

Group 4

CONSENT

Outline

- What is consent?
- Who gives consent?
- What is the process by which the decision is taken and recorded?
- What activities require consent?
- How to exercise consent?
- How to ensure a rights-based approach?
- Who seeks consent?

What is Consent?

- Consent is a decision that may be a “Yes” or a “No”
- It is determined by affected peoples (E.g. consensus, majority, etc.)
- Must be based on full understanding of opportunities and risks
- Freely given
- Empowerment to exercise rights (to self-determination, lands, resources and territories, culture)
- Collective decision
- Option to reconsider decision
- Consent given or not in phases, over specific periods of time

Who gives Consent?

- The directly and indirectly affected peoples, through their own representative institutions, following their own decision-making processes
- All rights holders represented in the process (men, women, youth, elderly, poor)

What is the process by which consent is taken and recorded? (1)

- The process must be free, prior, informed (see reports from other groups)
- The process must be iterative
- Use, build on, or improve, existing consultation and consent processes
- Transparent and participatory
- How to register views:
 - proper documentation of process, discussion, comments, question asked for decision, the decision, and/or terms of agreement,
 - voting disaggregated by gender, income level, etc., if possible
 - maintain a record of the result/decision, announce the result, and hold a self-validation process (e.g. village head signs), taking into account that the one validating might be illiterate
- There should be a recourse option in cases where the decision-making process is seen as unfair or invalid

What is the process by which consent is taken and recorded? (2)

- Set timetable together with people, allowing sufficient time for internal discussions and decision-making; offer support for the process (e.g. moderator, resource person)
- Process to take place in their local environment, including selection of meeting site
- The government must be informed, consulted, and involved in the process, if required, but must be neutral and not influence the process
 - Where presence of local authority unduly influences the process, the local authority must be informed of their role (or they could open the meeting and then leave)
- If the government does influence the process (coerce decision) then process (consent) is invalid

What is the process by which consent is taken and recorded? (3)

- Consent process should take place in language preferred by peoples. If the population is heterogenous, most widely understood languages should be used (fewest possible)
- Languages for communication materials and meetings can vary depending on what is most widely understood and culturally appropriate (as determined by the people whose consent is sought)
- How to register views? (e.g. raising hand, voting, signing, deferred)
 - To be determined by the people whose consent is being sought
 - Maintain a record of the result and hold a self-validation process

What activities require consent? (1)

- forcible removal from their lands or territories (Art. 10, UNDRIP)
- taking of cultural, intellectual, religious and spiritual property (Art. 11, UNDRIP)
- adopting and implementing legislative or administrative measures that may affect them (Art. 19, UNDRIP)
- storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples (Art. 29, UNDRIP)
- 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 (Art. 32, UNDRIP)
- Consent for distinct stages in REDD process

What activities require consent? (2)

- Activities that pose risks for lands, territories, natural resources, traditional livelihoods
- Need analysis of proposed activities and potential risks (i.e. do FPIC for risky activities --- who determines what is risky?)
- Use the precautionary principle

How to recognize consent?

- Distinguish between geographically disaggregated (GDA) vs. non-geographically disaggregated activities (NGDA):
 - for GDA, non-agreeing community simply does not participate
 - for NGDA, the principle is to respect the wishes of all communities – ensure 100% consent
- Interpretation of consent of multiple communities/ peoples may depend on the country's legal system (e.g. in Philippines, 2/3 of communities need to approve for FPIC for mining)
- Indigenous peoples and communities who do not agree to the project should not be included in project implementation

How to ensure a rights-based approach?

- All members of the community must have full and effective participation
- Rio Declaration Principle 10: rights to access to information, to participate in decision-making and policy-making process, and access to justice
- (3) Use recourse mechanism
- (0) Disseminate information widely on rights
- Prepare communication module on rights
- (1) Undertake independent analysis of status of human rights issues in area likely to affect FPIC process
- (2) Educate government (and others) about rights, agreements, conventions that apply

Who seeks consent?

- For UN-REDD, a range of options may be available
- For REDD, it is the government