

**UN-REDD Programme Guidelines for Seeking the Free, Prior, and Informed Consent of Indigenous Peoples and other Forest Dependent Communities**

**CONSOLIDATED DRAFT FOR COMMENT – January 2011**

**Based on Recommendations made by participants at the UN-REDD Programme Consultations on FPIC and Grievance Mechanisms in Asia-Pacific, and Latin America and the Caribbean, June and October 2010**

To support UN-REDD Programme countries to implement the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the Programme is undergoing a series of regional consultations with representatives of Indigenous Peoples' organizations, civil society and other stakeholders to develop specific guidelines for the UN agencies and countries participating in the Programme. This initiative responds to the demand from participating countries for concrete guidance on how to seek free, prior, and informed consent and provide effective grievance/complaint resolution within the context of the UN-REDD Programme. As a partnership of one specialized UN agency (FAO) and two programmes (UNDP and UNEP), the UN-REDD Programme is obliged to promote respect for, and seek the full application of, the provisions of UNDRIP, including the right to of FPIC, particularly at the country-level (UNDRIP, Art 42)<sup>1</sup>. The motivation to seek free, prior and informed consent and provide effective recourse within the context of the UN-REDD Programme is founded on a human rights-based approach to development programming<sup>2</sup>.

Recommendations made by participants at the first (Asia-Pacific) and second (Latin American and the Caribbean) regional dialogues, which took place in Hanoi, Viet Nam, from 16 to 18 June 2010, and in Gamboa, Panama, from 4 to 7 October 2010, have been consolidated in this draft which will serve as the basis for the upcoming regional consultation with African stakeholders in Tanzania in January 2011. This consolidated draft reflects the recommendations made during both workshops: Where ideas converged, recommendations have been harmonized. Where significant differences in recommendations or perspectives exist, recommendations from each region have been highlighted. Areas that remain unclear have been marked for additional attention during the consultation in Africa, as this is the final workshop prior to circulation of the guidelines for public comment and the finalization of the guidelines.

For more information on the Asia Consultation, including the workshop report, draft guidelines and original presentations made by the working groups, please see:

[http://www.unredd.net/index.php?option=com\\_docman&task=cat\\_view&gid=756&Itemid=53](http://www.unredd.net/index.php?option=com_docman&task=cat_view&gid=756&Itemid=53)

For more information on the Latin American Consultation, including the workshop report, draft guidelines, and the original presentations made by the working groups, please see:

[http://www.unredd.net/index.php?option=com\\_docman&task=cat\\_view&gid=860&Itemid=53](http://www.unredd.net/index.php?option=com_docman&task=cat_view&gid=860&Itemid=53)

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<sup>1</sup> The UN-REDD Programme is also obliged, as a partnership of one specialized agency and two programmes established under the supervision of a UN organ (the General Assembly), to assist in the implementation of UNDRIP through the mobilization of financial resources and technical assistance for indigenous peoples, and to establish ways and means of ensuring their participation on issues affecting them (UNDRIP, Art 41)

<sup>2</sup> For more information on the human rights based approach, please see <http://www.undg.org/index.cfm?P=221>

## **What is FPIC?**

FPIC is the right to give or withhold free, prior and informed consent and applies to all activities, projects, legislative or administrative measures, and policies that take place in or impact the lands, territories, resources or livelihoods of indigenous peoples. Free, prior and informed consent is founded in the rights articulated in the UN Declaration on the Rights of Indigenous Peoples:

- The right to self-determination (UNDRIP, Art 19)
- The right of indigenous peoples not to be forcibly removed from their lands or territories. (UNDRIP, Art 10)
- The right of indigenous peoples to practice cultural traditions and customs (UNDRIP, Art 11)
- The right to maintain, protect and have access to religious and cultural sites (UNDRIP, Art 12)
- The right of indigenous peoples to participate in decision-making through representatives chosen by themselves in accordance with their own procedures (UNDRIP, Art 18)
- The right not to be deprived of their means of subsistence (UNDRIP, Art 20)
- The right to traditional medicines (UNDRIP, Art 24)
- The right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired (UNDRIP, Art 26), and
- The right to determine and develop priorities and strategies for the development or use of their land or territories and other resources (UNDRIP, Art 32).
- The right to promote, develop and maintain institutional structures and distinctive customs, spirituality, traditions, procedures, practices (UNDRIP, Art. 34)

The FPIC process should be set in a national legal and policy framework which respects these rights, based on the national government's commitment to existing international agreements such as the UN Declaration on the Rights of Indigenous Peoples, the Convention on Biological Diversity, ILO 169, and the Universal Declaration of Human Rights. Analysis of state laws for compatibility with these international treaties and recognition of customary institutions and customary rights to land, resources, and forests should inform the FPIC process, including the arrangements to provide recourse. The free, prior and informed consent of indigenous peoples and other forest dependent communities should be sought through an open, transparent consultation process involving the rights holders.

## **Principles**

Proposed REDD+ readiness activities should take into account the socio-cultural, environmental, financial, and spiritual context of indigenous peoples and other forest dependent communities and should be relevant to the lifestyle of the indigenous community. Consultation processes designed to seek FPIC should:

- Strengthen and not degrade territorial integrity.
- Be orderly, participative, inclusive, accountable and representative.
- Be independent and follow indigenous peoples' traditional decision-making systems.
- Respect the natural dynamics of indigenous peoples and other forest dependent communities (cultural customs, practices and lifestyle).
- Ensure that clear, prior, transparent, and consistent information reaches the community-level.

**What is Consent?** Consent refers to the types of customary decisions made by indigenous peoples and other forest dependent communities reached through their socio-cultural decision-making process. The right to give or withhold consent applies to all projects, activities, administrative measures and policies (and their associated processes and phases) that directly impact the lands, territories, resources, and livelihoods of indigenous peoples and other forest dependent communities. Consent must be sought and granted or withheld according to the unique political-administrative dynamic of each community. Consent is:

- A freely given decision that may be a “Yes” or a “No,” including the option to reconsider if there are changes in programme design or if new information relevant to the programme emerges.
- A collective decision determined by the affected peoples (e.g. consensus, majority, etc.).
- Based on full understanding of opportunities and risks associated with the proposed activity.
- The expression of rights (to self-determination, lands, resources and territories, culture).
- Given or withheld in phases, over specific periods of time for distinct stages or phases of REDD.

**Prior:** Prior refers to a period of time in advance of an action or process when consent should be sought, as well as the period between when consent is sought and when consent is given or withheld.

- Prior implies that time is provided to understand, access, and analyze information on the proposed activity. The amount of time required will depend on the decision-making processes of indigenous peoples and other forest dependent communities.
- Information must be provided before activities can be initiated, at the beginning or initiation of an activity, process or phase of implementation, including conceptualization, design, proposal, information, and execution.
- The decision-making timeline established by indigenous peoples must be respected, as it reflects the time needed to understand, analyze, and evaluate the activities under consideration.

**Informed:** Refers to the type of information that should be provided prior to seeking consent.

Information should be:

- Accessible, clear, consistent, accurate, and transparent.
- Delivered in appropriate language and format (including video, graphics, radios, documentaries, photos);
- Complete and objective (include social, financial, political, cultural and environmental impacts);
- Delivered in a manner that strengthens and does not erode indigenous or local cultures;
- Delivered by culturally appropriate personnel and include capacity building of indigenous or local trainers; and
- Should reach the most remote, rural communities (as part of the decision-making process).

### **Who gives consent?**

Directly or indirectly affected indigenous peoples, tribal groups, ethnic minorities and other forest dependent communities have the right to give or withhold their consent, through their own representative institutions and following their own decision-making processes, regarding activities, proposals, administrative measures, policies that may affect their land, territories, resources or livelihoods. All rights holders should be represented in the decision-making process (including men, indigenous elders, women, youth, children and persons with disabilities, the poor). The process to seek consent from those empowered to offer a decision encompasses four steps:

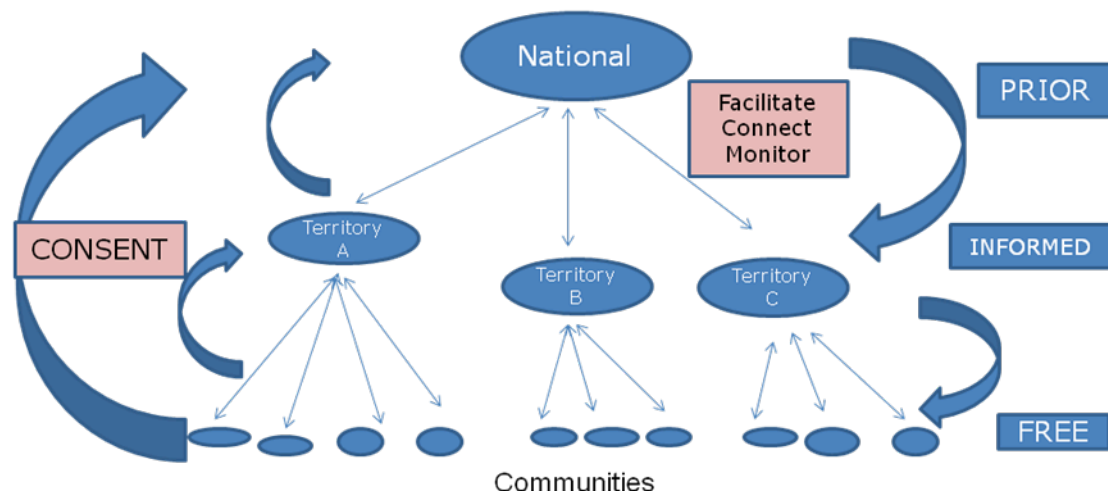
**Step 1. Identify the indigenous peoples’ or other forest dependent communities’ governance structure present in the country.** Actions and activities of significant scope (e.g. REDD+) should first be presented to the representative indigenous institution(s) present in the country (network, congress, traditional authorities, body or institutions with a cultural basis). The predominant indigenous peoples’ representative body should be made responsible for transmitting information on the proposed actions to the traditional institutions in each territory/province. The national institution(s) should play the role of facilitator, negotiator, and monitor for the traditional institutions in each territory/province, where their local technical team will play the role of facilitators.

**Step 2. Engage and partner with territorial indigenous peoples’ or other forest dependent communities’ institutions (councils, assemblies, congresses, etc.).** The territorial/provincial congresses and their technical staff should be responsible for transmitting information to their constituent communities in the appropriate language and format, according to their individual political-administrative structures, with adequate time for full consideration.

**Step 3. Indigenous or other forest dependent communities in each territory, under the guidance of their traditional authorities and according to their own decision-making process, shall grant or withhold consent or backing for the proposed project or action.** The decision-making process should be carried out without external pressures and respecting the community's timeline.

**Step 4. The territorial authorities, upon consulting with their constituent indigenous or other forest dependent communities, should provide the results of their decision to the national indigenous peoples’ or other forest dependent communities’ representative institution (networks, congresses, traditional authorities, bodies or institutions).** The national representative institution will then communicate the decision through a decree, resolution or other appropriate format.

Levels of decision-making for FPIC



\* Where indigenous peoples are not organized into a nationally representative system, advice should be sought from existing indigenous peoples institutions and civil society on how best to approach the effected indigenous communities.

**Who seeks free, prior and informed consent?**

- For UN-REDD Programme ‘readiness’ support activities, the Programme staff, representatives of the government, or civil society acting on behalf of the Programme, may seek consent.
- For national REDD+ activities, representatives of the national or sub-national government, or institutions acting on their behalf, may seek consent.

**How is free, prior and informed consent recognized?**

Indigenous peoples’ or other forest dependent communities’ decisions over proposed activities or projects that will impact their rights, lands, territories, resources or livelihoods, should be free of coercion, corruption, interference, and external pressure. Permission to undertake a proposed activity or project must result from full engagement with traditional or locally recognized decision-making processes that are undertaken on a voluntary basis, free from pressure, without interference, and with sufficient time to understand, analyze, debate, and discuss decisions. Permission to undertake a proposed activity will be delivered according to the norms and traditions of the indigenous peoples and other forest dependent communities, for example: deeds, resolutions, contracts and/or other types of written or oral agreements that should be mutually recognized by the communities in question, as well as local and national government authorities.

**How is consent recognized for different types of activities\***

It is possible to distinguish between geographically disaggregated (GDA) vs. non-geographically disaggregated activities (NGDA):

- For GDA (activities which can take place over separate land areas), non-agreeing communities simply do not participate.
- For NGDA (activities which cannot be split up), the principle is to respect the wishes of all communities – ensure 100% consent.

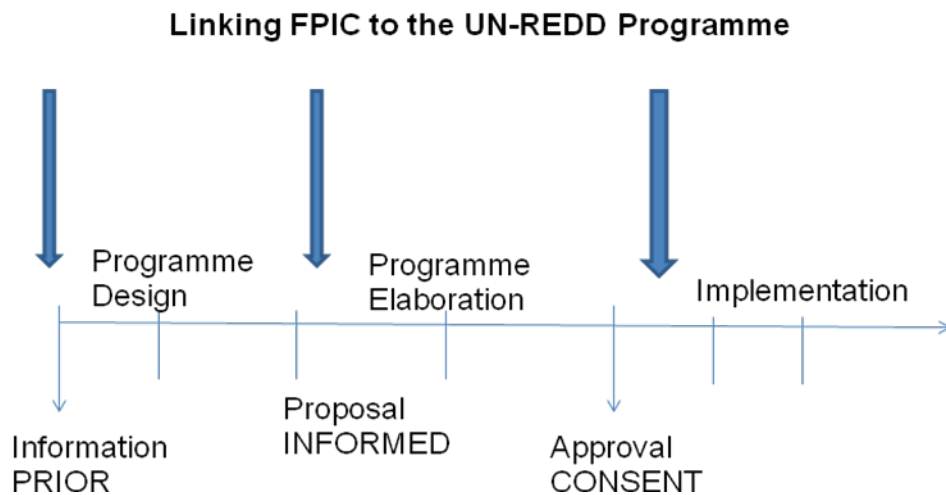
	<b><i>Geographically disaggregated</i></b>	<b><i>Non-geographically disaggregated</i></b>
<b><i>Example of REDD activity</i></b>	REDD awareness training for villages	Measurement of carbon stocks
<b><i>Type of consent required</i></b>	Villages can opt in and opt out	Consent of whole community is required
<b><i>Effect on REDD activity</i></b>	Opt out villages do not participate	If 100% consent not given, whole community does not participate

- 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).
- Communities who do not agree to the project should not be included in project implementation

\* As reflected in the recommendations from the Asia Regional Workshop on FPIC and Recourse Mechanisms.



## Applying free, prior and informed consent to the UN-REDD Programme:



Planned programme activities should be analyzed during the design phase to understand how, where and when consultation and/or FPIC should apply to different activities. Consultation processes should be integrated into programme/project design, development and implementation. Each national UN-REDD Programme contains a component on stakeholder engagement, training and consultation; this should correlate with the programme activities analysis. This component should be prioritized and adequately funded so as to facilitate consultation and FPIC processes, where necessary.

It is important to consider the differentiation between when it will be necessary to seek free, prior and informed consent and when it will be necessary to undertake a stakeholder consultation/participation process. For both processes, generic guidelines that provide basic guidance, while allowing a degree of flexibility to account for local and national contexts, will be necessary.

Existing indigenous peoples' or other forest dependent communities' representative organizations and consultation mechanisms should be engaged and partnered with to familiarize the population with REDD+ and the UN-REDD 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.

The timelines imposed by the REDD+ financing mechanisms should not limit or hinder the implementation of adequate consultation processes. Countries should be supported to complete and present their plans with due process of consultation and FPIC.

### Which UN-REDD Programme Activities Require FPIC?

- 1) Individual conditions for each country should define what activities will require consultation and what activities require FPIC. The following broad categories have been identified as requiring FPIC:
  - Policy level: Adopting and implementing legislative or administrative measures that may affect the rights holders (UNDRIP, Art. 19), such as the development of national REDD+ strategies, and the process of spatial-planning for REDD.
  - Project level: Projects affecting the lands or territories and other resources of indigenous peoples, particularly in connection with the development, utilization or exploitation of mineral, water or other resources (UNDRIP, Art. 32).
  - Removal from traditional or customary lands or territories (UNDRIP, Art. 10).
  - Removal of cultural, intellectual, religious and spiritual property (UNDRIP, Art. 11).
  - Activities that may affect lands, territories, natural resources, traditional livelihoods.
  
- 2) Under the premise that the consultation mechanism applied by each government is effective and abides by the UN-REDD Programme requirements, and that FPIC should apply to activities where there is a risk of impact to rights, lands, territories, resources or livelihoods:
  - Designation of what kinds of activities and programme components require FPIC should be integrated into the format/template of the UN-REDD national programme document: during the development of the national programme document (prior to validation and approval), the results framework (table of indicative activities and outcomes) must be analyzed to identify which activities/components require consultation or consent, and how the consultation and/or consent process will be carried out with indicative budget requirements.
  - The national programme document should map existing consultation mechanisms and designate which will be empowered to undertake consultation/consent on behalf of the national UN-REDD Programme.
  - For programme activities/components requiring FPIC, the obligation to seek consent should be integrated into the terms of reference for each implementing organization with indicators to verify that FPIC was sought for the identified activities.
  - In order to facilitate effective and equitable participation in national or sub-national activities, the national UN-REDD Programme should undertake an analysis of rights holders and their representative institutions.
  
- 3) The analysis of the national programme document results framework should be formally reviewed during the stakeholder validation meeting, prior to submission to the Policy Board.
  
- 4) This analysis should be further reviewed during the inception workshop to confirm which activities require consultation, effective participation, and/or FPIC.

The national UN-REDD Programme should submit annual work plans that identify activities that require consultation, participation and/or seek consent, according to the categorization of each activity for comment to the national REDD+ committee.

- 5) Access to a grievance/complaint mechanism must be assured.

#### **Levels of consultation and free, prior and informed consent**



**National-level:** Consultation on issues at the national-level should be conducted by a multi-stakeholder group with a specific mandate to facilitate consultation and FPIC on REDD+ (note: build on existing institutions, where possible). This multi-stakeholder group should be:

- Supported by an institutional analysis and capacity assessment of stakeholder representative organizations, if necessary;
- Empowered to oversee the process of REDD+ readiness; and
- Empowered to lead the design of the REDD+ readiness consultation strategy.

National-level activities should be based on effective consultation and participation and may be subject to FPIC during design and implementation phases, depending on the activity. For example, the decision to carry out an analysis of the national legal framework may be initiated without consultation. However, the analysis itself must be open and consultative and responsive to the input of stakeholders. The results of the analysis (eg., legal or administrative reform) must be subject to FPIC where they impact the rights, territories, resources or livelihoods of indigenous peoples and other forest dependent communities. New laws or public policies should contain socio-environmental safeguards, reflect collective and individual indigenous or community rights, and should establish basic mechanisms for conflict resolution.

**Regional/sub-national level:** Regional/sub-national level consultation mechanisms should be involved on a flexible basis, depending on the country context. Sub-national level activities may be similar to national-level activities in that the need for consultation or FPIC will be dependent on the issues under consideration.

**Community level:** At the community level, consultation or FPIC must be conducted through the traditional authority, when present, recognizing that there is often a core of individuals who are very active in decision-making, another group that is partially active, and others who do not engage in the process. The traditional authorities will determine how decisions will be made, based on customary practice. In the absence of a traditional authority, consultation or FPIC should be carried out through the prevailing local governance unit.

The time required for providing information must be based upon how long it will take to reach the most remote stakeholders. Information should be transmitted in the most appropriate cultural forms and languages. Community level decisions will reflect the territorial, cultural, and spiritual perspectives, as determined to be appropriate/relevant by the indigenous peoples and other forest dependent communities whose consent is sought. Community level consultation is not a single event; it is a continuous process that must be ongoing throughout the programming cycle.

All local/community level activities are likely to require FPIC. For example, capacity building of local actors, participation in pilot carbon monitoring activities at the local-level, participation in pilot initiatives to reduce deforestation, and establishment of local/community-level benefit distribution systems all require the free, prior and informed consent of the communities that will be affected.

## **Guidelines for seeking free, prior and informed consent in the context of the UN-REDD Programme:**

### **National/sub-national level process:**

- 1) In order to seek FPIC, existing consultation or multi-stakeholder participation mechanisms should be used/leveraged:
  - In the event that these mechanisms do not fulfill the requirements for FPIC implementation (see below), the existing mechanisms should be strengthened/amended;
  - In the event that multiple consultation or participation mechanisms exist under a variety of initiatives, these mechanisms should be coordinated and duplication of efforts avoided;
  - If different consultation or participation mechanisms exist, consensus should be sought with stakeholders over which mechanism to use.
  
- 2) In order to fulfill the requirements for FPIC implementation, the consultation or participation mechanism should have a defined structure, mandate and the decision-making power to manage its decisions, and should be inclusive and representative<sup>3</sup>. The selection of institutions participating in the consultation mechanism should be objective and democratic and should include equal representation of:
  - District or territorial representatives and forest owners;
  - Government representatives who make policy decisions regarding the environment, forestry, finance, and land tenure.
  - Representatives of each indigenous peoples' or forest dependent community's institutions or communities;
  - Civil society working on the issues under consideration;
  - UN agencies and donor institutions.
  
- 3) The participation mechanism empowered to lead the consultation and FPIC process, should undertake the following analysis:
  - Review of the national legal framework related to indigenous peoples and forest dependent communities. Identify gaps between international and national frameworks on rights and national legislation.
  - Draft and disseminate a report analyzing the existing policy, making recommendation for reform, and identifying elements of the Programme that require FPIC and outlining the process to implement FPIC.
  - Participatory mapping/scoping of indigenous peoples' territories/communities in areas targeted by the Programme.
  
- 4) In order to facilitate preliminary programme initiation (prior to the delivery of funds from the UN-REDD Programme), if the consultation mechanism complies with guidelines 1 through 3 above, it will be empowered to undertake consultation on behalf of the national UN-REDD Programme and have the legitimacy to report the results of the consultation process for the purposes of validating proposed programming.

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<sup>3</sup> If stakeholders are excluded from the consultation mechanism (in good or bad faith), it is fundamental that they be integrated in as timely a manner as possible.

5) Stakeholders who are a part of the consultation mechanism should receive training, and this training should precede all formal consultation processes. These stakeholders should receive continuous training to guarantee their effective and informed participation.

6) Informational meetings should be held about the UN-REDD Programme so that stakeholders understand what the UN-REDD Programme is and can jointly agree on the amount of time they will need to carry out consultation processes in order to prepare the national programme document.

7) A preliminary analysis on the state of national REDD+ readiness should be carried out in parallel to the integration of the consultation platform so that stakeholders have common understanding of the national REDD+ readiness situation.

8) The consultation or participation mechanism will determine the steps to be followed prior to finalization and implementation of the proposed national UN-REDD Programme. Each country should prepare a consultation plan that addresses, among other issues, the time required to reach the most remote stakeholders, the appropriate language for communication, and the media for communication (written, visual, theatrical). The consultation or participation plan should be subject to independent review by the multi-stakeholder group (or a selected representative) described above.

#### **Local level process:**

1) The consultation plan should contain the following:

- A description of the relevant stakeholders, identifying the institutions empowered to represent indigenous and other forest dependent communities.
- A description of proposed activity/policy, including its origin, the legal status of the institution proposing the activity, potential positive and negative impacts, the legal framework in which the consultation process is based, and resources available to conduct consultations or seek FPIC.
- Arrangements assessing socio-environmental impact of proposed activity/legislative or administrative measure/policy, where these impacts are not known.

2) The consultation plan should be presented by the proposing institution to the indigenous and other forest dependent communities' authorities for permission to undertake the process. These authorities will determine the process and timeline to consult with the community.

- Jointly develop a consultation road map with the indigenous and other forest dependent communities' authorities, according to the organizational structures of each community.
- The communities may say yes or no at any time and should not be pressured to change their position.
- The communities may identify information and capacity needs that should be addressed prior to seeking FPIC including training on rights, climate change and REDD+.

3) The consultation road map, as agreed with the indigenous community authorities, should outline:

- The information that must be considered in order to decide on decision-making time requirements.
- How and when the community authorities will notify proponent(s) on the required time, number and location of meetings etc. for decision-making.
- Where, when, and how consultation/sharing of information should be done;

- The appropriate language and media for information distributed. Languages for communication materials and meetings can vary depending on what is most widely understood and culturally appropriate.
- 4) The consultation plan and road map should define the role of local government officials and agencies in the FPIC process while respecting independence of community decision-making process, and should outline a process of coordination with relevant agencies, institutions, donors, and other stakeholders. The national and local 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.
    - Support training of government officials and civil society to build capacity to understand and implement this process.
  - 5) Once the consultation plan and road map is agreed, convey the initiative information to the community authorities, paying special attention to language and inter-cultural communication. This information must address the initiative's advantages and disadvantages. "Good faith" means that information must be exchanged constantly so that all parties know every agreement and have the opportunity to be heard and have questions and clarification requests attended to according to each culture's worldview.
  - 6) As an essential part of the 'free' determination, meetings should take place in the community. Facilitators should be cultural mediators, with technical knowledge of the issue under consideration. The community may request additional technical assistance to organize meetings and present information, if needed, to ensure communities fully understand.
  - 7) Facilitators are mutually accountable to both the UN-REDD Programme and the community; they must be trustworthy and competent. Facilitators, in cooperation with the community authority and the project proponent, are responsible for ensuring that the following key arrangements are part of the FPIC process:
    - Decision-making process is determined by the community without interference.
    - Timeline to undertake the decision-making process is decided by the community.
    - The language in which they wish to be addressed, including the language used for any written materials, is determined by the community.
    - Full, accurate information is communicated that is easily understandable for everyone, including innovative and creative forms, in the most appropriate language, to communicate issues, as well as access to other sources of information.
    - Additional information from local people should be sought and they should be encouraged to verify information.
    - Transparent and accurate and complete information communicated; positive and negative and potential short-term and long-term impacts, risks and benefits described.
    - That information reaches all community members is verified.
    - A secure and confident decision-making environment.
  - 8) Communities have the right to choose how and where to obtain additional information and technical support (so that community is not depending only on facilitators' information). Support

may include assistance in arranging internal meetings and the decision-making process. Community members should decide what form this support takes.

- 9) Facilitators should support the community to determine and document the collective decision-making process:
  - Use, build on, or improve existing transparent and participatory consultation and consent processes (e.g. raising of hands, voting, signing, deferring to leaders, etc.).
  - Consent process should take place in language preferred by the community. If the population is heterogeneous, most widely understood languages should be used (fewest possible).
  - Document process, discussion, comments, question asked for decision, the decision, and/or terms of agreement.
  - Maintain a record of the result/decision (disaggregated by gender, income level, if possible), announce the result, and hold a self-validation process (e.g. village head signs), taking into account that the one validating might be illiterate.
- 10) Consultation agreement conditions:
  - Traditional knowledge is intellectual property that collectively belongs to the indigenous peoples and other forest dependent communities.
  - The terms for socio-environmental mitigation due to the impacts of the project must be clearly articulated and agreed to.
- 11) The State has the responsibility to guarantee the rights of indigenous peoples and other forest dependent communities throughout the entire consultation process. The participation of independent national and/or international observers is recommended.
- 12) An independent verification of the FPIC process and result should be undertaken by an institution, to be mutually agreed by all relevant stakeholders, to verify that:
  - Information was shared widely in an appropriate form and understood by rights holders, how many of the rights holders participated in the process, and that the process responded to the rights holders' timeline and decision-making needs.
  - Officials understood the purpose of the process and respect the outcome/decision.
  - The FPIC process and decision is properly documented, verified and agreed before being shared.
- 13) Process for seeking recourse should be communicated as part of the FPIC process and decision.
- 14) Indigenous peoples and other forest dependent communities should participate in the monitoring of the project and maintain the freedom to withdraw from the same in the event that there's evidence of violations of the agreed-upon guidelines or upon reporting them to the agreed bodies.

**Guidelines for providing access to complaint resolution for UN-REDD Programme stakeholders, including indigenous peoples and other forest dependent communities:**

The grievance or complaint resolution mechanism shall apply to the UN-REDD Programme, with the proposition that it shall inform the grievance or complaint mechanism for REDD+ implementation. The

mechanism should address subjects related to FPIC as well as claims related to other rights that may be affected.

The authority of the grievance or complaint resolution mechanism will be designated based on the provisions of international and national legislation concerning collective and individual rights of indigenous and tribal peoples, ethnic minorities, and other communities who depend directly on the forest for their livelihoods. During the readiness stage, the authority will also be based on the UN-REDD Programme [Rules of Procedure](#) and [Harmonized Operational Guidance](#).

The grievance or complaint mechanism should be specifically designed to provide resolution of complaints brought forward by indigenous and tribal peoples, ethnic minorities and/or other communities that depend directly on the forest for their livelihood.

The grievance or complaint mechanism must be accessible to a diversity of stakeholders, and capable of addressing a diversity of conflicts and possible claims at all stages of programme development and implementation, including claims anticipated on a precautionary basis. For example: private property claims, indigenous territory claims, unregulated territory claims, and small-holder land claims.

The grievance or complaint mechanism must be binding and delivered through national, regional tribunals and courts (such as Inter-American Human Rights Court) or international (UNFCCC); and/or, independent committees at the three levels (described below) capable of imposing legal, financial and/or political sanctions. Grievance or complaint mechanisms should be guided by two main UNDRIP principles:

- State must establish a “fair, independent, impartial, open and transparent process” to adjudicate rights of indigenous peoples relating to land and resources (UNDRIP, Art 27).
- Indigenous peoples have the right to redress for land and resources taken without their FPIC (UNDRIP, Art 28).

### **Principles for effective complaint resolution for the UN-REDD Programme:**

**1. The grievance or complaint mechanism should be accessible:** Information on the organizational structure of the grievance or complaint mechanisms, levels of authority, and how to file a claim should be communicated through the consultation process conducted on behalf of the UN-REDD Programme. Instructions for filing a claim should be easy to follow. It should be possible to submit a complaint in any language or format, including by phone or through a simple one-page form (in multiple languages) and technical support for submitting a claim should be made available where necessary.

**2. The grievance or complaint mechanism should follow the principle of subsidiarity, where possible:** Using indigenous dispute-resolution institutions so that disputes are addressed as close to the administrative level where they arose as can be effectively resolved.

**3. The complaint mechanism should be independent and impartial:** The National REDD+ Committee should be multi-sectorial, representative, and maintain equality criteria in its representation (include indigenous peoples, local communities, CSOs, government, UN-REDD). The international complaint

resolution body should be completely independent and can receive first instance claims (e.g., when a claim is received against a State) as well as appeals claims.

**4. The complaint mechanism should be efficient and effective, with flexibility to respond to diverse issues brought forward by diverse parties.** Failure to respond to a legitimate claims process should result in punitive action: When human rights are violated under the auspices of REDD+, financial flows should be suspended.

**5. The complaint mechanism should have a dedicated budget:** A specific guaranteed budget is required for the mechanism and for the filing and monitoring process of those affected (note: this should be free of charge for the plaintiff), as well as for the resolution of claims.

**6. The complaint mechanism should be transparent and accountable:** The entity that is directly responsible at the national-level must be identified, as well as the hierarchy of the individuals and institutions responsible within the Programme at the national and international levels.

**7. Decisions taken through the complaint resolution process should include the possibility of informing decision-makers directly and offering recommendations on policy and/or procedural reform.**

**Four levels of conflict resolution should be accessible:**

**1) Local/Community level:** Local conflicts should be resolved internally between or among communities, through common law, customary law, or mediators. The “informed” part of FPIC includes giving information about recourse mechanisms:

- When consulting with indigenous peoples and forest dependent communities, the Programme should:
  - Ask indigenous peoples and forest dependent communities what sort of recourse mechanisms they already have and what they want in the context of the UN-REDD Programme.
  - Include information about existing recourse mechanisms (e.g. complaints can be made to the UN Resident Coordinator, any existing appeal rights, etc.).
- Establish clear channels of communication between the Programme, FPIC facilitators, elders/leaders, and community members to enable those who are concerned about specific impacts to communicate their concerns to those who are able to effectively consider the concerns and take appropriate action.
- Provide capacity-building support, if requested, to indigenous peoples’ and forest dependent communities’ institutions, including NGO’s, to assist them to receive complaints and to take them forward to the appropriate forum for resolution.

**2) National level:** Conflicts that cannot be resolved at the local/community-level or that involve actors at the national level should be brought to the attention of the National REDD+ Committee to resolve the conflict or channel it to the appropriate body. Claims can be against private actors, the State, and/or other communities.

The National REDD+ Committee should have competency to address subjects specific to REDD+ (technical and administrative). Legal matters should be referred to courts with legal jurisdiction. The Committee should explain its role in the national context with respect to existing judicial mechanisms and respecting the principle of the autonomy of indigenous peoples and other forest dependent communities to resolve their internal conflicts. The initial responsibility of the Committee will be to develop and provide legal bases for the exercise of court jurisdictions and national judicial systems with regard to issues specifically pertaining to REDD+. A second function will be related to receiving specific REDD+ claims. Commission/tribunal should have the power to suspend readiness and REDD+ activities until the complaint has been resolved (where the complaint is serious). When existing bodies and mechanisms are not expeditious, complainants should be free to go to other bodies to seek resolution of the conflict. There should be no requirement for a complainant to exhaust their local remedies before they are entitled to bring a complaint at the national level. Multiple avenues to pursue complaints should be preserved.

**3) Regional level:** Claims that cannot be effectively addressed at the local or national-level should be brought to the attention of a Regional Committee (composition to be determined), including first instance claims against the UN-REDD Programme and/or the State, claims countering unjust judicial decisions, and appeals of decisions taken at the national-level.

**4) International level:** Claims that cannot be effectively resolved at the regional-level may be brought to the attention of international entities such as the UN-REDD Programme Secretariat, UNFCCC, and the international human rights system. These institutions should make special arrangements to:

- Investigate and monitor complaints.
- Provide an early warning system requiring REDD+ countries to address timely/urgent concerns.
- Suspend funding until country or government has resolved the problem.
- Establish a clear mechanism to receive systemic complaints (e.g. weak legislation) and individual complaints (where not solved at national level). There should be no requirement for a complainant to exhaust their domestic remedies before they are entitled to bring a complaint at the international level. Preserve multiple avenues to pursue complaints.
- Receive country reports on how FPIC obligations have been met, including listing any complaints it has received (MRV for safeguards).
- Uphold the right to appeal against government decisions regarding REDD.
- Provide an impartial tribunal/commission to hear and resolve disputes (including indigenous representation).
- Provide training and support for judges, officials, etc. on REDD and the scope of matters potentially subject to complaints arising from readiness and REDD+ activities.

**In case of land rights disputes:** Resolution of land disputes can be lengthy and is not always independent of the national government:

1. Use appropriate venues to resolve land disputes, respecting which mechanism indigenous peoples and forest dependent communities want to use (e.g. dispute may be between indigenous peoples, between indigenous and non-indigenous peoples, or with outsiders).
2. Ensure there is a venue to manage land disputes between the community and the State.



3. Consider an independent process (e.g. tribunal or land council) to resolve land disputes quickly and fairly. Tribunal or land council should include indigenous peoples' and forest dependent communities' representatives.

**Organization of the Complaint Mechanism**

