

Report of the Expert Workshop on the UN- REDD Programme¹ draft Guidelines on Free, Prior and Informed Consent

10-11 February 2012, Geneva



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).

Introduction

The UN-REDD Programme convened an Expert Workshop in Geneva from 10-11 February 2012 to advance the development of the UN-REDD Programme Guidelines on Free, Prior, and Informed Consent (FPIC). The workshop brought together participants representing indigenous peoples, non-governmental organizations, UN-REDD Programme partner and donor countries, and UN agencies. The Workshop was the fourth in a series of in-person consultations on the UN-REDD Guidelines on FPIC; the first three of which were regional consultations, held in Viet Nam (June 2010), Panama (October 2010), and Tanzania (January 2011),² and followed a public consultation process (1 December 2011 – 20 January 2012).

The main objectives of the Workshop were to:

- Review proposed revisions made in response to the feedback received during the public consultation.
- Cause a breakthrough in understanding and ability to apply FPIC for REDD+, especially regarding key issues such as *for whom? when to apply? how to apply?*
- Refine the draft UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC).
- Provide an opportunity for an in-depth discussion of the objectives, contents and application of the draft FPIC Guidelines.

The Guidelines will be revised in response to inputs received during the public consultation and the Expert Workshop. The revised Guidelines will be used in conjunction with the joint UN-REDD/FCPF [Guidelines on Stakeholder Engagement in REDD+ Readiness With a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities](#) in the preparation of UN-REDD countries' *Readiness Preparation Proposal* (R-PP) Template³. The Guidelines will also be used to support UN-REDD National Programmes in the development of national methodologies for applying FPIC in their country. The Guidelines are to a certain extent a "living document" and will be responsive to emerging needs and experiences from countries and stakeholders. A summary of this report will be shared at the Eighth Meeting of the UN-REDD Programme Policy Board, to be held in Paraguay, 25-26 March 2012.

Background Materials

- [Participants List](#)
- [Provisional Agenda](#)
- [UN-REDD Programme FPIC Guidelines](#)
- [Overview of recommendations arising from comments on the UN-REDD Guidelines on FPIC during the public consultation period \(1 December 2011 – 20 January 2012\)](#)⁴
- [Public Consultation Comment Matrix](#)

² For more information, see: [Asia- Pacific workshop report](#); [Latin America and the Caribbean workshop report](#); [Africa workshop report](#)

³ 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.

⁴ Note these are a composite of recommendations prepared by the UN-REDD Programme; consensus by the Workshop participants was not sought on each recommendation.

DAY 1: Friday, 10 February, 2012

The Workshop opened with introductory presentations from the UN-REDD Programme on the following topics:

- [The process to develop the UN-REDD FPIC Guidelines, next steps and workshop objectives](#)
- The history and legal basis for FPIC and its significance in the context of REDD+ (Vicky Tauli-Corpuz, Executive Director, Tebtebba Foundation)
- [An overview of the UN-REDD FPIC Guidelines](#)
- [An overview of the recommendations arising from the public consultation on the UN-REDD FPIC Guidelines, initial responses to these recommendations and issues to be discussed during the Workshop](#)

Key Recommendations arising from the public consultation on the UN-REDD FPIC Guidelines include:

- 1. Provide clarity on how the Guidelines will be tailored to national contexts:** Given the diversity of, among others, peoples, terminologies, legal frameworks and phase in the REDD+ process, there is a need to provide flexibility in the Guidelines to account for country contexts. At the same time, such flexibility should not undermine the underlying right and therefore must ensure consistency with international normative frameworks.
- 2. Section 1.3 (normative framework) of the Guidelines should be strengthened:** There is a need to include additional references to international case law to ensure the human rights-based approach is accurately and comprehensively elaborated. There is also a need to ensure the rights of 'other' stakeholders (non-indigenous peoples, including minorities, forest-dependent communities, women, etc.) are clarified.
- 3. Provide clarity on who gives consent:** Further clarity is needed on the process to determine which groups FPIC should be extended to. Stakeholder terminology should be better defined, made consistent throughout the document, and tailored to national contexts. Further guidance is needed on how rights-holders will be represented in FPIC processes.
- 4. Provide clarity on when FPIC is required:** The Guidelines need to provide further information on which activities require FPIC and how National Programmes should make this determination, as well as to what extent FPIC is required in the REDD+ Readiness phase.
- 5. Provide clarity on the process for seeking FPIC:** Further guidance is needed on: the methodology for evaluating and verifying the FPIC process; the identification and role of the facilitator, if any, in the FPIC process; and determining an appropriate timeline for the FPIC process.
- 6. The scope of application of the Guidelines should be clearer in countries supported by both FCPF and UN-REDD:** The difference in standards between the two programs on the topic of FPIC creates confusion and inconsistency for countries and undermines efforts to enhance coherence and efficiency in the readiness process.

7. **The Guidelines need to elaborate on the proposal for grievance and accountability mechanisms:** Given the significance of these two components to the overall implementation of the FPIC Guidelines, and more broadly the UN-REDD Programme standards, further clarification is requested on their design and operationalization.
8. **The Guidelines should be reviewed and revised from the gender perspective.**

The plenary discussion that followed focused on recommendations to and comments on the Guidelines in addition to those presented above, including:

- The Guidelines should reflect how the different stages of REDD+ will have different implications for countries and stakeholders, including indigenous peoples;
- The Guidelines should address the risks associated with applying FPIC;
- The link between consultation and consent should be strengthened in the Guidelines;
- The Guidelines should make explicit reference to customary forest rights;
- The Guidelines are not meant to solve all issues – they are part of a suite of tools offered by the UN-REDD Programme to address social and environmental impacts;
- The Guidelines should include a discussion of how the issue of conflicting rights will be addressed, possibly through the text on grievance mechanisms;
- The normative framework should include additional international legal references that provide clarification on the human rights-based approach, the bundle of rights underlying FPIC; and specific terms (i.e. duty bearer and rights holder);
- The Guidelines should state explicitly that FPIC is not for state agencies or private companies.

The UN-REDD Programme identified recommendations 3, 4 and 5 above as the ones most in need of further discussion and guidance and therefore proposed that the Workshop focus on developing responses to these three recommendations. Therefore, three Breakout Groups were formed to discuss the key topics of: (1) Who gives consent? (2) When is FPIC required? and (3) Process for Seeking FPIC. (See [Breakout Group Questions](#))

The Breakout Groups then reported back (See [Presentation of Breakout Group Responses](#)) and a Plenary Discussion was held to discuss the outcomes of the Groups' discussions (See a [Summary of Breakout Groups' Report Back and Plenary Discussion](#)).

The first day concluded with the following presentations of practical experiences in applying FPIC:

- [Free, Prior, and Informed Consent \(FPIC\) in the UNREDD Vietnam Programme](#) (RECOFTC, Vietnam)
- [Experience in Developing Approaches to REDD+ Safeguards: Focus on FPIC](#) (WISE Inc. on behalf of CoDe REDD Philippines).

Day 2: Saturday, 11 February, 2012

The second day of the workshop was composed of a smaller group of technical experts and focused on elaborating the [Breakout Group Responses](#). In particular, the participants clarified recommendations on the 'who' and the 'when' of FPIC, by responding to the following questions:

- **Who:** What should be the criteria for determining which groups FPIC should be extended to?
- **When:** Do readiness activities require FPIC? What aspects (if any) of the development of a national REDD+ strategy require FPIC?

Below is a summary of discussions and recommendations on the above topics.

What should be the criteria for determining which groups FPIC should be extended to?

Discussions centered on the legal basis for FPIC and the process for determining which stakeholders have a right to FPIC. There was recognition of the need to ensure that the rights of other forest-dependent communities are upheld, even though they may not have a specific right to FPIC. The Workshop participants proposed a way forward on this question that included five key components:

1. The Guidelines should state that FPIC is a recognized right of indigenous and tribal peoples under international law.
2. The Guidelines should elaborate on the rights of other stakeholders (non-indigenous and tribal peoples).
3. The Guidelines should apply the World Bank's criteria to determine whether a group can be considered indigenous peoples or not, as stated in its Operational Policy 4.10 on Indigenous Peoples, copied below:

"Because of the varied and changing contexts in which Indigenous Peoples live and because there is no universally accepted definition of "Indigenous Peoples," this policy does not define the term. Indigenous Peoples may be referred to in different countries by such terms as "indigenous ethnic minorities," "aboriginals," "hill tribes," "minority nationalities," "scheduled tribes," or "tribal groups." For purposes of this policy, the term "Indigenous Peoples" is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:

- a) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;*
- b) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories*
- c) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and*
- d) an indigenous language, often different from the official language of the country or region.*

A group that has lost "collective attachment to geographically distinct habitats or ancestral territories in the project area" ... because of forced severance remains eligible for coverage under this policy. Ascertaining whether a particular group is considered as "Indigenous Peoples" for the purpose of this policy may require a technical judgment. "

4. The Guidelines should introduce 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).
 - A HRIA would support National Programmes to identify potentially affected stakeholders and their composition including who the rights-holders are and which rights they are entitled to.
 - A HRIA would support National Programmes to meet one of the safeguards outlined in the Cancun Agreements: *"Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples."*
 - As a starting point, the UN-REDD Programme could review and learn from the [International Finance Corporation's \(IFC\) Guide to Human Rights Impact Assessment and Management](#), and other relevant tools supported by Norway, Denmark, Oxfam and others.
5. The Guidelines should adopt the definition of consultations as stated in ILO Convention 169, which states that all consultations have the objective of achieving agreement or consent: *"The consultations ... shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures."* (ILO 169, Art 6, Para 2)

Do readiness activities require FPIC? What aspects (if any) of the development of a national REDD+ strategy require FPIC?

There was agreement that components of a national REDD+ strategy may have implications on the rights of indigenous peoples (e.g., proposed legislation related to changes in land tenure or agreements on benefit sharing etc.) and therefore at least those components may require some form of consent.

Questions were raised about what the process could be for seeking consent at the national level. It was suggested that consent at the national level could be provided through indigenous peoples' own representative bodies, as per Article 19 of the UNDRIP: *"States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."*

Thus, in cases where a national REDD+ strategy includes policy or legislative measures that will affect numerous indigenous peoples' communities in a country, it was proposed that National Programmes consult widely with representatives of indigenous peoples and their associations and networks, based on a schedule that is transparent and iterative. Consultative mechanisms could be identified and/or created and consent could be given through duly designated indigenous peoples representatives for certain issues. These mechanisms would need to be based on local level self-selection. National level

representatives would need to be validated externally and with communities they claim to represent to ensure their legitimacy.

Questions were raised about the legitimacy and feasibility of such an approach, considering that in existing practice, consent is decided collectively by a community to a specific issue related to that community's land, territories and/or resources. Participants noted the challenge of ensuring fair and valid representative structures through which to seek consent. Some were concerned that the definition and application of FPIC may be diminished if there are two different interpretations of FPIC – one at the community level and another at the national level. Others felt that the proposed approach conflated the definitions of consultation and FPIC.

At the same time, it was noted that consent given at the national level would not remove the right to give or withhold consent at the community level. The right to give or withhold consent to components of a national REDD+ strategy was seen as absolutely critical to ensuring that the rights of indigenous peoples are recognized and protected in the national REDD+ strategy, which will guide all other REDD+ activities in a country. Also, given that national REDD+ strategies are likely to propose broader, more overarching measures, rather than community-specific ones, it may make sense to have consent come in a different form than it would at the community level. They may in fact be too broad to even identify specific communities to seek consent from.

The following draft text, reflecting the views of most participants was proposed to be included in the Guidelines:

It is recognized that States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (UNDRIP, Art. 19).

In the development of national REDD+ strategies, States [or National Programmes] 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 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.

Noting the challenge of ensuring fair and legitimate representation structures at the national level, participants discussed how National Programmes can support or facilitate rights-holders to identify and/or create their own representative structures, making the following points:

- The Forests Dialogue pointed to some successful cases of the development of legitimate representation structures from groups in British Columbia and New Zealand, where indigenous peoples' organizations self-organized based on agreed criteria. Notable characteristics of these groups were that they had sustainable livelihoods and were self-funded.⁵
- The process to support the organic growth of legitimate representation structures takes a long time and will require additional resources, but REDD+ programs (e.g., UN-REDD Programme and FCPF) are moving too quickly to allow for this organic growth.
- Communities must be provided with capacity/support to build their representative base. Representatives lose their credibility when they don't have the resources to consult with their constituency.

Other recommendations arising from the Workshop include:

- The Guidelines should include a process roadmap for grievance mechanisms, similar to the descriptive text in Annex III of the Guidelines which outlines the process for seeking FPIC.
- The UN-REDD Programme should consider how it would respond if the State counterpart of a National Programme does not recognize the rights of groups with these criteria.
- It should be made clear that while the Guidelines specifically apply to UN-REDD Programme funded activities, States are obligated by international law to seek FPIC from indigenous peoples on activities that may impact their rights. The Guidelines should be clearer on the fact that this is an obligation of the State that cannot be delegated to a facilitator or an intermediary.
- The Guidelines should be further vetted and reviewed by United Nations human rights branches and experts, including the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Special Rapporteur on the Rights of Indigenous Peoples.
- In countries where FCPF and the UN-REDD Programme are both active, the Guidelines should apply.
- A system should be in place to ensure communities that withhold their consent are not victimized.
- The Guidelines should link to these additional existing tools and resources:
 - [FPIC Verification and Evaluation Toolkit](#) (prepared by RECOFTC and the UN-REDD Programme in the Asia/Pacific Region)
 - [Evaluation and Verification of the Free, Prior and Informed Consent Process under the UN-REDD Programme in Lam Dong Province, Vietnam](#)
 - [Draft guidelines on the protection of indigenous peoples in voluntary isolation and in initial contact of the Amazon basin and el Chaco](#)⁶
 - 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](#))

⁵ For more information see: New Zealand: land trust structure for Maori <http://www.ltft.co.nz/>; and British Columbia: Assembly of First Nations <http://www.afn.ca/index.php/en/about-afn/our-story>.

⁶ The aim of these guidelines is to serve as a frame of reference for the different actors working with indigenous peoples in isolation and in initial contact in South America. The guidelines are meant to be used as an instrument for better contextualizing international law with a view to protecting these peoples, given their extreme vulnerability and high risk of extinction. The Office of the High Commissioner submitted the guidelines to the Expert Mechanism on the Rights of Indigenous Peoples as an example of how the United Nations Declaration on the Rights of Indigenous Peoples can be applied to the protection of the rights of indigenous peoples in isolation and in initial contact.

Conclusions

The UN-REDD Programme will seek to address the recommendations outlined in this report, the [Breakout Group Responses](#), as well as those in the [Overview of recommendations arising from comments on the UN-REDD Guidelines on FPIC during the public consultation period \(1 December 2011 – 20 January 2012\)](#).

Specifically, the UN-REDD Programme will make the following revisions to the Guidelines:

- a) Provide clarity on how the Guidelines will be tailored to national contexts.
- b) Strengthen Section 1.3 (normative framework) of the Guidelines to include additional references to international case law to ensure the human rights-based approach is accurately and comprehensively elaborated. The Guidelines will be revised to include references to and from the following, where relevant:
 - Additional UNDRIP Articles and provisions in ILO Convention 169;
 - Additional references that provide clarification on the human rights-based approach, the bundle of rights underlying FPIC, some of which are binding; and specific terms (i.e., duty bearer and rights holder);
 - Relevant reports from the African Commission on Human and Peoples Rights and the Inter-American Court of Human Rights;
 - Advice No. 2 of the Expert Mechanism on the Rights of Indigenous Peoples;
 - The UN Committee on the Elimination of Racial Discrimination (CERD);
 - The UN Committee on Economic, Social and Cultural Rights (CESCR);
 - The International Covenant on Economic, Social and Cultural Rights (ICESCR);
 - The International Covenant on Civil and Political Rights (ICCPR);
 - References to indigenous peoples' permanent sovereignty over their natural resources;
 - References to forest customary rights;
 - Statements by the United Nations High Commissioner for Human Rights.
- c) Provide clarity on who gives consent by:
 - Stating that FPIC is a recognized right of indigenous and tribal peoples under international law.
 - Elaborating on the rights of other stakeholders (non-indigenous and tribal peoples).
 - Applying the World Bank's criteria to determine whether a group can be considered indigenous peoples or not, as stated in its Operational Policy 4.10 on Indigenous Peoples.
 - 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), building on existing approaches.
 - Adopting the definition of consultations as stated in ILO Convention 169.
 - State explicitly that the Guidelines are not meant to convey the human right of FPIC to state agencies or private companies, but rather assist in the right's application to communities.

- d) Provide clarity on when FPIC is required, by further vetting and considering the implications of including the draft text above (p. 7), reflecting the views of most participants on the second day of the Expert Workshop (**additional comments on the text and general approach are welcome**).
- e) Provide clarity on the process for seeking FPIC by drawing from the recommendations and lessons included in the following: [FPIC Verification and Evaluation Toolkit](#); [Breakout Group 3 Recommendations on the FPIC process](#); Proposed Protocol for a Consultation and Consent Process with the Indigenous Peoples of Paraguay ([EN](#), [SP](#)); and [Guidance for community-level FPIC process facilitators](#) (developed by WISE).
- f) Elaborate the proposal for grievance and accountability mechanisms.
- g) Review and revise from a gender perspective.
- h) Elaborate on how the different stages of REDD+ will have different implications for countries and stakeholders, including indigenous peoples.
- i) Elaborate on the risks associated with applying FPIC incorrectly.
- j) Strengthen the link between consultation and consent.
- k) Have the Guidelines vetted by United Nations human rights branches and experts.
- l) Include provisions recognizing the need to ensure communities that withhold their consent are not victimized.
- m) Include links to additional existing tools and resources, as referenced above (p. 8).
- n) Seek to clarify a process for ensuring consistency in approaches to stakeholder engagement in countries where both the UN-REDD Programme and FCPF are active.

Photos of the Expert Workshop on the UN-REDD Guidelines FPIC



