

# Free, Prior and Informed Consent: Basic Principles and Implementation

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*FPIC and Recourse Mechanisms for REDD+*

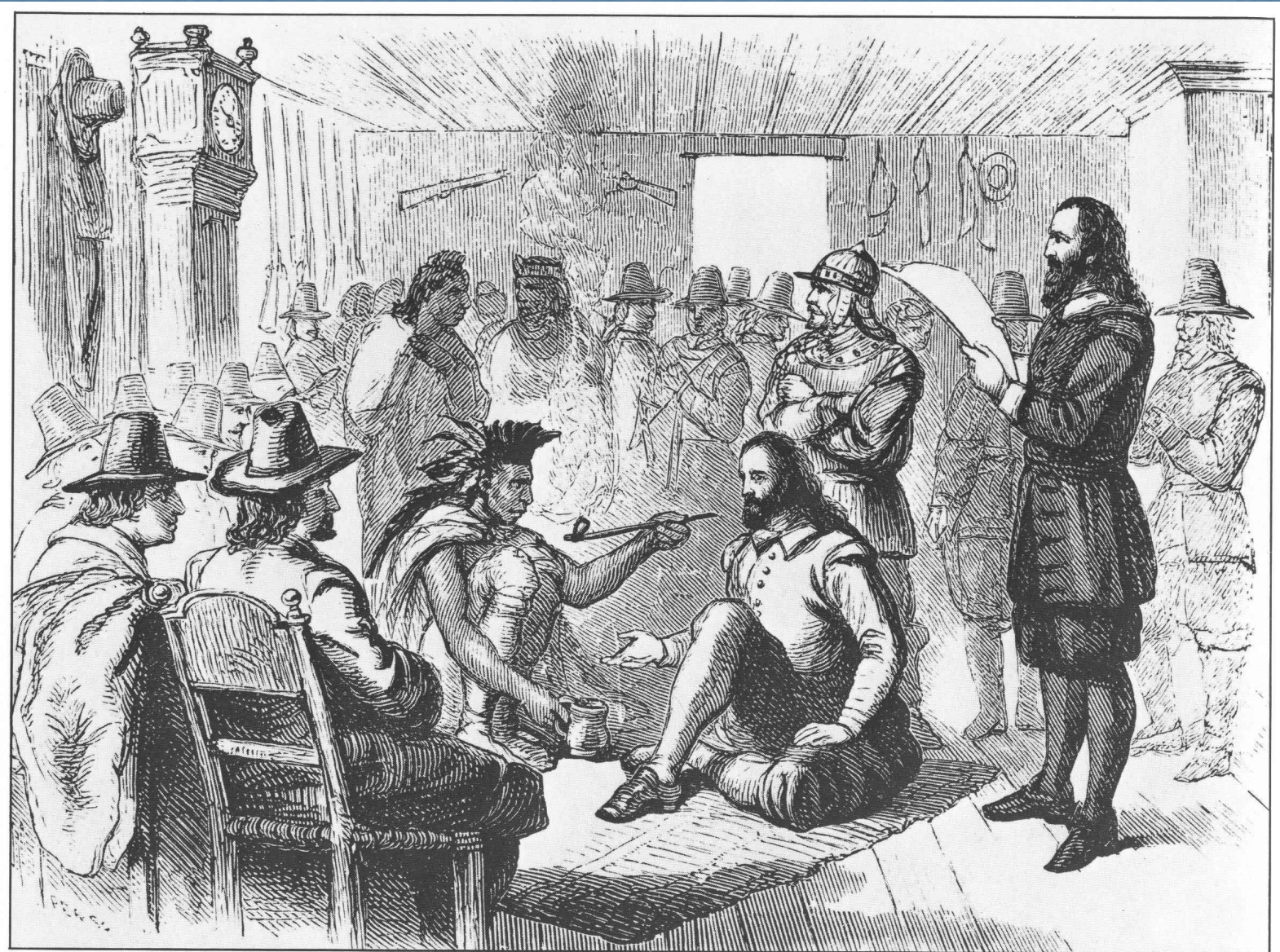
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# Forests for Peoples : Peoples for Forests



# FPIC: a new concept ?



# UN Declaration on the Rights of Indigenous Peoples

- IPs are no less peoples than other human societies
- **Article 3:** Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- **Article 4:** Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

# Key rights in the UN Declaration

- Rights to the land, territories and natural resources customarily owned, occupied or otherwise used by them
- Control what happens on their lands
- Represent themselves through their own institutions
- Exercise their customary law
- All of above within framework of State, international human rights and respecting rights of individuals.

## ***UN Declaration on Rights of Indigenous Peoples: Article 32***

- 1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.*
- 2. States shall 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 the approval of any project affecting their lands or territories and other resources...*

***(Adopted by UN GA Sept. 2007)***

# What does FPIC consist of ?

- Right to say '**yes**' or '**no**' to proposed developments on peoples' lands
- **Consent** which is determined in conformity with or with respect for peoples' cultures, customary systems and practices
- According to people's own **representative** organisations/ institutions
- Without coercion or duress (**'Free'**)
- Before the initiation of activities (**'Prior'**)
- After the complete sharing of available information on the proposed activities and their implications, according to an agreed process and with adequate time (**'Informed'**)

# FPIC in international norms:

- UN Development Group Guidelines
- UNDP Policy on Indigenous Peoples
- European Union : IPs policy
- IBD: IPs and re resettlement
- IFAD: IP policy
- World Bank Indigenous Peoples Policy
- **FPICon and Broad Community Support**
- FAO Voluntary Guidelines for Planted Forests: no resettlement without FPIC



# FPIC in voluntary 'best practice' standards:

- Protected Areas : WCPA, WPC, WCC, CBD
- Forestry: Forest Stewardship Council
- Dams: World Commission on Dams
- Mines: World Bank's Extractive Industries Review
- Environmental Impact Assessments: Akwe:kon Guidelines
- Crops: Roundtable on Sustainable Palm Oil, RTRS, RSB....
- Now REDD: UNREDD, CCBA, CCBA/CARE.

# Conflict: costly to ignore rights



# Repression: costly for people



# ***CSR and FPIC: Why companies seek consent: reducing risk***

*' ... early attention to FPIC issues can avoid significant costs during implementation... '*

*' Even as we refine what this principle means in operation, there is no question that as a principle and as a practice, free, prior, informed consent is a key part of legitimacy. And if you wonder if that is true, simply ask this question: Is your company better off having the people in the communities where you operate with you or against you? It is just plain common sense. '*

***WRI, 2006, Development Without Conflict: The Business Case for Community Consent, Washington DC***



# Is FPIC a right of 'veto'?

- Does this mean that IPs can reject private sector development plans on their lands. As a general rule: yes.
- Does this mean that IPs can overrule the State?
- Not exactly, the jurisprudence clarifies that in 'exceptional circumstances' and where there are 'compelling reasons', the State may push ahead but should still allow people to express their views through an FPIC approach.
- In such cases, however, the State must then satisfy a number of additional requirements:
  - It must acquire lands and pay due reparations through due process previously established by law
  - Show that the intervention is 'necessary'
  - Show that the cost (to the people) is 'proportional' to the benefit being sought
  - Must be 'with the aim of achieving a legitimate objective in a democratic society'
  - Should not 'endanger their very survival as a people'
- Simply invoking the national interest is not enough.

# Lessons from the field

- FPP has been working with indigenous peoples on FPIC in a number of countries including
- Russia
- Indonesia
- Cameroon and Republic of Congo
- Guyana, Suriname and Panama
- As well as holding numerous international meetings to review progress with implementation

# Who has the right to FPIC?

- Indigenous peoples
- 'Local communities'
- Definitional challenge very great
- Legal basis unclear
  - All 'peoples' have the right to self-determination
  - But do all 'social groups' have same collective rights?  
Probably not.
- Representation issues very challenging: how is representation of a 'local community' different from devolution to local government?
- IFAD policy on access to land: IPs and LCs