

Recourse

Recommendations to Government of
Mongolovia regarding recourse
mechanisms for FPIC and REDD

Key principles

- Accessible
 - eg make sure indigenous peoples can find it and use it
- Independent and impartial
 - not influenced by vested interests
- Efficient
 - eg not take too long (PNG can take 10 years)
- Effective
 - eg should “have teeth”
- Using indigenous institutions, where possible
(Use UNDRIP Articles 27 and 28 as a guide)

Land rights disputes

Issue: land disputes can take a long time to resolve and are not always independent of govt.

- Use appropriate venue to resolve land disputes, respecting which mechanism indigenous people want to use
 - Eg dispute may be between indigenous v indigenous peoples, or indigenous v non-indigenous peoples
- Ensure there is a venue to resolve land disputes between the community and the State
- Consider an independent process (eg tribunal) to resolve land disputes quickly and fairly
 - Tribunal should include indigenous peoples' representatives.

Local level

Principle: the “informed” part of FPIC includes giving information about recourse mechanisms

- When consulting with indigenous peoples, govt should:
 - Ask indigenous peoples what sort of recourse mechanisms they already have, and what they want for REDD
 - Include information about existing recourse mechanisms (eg UN Resident Coordinator, appeal rights, etc)
- Need to establish clear channels of communication
- Need to build capacity of indigenous institutions to receive complaints and take them forward.

National level (1)

- National REDD governance framework and REDD strategy should include recourse mechanisms:
 - National court or tribunal
 - Ombudsman.
- Establish an independent audit and verification system to check that FPIC has been done properly
- Ensure that there are provisions protecting complainants from retaliation

International level (2)

- Establish:
 - A clear mechanism to receive complaints
 - A right to appeal against government decisions regarding REDD
 - Have an impartial tribunal/commission to hear and resolve disputes (including indigenous representation)
- Orientation for judges, officials, etc on REDD and how to deal with complaints

National level (3)

- Commission/tribunals hearing land disputes and other FPIC complaints should have the power to change the REDD activity
- Commission/tribunal should have the power to suspend REDD activities until the complaint has been resolved (where serious).

International level (1)

Issue: how to ensure that national governments meet their FPIC obligations?

- Objective:
 - to link compliance with REDD funding
 - to set up a system so that REDD funders are aware of problems.
- How will the Government of Mongolia do this?

International level (2)

- International REDD bodies (UNFCCC, UN REDD, Norway, etc). Government should require them to:
 - Establish a REDD Board
 - REDD Board should include indigenous representation
- Board should be able to receive BOTH:
 - Systemic complaints (eg poor legislation)
 - Individual complaints (where not solved at national level)
 - No requirement to exhaust remedies before using international level. Preserve multiple avenues to pursue complaints.

International level (3)

Functions of REDD Board

- Country should be required to report regularly to REDD Board on how it has met its FPIC obligations, including listing any complaints it has received (MRV for safeguards).
- to investigate and monitor complaints.
- have an early warning system
- Should ultimately be able to suspend funding until country has resolved the problem

Final recommendation

- That the Moldavian Government implement all of our recommendations immediately!

Thank you!