of the indigenous community whose land and environment may be impacted.
10. The agreement reached in COP 16, United Nations Convention on Climate Change (UNFCCC) in Cancun-Mexico called for developing nations to ensure full and effective participations of the relevant stakeholders (among others indigenous community and or local communities) in development and to implement National Strategy for REDD+. Indonesia should look at the development of regulatory scheme and may fulfill it as an access to obtain funding through REDD+ mechanism.
11. At the national level, the law in Indonesia also accommodates the interest and rights of the community in development. It is marked among others by the

¹ In the Draft of the 2011 - 2030 National Forestry Plan (RKTN), Ministry of Forestry targeted the settlements of forestry conflicts in 19,420 villages which are located in and around the forest in 32 provinces in Indonesia.

amendment of the 1945 Constitution which added one separate chapter on human rights. The position of the Government of Indonesia on development and human rights can be found among others in the elucidation of Law No. 11/2005 on Ratification of International Covenant on Economic and Cultural Rights as follows: “Finally, it was realized that the life of a nation and a state that ignores the respect, the enforcement and protection of human rights will always cause injustice to the general public and does not provide a sound foundation for a long term economic, political, social and cultural development.”

12. Stipulation of the People’s Consultative Assembly number IX/2001 on Agrarian Reform and Management of Natural Resources, states that agrarian reform and management of natural resources must be performed in accordance with principles among others: respecting and upholding human rights; developing democracy, legal compliance, transparency and optimisation of people’s participation; ensuring justice in control, ownership, use, utilisation and maintenance of agrarian and natural resources; acknowledging and respecting rights of indigenous community and diverse cultures on agrarian and natural resources. Policy direction for agrarian and natural resources management reforms must refer to those principles.
13. Law No. 32/2009 on Environmental Protection and Management has included at the minimum 7 articles regulating the recognition and protection of rights and wisdom of the indigenous community related to environmental protection and management which will serve as legal platforms for them and their traditional wisdoms in participating fully and effectively in REDD+ implementation in Indonesia. The law also states that the community has equal and the broadest opportunity to participate actively in environmental protection and management. The roles of the community may take the form of: social supervision; advise, opinion, suggestion, objection, complaint; and/or delivery of information and/or report.
14. Protection of Citizen’s Rights for Information is regulated in Law No. 14/2008 on Public Information Disclosure. Aspects regulated in the law include the right of a citizen to be informed of plans for public policy making, public policy programme, public decision making process, the reason of a public decision making, promotion of community participation in public policy making process and sound public agency management. Article 68 [2]b of Law No. 41/1999 on Forestry also regulates rights of citizens in decision making process which will affect them: “Citizens have the right to be informed of forest allocation, utilisation of forest product, and forestry information”.
15. **Technical Consideration.** The local characteristic of FPIC implementation process is highly dependent on the social and cultural aspects of an indigenous community, local community and various forestry stakeholders in a particular

forest. The diversity will be a technical challenge in FPIC implementation as it depends on specific cultures of communication, coordination and consensus. With 250 different dialects in Papua for instance, it will take time to find a local facilitator to ensure that the local people understand what REDD+ is all about, in particular what the opportunities and potential risk are as well as the meaning of FPIC can genuinely be understood. However, due to the fact that principles and mechanism of FPIC implementation exist in various local cultures in Indonesia, the application of FPIC in REDD+ implementation is not expected to face obstacles, as long as the FPIC instrument is socialised with contextual language and presentation in accordance with the local socio-cultural conditions and the process is facilitated by trusted figures (having credibility) in the community and accepted by the stakeholders of the forest ecosystem selected for REDD+ location.

PROPOSED POLICY RECOMMENDATION

16. Before obtaining approval from a relevant REDD+ agency, responsible proponent intending to implement REDD+ activities have to implement an FPIC process. In other words, the approval will not be given without having been preceded by FPIC. The implementation of FPIC must be preceded by a socialisation of REDD+ and the proposed activities.
17. The main subjects of FPIC are the indigenous community and the local community. The implementation of FPIC will be applied utilising general guidelines and will be adjusted to the local socio-cultural and economic context.
18. Principles that must be followed in the implementation of FPIC in REDD+ Indonesia are: (1) **Transparency**, namely availability and access of all information related to planning, implementation and the result of FPIC and the issuance of open statement/opinion of the stakeholders. (2) **Accountability**, the process and result of FPIC are accountable to the relevant stakeholders. (3) **Inclusivity**, namely guaranteeing the effective involvement of the stakeholders without discriminating gender, ethnicity, age, religion etc. (4) **Integrity**, namely consistency of action, values, method, principle of the implementation of FPIC. (5) **Participation**, namely involving all members of the community who will be affected by REDD+ including women, children, youth, and the elderly. (6) **Freedom**, namely physical and mental freedom to express opinions and free from the pressure of a certain interest.

19. **The implementation of FPIC at the minimum must pass through four main phases:**

The first phase is pre-condition. This activity consists of awareness raising of stakeholders through workshops and information dissemination through leaflet, brochure and other relevant media and inventorisation of forest utilization models including inventorisation of forest stakeholders. At the same time, a facilitator (independent and trusted by all parties) needs to be appointed to determine the approach/method of the FPIC implementation. Existing indigenous peoples' or other forest dependent communities' representative organisations and consultation mechanisms should be engaged and partnered with to familiarise the population with REDD+ and the project proponent Programme, undertake consultation, and seek consent where appropriate. Training is essential to ensure that information communicated on REDD+ and climate change is uniform, consistent, complete, and clear.

During this pre-condition phase, institutional mapping needs to be performed at all affected areas in order to obtain information on the types of stakeholders who should be involved and their representatives in all processes. This phase is expected to increase stakeholders' understanding on REDD+ and the importance of FPIC and its process (if necessary by developing a guide book). Other expected result is the availability of data on forest stakeholders and the inventorisation of forest utilization models. This phase is extremely important in determining potential stakeholders and their representatives as well as methods and processes. This phase will be the most time consuming and will answer the Free, Prior and Informed components. All activities will require competent facilitator to cooperate with local parties such as Provincial, District, Sub-district and Village REDD+ Task Forces or other names in accordance with the local custom.

The second phase is Decision Making. This phase will answer the consent component of FPIC. All competent representatives will have a discussion to decide the impact, options for compensation of the impact and other rights if required, involvement in the management of REDD+ initiative and the obligations of the forest dependent communities. This process will be guided by a local facilitator appointed during the pre-condition phase. The time required will depend on the success of stakeholders' awareness raising in the pre-condition phase.

The third phase is verification. A verification team will be appointed by the owner/implementer of REDD+ project to assess whether all FPIC processes have been performed in accordance with the FPIC principles and

phases of implementation. **The fourth phase is socialization of the result of the verification.** This phase is to socialize the result of the process and decisions made to all components of the community who will be affected, including to core stakeholders at district, provincial and national levels. Village REDD+ task force, or other name in accordance with the local custom, will conduct a series of meetings at regional, district, provincial and national levels.

20. Institutional arrangement can be performed by strengthening institutional design for safeguards and the resolutions of ongoing conflicts. The success of FPIC implementation in ensuring that communities are empowered and enabled to give or withhold consent on REDD+ activities that may impact them is dependent upon the availability of an adequate institutional arrangement. Institutional arrangement in this case consists of policy related to forest planning and utilization; and an organization with capable human resources who are able of ensuring the implementation of the entire FPIC mechanism including resolving conflicts which have occurred. Noting the current condition, it is necessary to take the following steps: Implementation of FPIC should be prioritized for indigenous community and local community who have claim rights and group of people who are directly affected by REDD+.
21. In conjunction with the implementation of FPIC, a number of regulations of law need to be revised, among others Law No. 41/1999 on Forestry and Law No. 5/1990 on Conservation of Biodiversity along with their lower legislations because those regulations do not contain adequate FPIC principles.
22. The implementation of FPIC in REDD+ requires grievance or complaint mechanism. The grievance or complaint consists of channels prepared by the implementer of REDD+ project for the community during and post the FPIC implementation. The channels seek to collect inputs, criticism, complaint, and suggestions from the community to the project proponent during each phase of FPIC activity in the community. As such, this grievance or complaint mechanism must observe the following principles: accessible by the community, subsidiarity where possible, independent and impartial, transparent, effective and efficient, dedicated budget, the possibility of informing decision-makers directly and offering recommendation on policy and/or procedural reform in dealing with a grievance/complaint.

23. The development of an FPIC policy for REDD+ is an important component to ensure community rights are upheld, secure community involvement and ensure direct benefits from the REDD+ scheme. As an instrument, this approach needs to be developed and established as one of the components for the preparation of REDD+ infrastructure in Indonesia. This is because one of the success factors of the implementation of REDD+ on the field is highly determined by the extent to which the community is informed, participates freely without any pressure and is finally able to determine whether or not to approve and support the activity.
24. In relation to that, several principles need to be observed in the formulation of FPIC policy: inclusivity, transparency, credibility, accountability, participative, and freedom. It needs to be ensured that the policy will be operational and efficient both in terms of time and cost. The content of the FPIC policy should be simple and easy to understand so as to avoid multi interpretations which will lead to conflicts among stakeholders.



Dewan Kehutanan Nasional
Gedung Manggala Wanabhakti Lt. 2
Jl. Gatot Subroto,
Jakarta 10270
Telp. : +62 21- 5703246 Ext. 5388
Telp. Fax. : +62 21- 5790-3082



UN-REDD Programme Indonesia
Manggala Wanabakti Building Block IV, 5th Floor, Suite 525C
Jl. Jenderal Gatot Subroto,
Jakarta 10270, Indonesia
Telp. : +62 21- 5703246/65
Fax. : +62 21- 5746748