

Guidelines on Free, Prior and Informed Consent



UN-REDD PROGRAMME



The UN-REDD Programme is the United Nations collaborative initiative on Reducing Emissions from Deforestation and forest Degradation (REDD+) in developing countries. The Programme was launched in 2008 and builds on the convening role and technical 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). The UN-REDD Programme supports nationally-led REDD+ processes and promotes the informed and meaningful involvement of all stakeholders, including indigenous peoples and other forest-dependent communities, in national and international REDD+ implementation.

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Status of the Guidelines

This is a 'Working Final' version of the document, meaning that there will be periodic updates to this version based on the application of these Guidelines, increased information and experience related to the application of Free, Prior and Informed Consent (FPIC) more generally, and continued input and feedback from governments, indigenous peoples and forest-dependent communities, practitioners and experts, partners and colleagues. In the meantime, the application and interpretation of the Guidelines in their current form is encouraged, in order to test usability and improve on a continual basis. For more information, questions or comments, please contact jennifer.laughlin@undp.org.

TABLE OF CONTENTS

1. Introduction	8
1.1 Objective	10
1.2 Guideline Users.....	10
1.3 Application of the Guidelines.....	11
1.4 Normative Framework: Human Rights-Based Approach	12
2. Defining Free, Prior and Informed Consent	18
2.1 Defining the Elements of FPIC.....	18
3. UN-REDD Programme Policy on Applying Free, Prior and Informed Consent	22
3.1 What is Required of UN-REDD Programme Partner Countries?.....	22
3.2 When is FPIC Required?	24
3.3 At What Level is FPIC Applied?	28
3.4 Who Seeks Consent?.....	29
3.5 Who Gives Consent?.....	29
3.6 Outcome of the FPIC Process.....	29
4. Operational Framework for Seeking Free, Prior and Informed Consent	32
5. National-level Grievance Mechanisms.....	34



Annexes

Annex I	Identifying Indigenous Peoples	36
Annex II	Types of Participation.....	41
Annex III	Stakeholder Engagement: Effective and Equitable Gendered Participation and Representation in Decision-Making.....	44
Annex IV	Indicative Steps for a REDD+ Process to Respect the Principle of FPIC.....	45
Annex V	The Role of Facilitators in Supporting the FPIC Process	46
Annex VI	Lessons Learned from UN-REDD Programme FPIC Pilot Experiences	48
Annex VII	Tools and Resources	50



1. INTRODUCTION

“Indigenous peoples” (as defined in Annex I)¹ and *“forest-dependent communities”*² are essential to the success of REDD+ given that the majority of the world’s remaining forests in developing countries are located where they live, often within their ancestral and customary lands, and where in most cases they have for centuries played a historical and cultural role in the sustainable management of these forests with relative success, especially in the case of indigenous peoples. Inadequate mechanisms for effective participation of indigenous peoples and forest-dependent communities in land use decisions could seriously compromise the delivery of both local and global benefits and the long-term sustainability of REDD+ actions and investments, as well as negatively affect internationally recognized human rights. In this respect, while citing the Human Rights Committee, the UN Special Rapporteur on the Right to Food explains that “no people’s land, including in particular indigenous peoples, can have its use changed without prior consultation.”³ He thus recommends that any changes in land use can only take place “with free, prior and informed consent” and emphasizes that this “is particularly important for indigenous communities, in view of the discrimination and marginalization they have been historically subjected to.”⁴

Recognizing the critical role of indigenous peoples and other forest-dependent communities to the long-term sustainability and effectiveness of REDD+, the UN-REDD Programme has prioritized stakeholder engagement from its inception. Following a series of extensive consultations with indigenous peoples and forest-dependent communities, the UN-REDD Programme developed Guidelines on Stakeholder Engagement, which have since been harmonized with guidance from the Forest Carbon Partnership Facility (FCPF) on the same topic. These Joint FCPF/UN-REDD Programme [*Guidelines on Stakeholder Engagement for REDD+ Readiness with a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities*](#) (hereafter called “*Joint Stakeholder Engagement Guidelines*”) focus on principles for effective participation and consultation and concrete guidance on planning and implementing consultations.

A key component of effective stakeholder engagement and consultation is free, prior and informed consent (FPIC). This document therefore takes the Joint Stakeholder Engagement Guidelines one step further by outlining a normative, policy and operational framework for UN-REDD Programme partner countries to seek and obtain FPIC. It will in turn support UN-REDD Programme partner countries to apply UN-REDD Programme guidelines and principles, undertake effective consultations and obtain consent as and when appropriate, as determined by the partner country in consultation with relevant rights-holders and consistent with their duties and obligations under international law.

This document is based on recommendations received during three regional consultations on FPIC and grievance mechanisms⁵, held in Viet Nam (June 2010), Panama (October 2010), and Tanzania (January 2011); and also responds to feedback received from the UN Special Rapporteur on the Rights of Indigenous Peoples⁶ (February 2011). The Guidelines have been revised most recently based on recommendations arising from comments on a draft version received during a public consultation period (1 December 2011 – 20 January 2012), an Expert Workshop on the Guidelines in Geneva (10 – 11 February 2012)⁷, and the lessons learned from FPIC pilot experiences undertaken by Viet Nam’s UN-REDD National Programme and Indonesia’s UN-REDD National Programme, as presented at the Second UN-REDD Programme Regional Workshop on FPIC Shared Learning in Bogor, Indonesia (19 – 20 April 2012).⁸ The Guidelines also draw on the historical experience of select cases relevant to the integration of FPIC into national strategies and activities.⁹

International law has now recognized that FPIC is a legal norm imposing clear affirmative duties and obligations on States (see section 1.4 and the [Legal Companion to the UN-REDD Programme Guidelines on FPIC](#) (hereafter called the *Legal Companion*)). FPIC has been described repeatedly as a “right” by among others, the United Nations Human Rights Committee, the UN Committee on Economic, Social, and Cultural Rights, the UN Committee on the Elimination of Racial Discrimination, the UN Expert Mechanism on the Rights of Indigenous Peoples and the UN Permanent Forum on Indigenous Peoples.¹⁰ Others feel it is more appropriate to describe FPIC as a “principle.”¹¹ Some have even referred to it both as a “right” and a “principle.”¹²

The variety in terminology is understandable given that in large part, FPIC is neither “an end in itself” nor a “stand alone” right *per se*,¹³ but if anything, a *derivative* of underlying substantive rights which it is designed to protect. It is a norm or standard that supplements and is a means of effectuating these substantive rights.¹⁴ These include the rights to: property, participate, non-discrimination, self-determination, culture, food, health, and freedom against forced relocation.¹⁵ Another way of looking at it is to see FPIC as just one of the many facets to each of these critical human rights — for example, the right to property can be described as a bundle of rights which include the right to own, possess, control, evict, manage, and the right to choose what does or does not happen with respect to said property (i.e. FPIC). As stated by the Committee on Economic, Social and Cultural Rights, States are required to respect “free, prior and informed consent of indigenous peoples in all matters covered by their specific rights.”¹⁶

The Guidelines’ focus on FPIC is not without recognition that compelling efforts by States to protect the underlying substantive rights are indispensable and obligatory. Indeed, the focus of the Guidelines should not be interpreted to mean that FPIC is a cure all or a distraction from those priority efforts. The Guidelines are merely a recognition that the State has a duty and obligation not only to seek FPIC, but where the circumstances warrant, to actually secure it; thereby allowing FPIC to serve as a safeguard¹⁷, or rights-based mechanism if you will, in the State’s paramount responsibility to effectively take all necessary measures to ensure the respect, protection and enjoyment of all of these underlying rights.¹⁸ These measures range from affirmative steps to delimit, demarcate and title lands, territories and resources, to clear actions to guarantee the juridical person-

ality of indigenous peoples as collectives. In the context of the broader steps that States are obliged to take to give effect to these substantive human rights, these Guidelines answer a specific call by States, indigenous peoples, forest-dependent communities and others to elaborate further upon the content of FPIC and the modalities for its implementation. Recognition and implementation of FPIC must, however, go hand in hand with intensified efforts to ensure the full enjoyment of the underlying rights both in legislation, policies and regulations formulated and effectively implemented with the effective participation of the people concerned.

Whether FPIC continues to be characterized by some as a “right,” a “derivative right,” a “principle,” or anything else, as discussed in these Guidelines and as demonstrated in the *Legal Companion* (see below), the result is the same. No description changes the fact that all the authorities agree that it is a normative obligation. It is a substantive standard that acts like a precondition to be satisfied before the State and third parties may by act or omission impact other substantive rights. It is a requirement that imposes affirmative duties and obligations on States.¹⁹ This is the FPIC that is elaborated upon by these Guidelines.

The Guidelines further recognize that there is, as of yet, no single internationally agreed definition of FPIC nor a one-size fits all mechanism for its implementation. The Guidelines are possible, however, because there is a sufficient and growing consensus around what FPIC is comprised of, and regarding the bare minimum measures that a State must take to guarantee its respect, protection and enjoyment. That said, the Guidelines make room for variances across regions, countries, peoples, communities and circumstances, while remaining vigilant to ensure that in tailoring the application of the Guidelines to specific contexts, the very nature and purpose of the obligation itself is not undermined.

1.1 Objective

The aim of this document is to outline a normative, policy and operational framework for UN-REDD Programme partner countries to seek FPIC. (While these Guidelines often refer to “seeking” consent, this is to be interpreted beyond what should be the general aspiration and goal of every good faith consultation, and to also include the requirement to actually “secure” that consent where the circumstances so warrant (as discussed below)).

1.2 Guideline Users

The primary users of the Guidelines will be UN-REDD Programme partner countries (who as States are the ultimate duty bearers in this context under international law) and the indigenous peoples and forest-dependent communities in those countries, including those with National Programmes²⁰ as well as those receiving targeted support.²¹ The Guidelines apply to national-level activities supported by the UN-REDD Programme. They also apply to activities supported by the UN partner agencies to the UN-REDD Programme in their role as a Delivery Partner under the FCPF Readiness Fund (FAO and UNDP). That being

said, all countries engaged in REDD+ activities are welcome and encouraged to utilize and apply these Guidelines and provide the UN-REDD Programme with feedback on their use.

1.3 Application of the Guidelines

International law, including various international and regional human rights treaties, as well as international jurisprudence and State practice, has repeatedly affirmed the right of indigenous peoples to consultation with the objective of obtaining FPIC on matters that may affect their rights and interests and the corresponding duties and obligations of States to respect, protect, and guarantee the enjoyment of that right (see section 1.4 and the *Legal Companion* for an extensive, but not exhaustive, list of international affirmations and precedents). The *Legal Companion* also demonstrates that FPIC is a legal requirement, not just a goal or aspiration of consultation, in particular circumstances (discussed below).

The unambiguous recognition of FPIC in international law is the product of, among other things: decades of extensive advocacy by indigenous peoples and their supporters; numerous legislative and judicial interventions worldwide; increased understanding regarding their historic and contemporary circumstances, systematic discrimination, cultures, and needs; as well as a growing collaborative relationship between indigenous peoples and States in the protection and promotion of human rights and the pursuit of sustainable rights-based economic development and conservation.

In line with this, the **Guidelines require States to recognize and carry out their duties and obligations to give effect to the requirement of FPIC as applicable to indigenous peoples.**

The Guidelines acknowledge the right of forest-dependent communities to effectively participate in the governance of their nations. To ensure this, at a minimum the **Guidelines require States to consult forest-dependent communities in good faith regarding matters that affect them *with a view to agreement*.**

Appreciating that international law, jurisprudence and State practice is still in its infancy with respect to expressly recognizing and requiring an affirmative obligation to secure FPIC from all forest-dependent communities, **the Guidelines do not require a blanket application of FPIC to all forest-dependent communities.**

That said, the Guidelines soberly recognize that, in many circumstances, REDD+ activities may impact forest-dependent communities, often similarly as indigenous peoples, and that the circumstances of certain forest-dependent communities may rise to a threshold such that it should be seen as a requirement of States to secure FPIC when an activity may affect the communities' rights and interests. This approach is consistent with the call of the UN Human Rights Committee, which, in 2009 while interpreting the rights to culture of individuals belonging to minority groups under ICESCR, Article 27, stated:

“In the Committee’s view, the admissibility of measures which substantially compromise or interfere with the culturally significant economic activities of a *minority* or indigenous community depends on whether the members of the community in question have had the opportunity to participate in the decision-making process in relation to these measures and whether they will continue to benefit from their traditional economy. The Committee considers that participation in the decision making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community. In addition, the measures must respect the principle of proportionality so as not to endanger the very survival of the community and its members (Emphasis added).”²²

As such, these **Guidelines require States to evaluate the circumstances and nature of the forest-dependent community in question, on a case by case basis, through among others a rights-based analysis, and secure FPIC from communities that share common characteristics with indigenous peoples²³ and whose underlying substantive rights are significantly implicated (see supra notes 9-14 and corresponding text above).**

As outlined in the Report of the UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya (6 July 2012): “The particular indigenous peoples or communities that are to be consulted are those that hold the potentially affected rights, the consultation procedures are to be devised to identify and address the potential impacts on the rights, and consent is to be sought for those impacts under terms that are protective and respectful of the rights. Where the rights implicated are essential to the survival of indigenous groups and foreseen impacts on the rights are significant, indigenous consent to those impacts is required, beyond simply being an objective of consultations.”²⁴

For the purposes of these Guidelines, the term ‘**rights-holders**’ will refer to the community(ies) (indigenous and/or forest-dependent) that the partner country is seeking consent from.

1.4 Normative Framework: Human Rights-Based Approach

Consistent with other UN agencies and programmes, the UN-REDD Programme follows a human rights-based approach to programming and policy. This approach is outlined in the [UN Common Understanding on the Human Rights-Based Approach to Development Cooperation](#) (2003).²⁵ The Common Understanding reiterates the UN commitment to further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments by ensuring that these instruments guide all development cooperation and programming. The Common Understanding underlines the essential role of development cooperation in supporting the capacity of duty-bearers (e.g. States) to meet their obligations and of rights-holders to claim their rights (e.g. indigenous peoples and forest-dependent communities).

The duty and obligation of States to consult with indigenous peoples and forest-dependent communities with a view to agreement, the requirement to obtain the FPIC of indigenous peoples, and the growing call to secure consent from forest-dependent communities as well, is a corollary of a myriad of universally accepted human rights, including the right to self-determination, right to participation, right to property, right to cultural integrity and right to equality, that are contained in numerous international human rights instruments.²⁶ An extensive compilation of these instruments, as well as international jurisprudence and evidence of State practice can be found in the *Legal Companion*.

The *Legal Companion* demonstrates that the specific duties and obligations of States—and by extension the UN and its programmes—to respect, protect, and promote FPIC, particularly in the case of indigenous peoples, is affirmed in numerous international and regional instruments. The requirement of FPIC is expressly recognized in the decisions of the human rights bodies authorized to interpret these instruments and is clearly shown to arise from the States' corresponding duties and obligations to give effect to a host of underlying substantive rights affirmed by these instruments.

For example, the [Convention concerning Indigenous and Tribal Peoples in Independent Countries \(ILO No. 169\)](#) (1989) (hereinafter "ILO Convention 169") expressly provides that indigenous peoples must be consulted "whenever consideration is being given to legislative or administrative measures which may affect them directly" and that such consultations "shall be undertaken, in good faith and in a form appropriate to the circumstances, *with the objective of achieving agreement or consent.*"²⁷ (Emphasis added). It further provides that "[w]here the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only *with their free and informed consent.*"²⁸ (Emphasis added).

The [Convention on Biological Diversity](#) (1992) also expressly affirms the principle of FPIC. Article 8 (j) states that "[a]ccess to traditional knowledge, innovations and practices of indigenous and local communities should be subject to *prior informed consent or prior informed approval* from the holders of such knowledge, innovations and practices." (Emphasis added).

Other international instruments, such as the [International Covenant on Civil and Political Rights \(ICCPR\)](#) (1976), the [International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#) (1966), and the [Convention on the Elimination of all Forms of Racial Discrimination \(CERD\)](#) (1965), do not expressly mention indigenous peoples or FPIC, but their UN monitoring bodies (human rights committees) have unambiguously and repeatedly interpreted their various provisions affirming the right to culture, right to equal treatment before the law, and right to self-determination, among others, to include the duty and obligations of States to secure consent in a myriad of circumstances.

For instance, interpreting the ICCPR the Human Rights Committee observed "with concern that neither the existence of indigenous peoples in Togo nor their right to free, prior and informed consent is recognized (arts. 2 and 27)," and recommended that the State party should "ensure that indigenous peoples are able to exercise their right to free, prior and

informed consent.”²⁹ The Committee on Economic, Social and Cultural Rights, interpreting the ICESCR, expressed concern “that infrastructure, development and mining megaprojects are being carried out in the State party without the free, prior and informed consent of the affected indigenous and Afro-Colombian communities...” and recommended that the State party “adopt legislation in consultation with and the participation of indigenous and Afro-Colombian people, that clearly establishes the right to free, prior and informed consent in conformity with ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, as well as the relevant decisions of the Constitutional Court.”³⁰

As reflected in the multiple observations and decisions of these committees, provided in the *Legal Companion*, per these treaties indigenous peoples’ possess a right, effectuated through their own freely identified representatives or institutions, to give their prior informed consent generally when their rights may be affected, as well as in connection with specific activities, including: mining and oil and gas operations; logging; the establishment of protected areas; dams; agro-industrial plantations; resettlement; compulsory takings; and other decisions affecting the status of land rights.³¹

Indeed, the [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#) (2007) includes no less than seven (7) provisions expressly recognizing the duty of States to secure FPIC from indigenous peoples in circumstances ranging from population relocations, the taking of “cultural, intellectual, religious and spiritual property,” any damages, takings, occupation, confiscation and uses of their lands, territories and resources; before “adopting and implementing legislative or administrative measures;” and “prior to the approval of 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.”³²

The UNDRIP elaborates on the application to indigenous peoples of human rights already affirmed extensively in treaties ratified by the majority of States.³³ As such, to the extent that the duties and obligations as expressed therein are already binding on States, they merely need to look to the Declaration to assist them in understanding how such rights might be protected for indigenous peoples as collectives, as well as their individual members.

International courts and human rights commissions in the African and Americas regions in particular have also made it clear that binding *regional* human rights treaties and conventions such as the [African Charter on Human and Peoples Rights \(Banjul Charter\)](#) (1981) as well as the [American Convention on Human Rights](#) (1969) and the [American Declaration on the Rights and Duties of Man](#) (1948), all recognize the State’s duties and obligations to secure FPIC.

State practice and the emerging consensus around FPIC can further be evidenced in the growing number of public statements, reports, guidelines, and policies of multiple UN and other international institutions and special rapporteurs acknowledging FPIC as necessary to protect and give effect to various underlying rights. A number are detailed in the *Legal Companion* and they include, for instance, the [United Nations Development Group \(UNDG\) Guidelines on Indigenous Peoples Issues](#) (2008) which are based on several existing international instruments regarding indigenous peoples, including the

UNDRIP and ILO Convention 169. The UNDG Guidelines provide a policy and operational framework for implementing a human rights-based approach to development for and with indigenous peoples. Included as a key result of such an approach is the application of FPIC in development planning and programming.

The Expert Mechanism on the Rights of Indigenous Peoples also issued a [“Final report on the study on indigenous peoples and the right to participate in decision-making”](#) opining that:

As mentioned above, the right to free, prior and informed consent is embedded in the right to self-determination. The procedural requirements for consultations and free, prior and informed consent respectively are similar. Nevertheless, the right of free, prior and informed consent needs to be understood in the context of indigenous peoples’ right to self-determination because it is an integral element of that right.

The duty of the State to obtain indigenous peoples’ free, prior and informed consent entitles indigenous peoples to effectively determine the outcome of decision-making that affects them, not merely a right to be involved in such processes. Consent is a significant element of the decision-making process obtained through genuine consultation and participation. Hence, the duty to obtain the free, prior and informed consent of indigenous peoples is not only a procedural process but a substantive mechanism to ensure the respect of indigenous peoples’ rights.³⁴

Further, in the context of REDD+, although the term ‘FPIC’ is not expressly referred to in the [Cancun Agreements or in the Appendix on REDD+ safeguards](#), FPIC is addressed indirectly because the text “note[s]” that the General Assembly has adopted UNDRIP (which itself sets out the principle of FPIC). Securing FPIC is a means to meet the Cancun Agreements’ requirement of countries to promote and support “respect for the knowledge and rights of indigenous peoples and members of local communities” and to ensure “the full and effective participation of relevant stakeholders, inter alia, indigenous peoples and local communities.”³⁵

In addition to the strong normative case for FPIC, it also makes 'good business sense' to ensure that FPIC is obtained (see box below).

Conclusions reached in World Resources Institute Report on why FPIC makes good business sense

- When businesses get it right, achieving consent can benefit both the community and the project.
- The business risks of going forward with a large-scale project in a community without its acceptance can threaten commercial or financial viability of the project.
- Community opposition can arise from impacts that are generated at any stage in the project cycle. As a result, FPIC must be ongoing.
- Addressing issues of community concern before the project begins is likely to be more successful and cost-effective than responding to community opposition later on.
- The risks of failing to achieve community consent are not borne exclusively by the project sponsor, which itself may suffer reputational harm. Other stakeholders, such as shareholders, financiers, and host governments can also have their interests adversely affected by conflicts that may result from the failure to achieve community support of a project.
- Mere engagement or consultation may not be sufficient to fully address these risks. Consultations that do not resolve a community's reasons for opposition or achieve consent will provide little assurance against potentially costly and disruptive conflict.

Source: Sohn, J., (ed.) (2007), Development Without Conflict: The Business Case for Community Consent, World Resources Institute, p. 3.



2. DEFINING FREE, PRIOR AND INFORMED CONSENT

The “principles of consultation and consent together constitute a special standard that safeguards and functions as a means for the exercise of indigenous peoples’ substantive rights. It is a standard that supplements and helps effectuate substantive rights... including the right to property ... and other rights that may be implicated in natural resource development.”³⁶

FPIC applies to REDD+ regarding potential changes in resource uses that could significantly impact the substantive rights of indigenous peoples and, where relevant, other forest-dependent communities. Under these circumstances, consistent with international human rights instruments and other treaty obligations, potentially impacted peoples have the right to participate in and consent to or withhold consent from a proposed action.

FPIC can have the effect of reversing the historical pattern of exclusion from decision-making in order to avoid the future imposition of important decisions on indigenous peoples, allowing them to continue to live as distinct communities on lands to which their cultures remain attached.³⁷

As the *Legal Companion* demonstrates, FPIC has been affirmed and elaborated upon in multiple binding regional and international instruments as well as the interpretative decisions of their monitoring bodies.

2.1 Defining the Elements of FPIC

The below definitions build on the elements of a common understanding of free, prior and informed consent endorsed by the UNPFII at its Fourth Session in 2005.³⁸

Free

Free refers to a consent given voluntarily and absent of “coercion, intimidation or manipulation.”³⁹ Free refers to a process that is self-directed by the community from whom consent is being sought, unencumbered by coercion, expectations or timelines that are externally imposed:

- Stakeholders determine process, timeline and decision-making structure;
- Information is transparently and objectively offered at stakeholders’ request;
- Process is free from coercion, bias, conditions, bribery or rewards;
- Meetings and decisions take place at locations and times and in languages and formats determined by the stakeholders; and

- All community members are free to participate regardless of gender, age or standing.

Prior

Prior means “consent is sought sufficiently in advance of any authorization or commencement of activities.”⁴⁰ Prior refers to a period of time in advance of an activity 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 means at the “early stages of a development or investment plan, not only when the need arises to obtain approval from the community.”⁴¹

- 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 the rights-holders;
- 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, execution, and following evaluation; and
- The decision-making timeline established by the rights-holders must be respected, as it reflects the time needed to understand, analyze, and evaluate the activities under consideration in accordance with their own customs.

Informed

Informed refers mainly to the nature of the engagement and type of information that should be provided prior to seeking consent and also as part of the ongoing consent process.

Information should:

- Be accessible, clear, consistent, accurate, constant, and transparent;
- Be delivered in appropriate language and culturally appropriate format (including radio, video, graphics, documentaries, photos, oral presentations);
- Be objective, covering both the positive and negative potential of REDD+ activities and consequences of giving or withholding consent;
- Be complete, covering the spectrum of potential social, financial, political, cultural, environmental impacts, including scientific information with access to original sources in appropriate language;
- Be delivered in a manner that strengthens and does not erode indigenous or local cultures;
- Be delivered by culturally appropriate personnel, in culturally appropriate locations, and include capacity building of indigenous or local trainers;
- Be delivered with sufficient time to be understood and verified;
- Reach the most remote, rural communities, women and the marginalized; and
- Be provided on an ongoing and continuous basis throughout the FPIC process.

Consent

Consent refers to the collective decision made by the rights-holders and reached through the customary decision-making processes of the affected peoples or communities. Consent must be sought and granted or withheld according to the unique formal or informal political-administrative dynamic of each community.⁴²

Consent is:

- A freely given decision that may be a “Yes” or a “No,” including the option to reconsider if the proposed activities change or if new information relevant to the proposed activities emerges;
- A collective decision determined by the affected peoples (e.g. consensus, majority, etc.) in accordance with their own customs and traditions;
- The expression of rights (to self-determination, lands, resources and territories, culture); and
- Given or withheld in phases, over specific periods of time for distinct stages or phases of REDD+. It is not a one-off process.

While the objective of consultation processes shall be to reach an agreement (consent) between the relevant parties, this does not mean that all FPIC processes will lead to the consent of and approval by the rights-holders in question. At the core of FPIC is the right of the peoples concerned to choose to engage, negotiate and decide to grant or withhold consent, as well as the acknowledgement that under certain circumstances, it must be accepted that the project will not proceed and/or that engagement must be ceased if the affected peoples decide that they do not want to commence or continue with negotiations or if they decide to withhold their consent to the project.



FPIC facilitator explaining climate change and REDD+ to women during FPIC pilot in Lam Dong Province, Viet Nam, 2010. (Photo credit: Nguyen Thi Thu Huyen)

3. UN-REDD PROGRAMME POLICY ON APPLYING FREE, PRIOR AND INFORMED CONSENT

3.1 What is Required of UN-REDD Programme Partner Countries?

As outlined in the UN-REDD Programme Handbook for National Programmes and Other National-Level Activities,⁴³ the FCPF/UN-REDD Readiness Preparation Proposal (R-PP) Template,⁴⁴ and the Joint Stakeholder Engagement Guidelines, partner countries are required to develop consultation and participation plans for engagement of stakeholders. This is consistent with the increasing adoption at the domestic level of such plans, policies and laws that have been called for pursuant to international treaties and conventions.⁴⁵

National Programme implementing partners (national counterparts and UN organizations) should ensure that FPIC is incorporated into these consultation plans during the National Programme Document (NPD) Scoping/Finalization and/or R-PP Formulation phase, and carried out in the NPD Implementation/Readiness Preparation phase. See the table below for indicative steps for ensuring provisions for the application of FPIC are considered and incorporated into the national REDD+ process.

In accordance with the guidance provided in the Joint Stakeholder Engagement Guidelines, prior to the development of a REDD+ programme/activity, indigenous peoples living in voluntary isolation who may be affected should be identified in consultation with the relevant entities at the national, sub-national and/or local levels to ensure that the programme/activity is developed in a way that avoids contact with these communities, including any attempts to contact them for purposes of consultation or obtaining their consent. Indigenous peoples living in voluntary isolation are considered to have exercised their rights to effective participation and consultation and as a result of their condition decided to withhold their consent and choose not to enter into consultations. This decision should be respected and all contact avoided.⁴⁶

Indicative Steps for Ensuring Provisions for the Application of FPIC are Considered and Incorporated into the National REDD+ Process

Stage	Activity
NPD Scoping + Finalization / R-PP Formulation	<p>The NPD/R-PP should outline the National Programme's proposal to undertake the following in the Readiness Phase of the process:</p> <ul style="list-style-type: none"> ■ For mapping the substantive rights of indigenous peoples and where applicable, forest-dependent communities, that may be affected by REDD+ activities and therefore require FPIC to protect said rights; ■ For consulting on key issues related to the national application of FPIC; ■ To determine who gives consent (e.g. through a rights-holder mapping); ■ To determine the possible activities requiring FPIC (e.g. through rights-impact and other assessments); ■ To determine when (timing) the FPIC will be sought; ■ To determine operational steps for applying FPIC (e.g. develop a national methodology/guidelines for applying FPIC). <p>Note: In cases where the NPD or R-PPs have already been approved, partner countries should incorporate a proposal for these activities retroactively into their NPD/R-PP, as part of their stakeholder engagement plans and/or SESA, for review by the National Programme Steering Committee (or equivalent).</p>
NPD Implementation / Readiness Preparation	<ul style="list-style-type: none"> ■ Undertake activities as outlined in NPD/R-PP (as outlined above). ■ Develop National FPIC Guidelines / Methodology, including the following elements, based on a consultation process (as outlined above): <ul style="list-style-type: none"> - International and national legal basis for FPIC in the country; - Principles for undertaking FPIC processes; - Mapping of rights-holders; - Which activities will require FPIC; - How FPIC will be applied at the community level (discreet activities with impacts to specific communities); and - How FPIC will be applied at the national level (concerning policy, legal or administrative measures with impacts on several non-specific communities). ■ Incorporate National FPIC Guidelines / Methodology into National REDD+ Strategy. ■ National REDD+ Strategy must recognize the duties and obligations of States to secure FPIC from indigenous peoples and where applicable, other forest-dependent communities (as identified in the rights-holder mapping). ■ In the development of National REDD+ Strategies, 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, to their self-determination, culture and equality before law, partner countries shall consult and cooperate in good faith with the rights-holders concerned through their own representative institutions in order to obtain their FPIC prior to finalizing the National REDD+ Strategy.

Indicative Steps for Ensuring Provisions for the Application of FPIC are Considered and Incorporated into the National REDD+ Process

Stage	Activity
Implementation of National REDD+ Strategy	<ul style="list-style-type: none"> ■ Application of national and/or sub-national FPIC Guidelines.

Indicative Steps for Developing National FPIC Guidelines

1. Identify the relevant principles for the guidelines:
 - The country's obligations under national and international law; and
 - UN-REDD Programme FPIC Guidelines.
2. Identify any existing processes for consultation and consent concerning relevant stakeholders' land and land use planning or natural resource development, and analyze the strengths and weaknesses of these processes:
 - For example, are they being properly followed? Where is the existing system breaking down?
 - Are these systems effective in protecting the rights of indigenous peoples and other forest-dependent communities?
3. Develop first draft of FPIC guidelines:
 - Ensure that there is a process of public consultation and validation by stakeholders on the guidelines; and
 - Include any actors which are likely to be involved in implementing the guidelines, such as local or national forestry authorities.
4. Field test draft FPIC guidelines at a pilot site:
 - This should preferably be done where there is a concrete proposal which requires consent from the local rights-holders.
5. Independently evaluate the field test.
6. Amend the draft FPIC guidelines, as necessary:
 - Undertake a validation process with all stakeholders.
7. Consider how the FPIC guidelines could be formalized:
 - For example, by adopting the principle of FPIC in legislation, and considering how the guidelines could be integrated into a broader regulatory scheme for REDD+.

3.2 When is FPIC Required?

The specific characteristics of the consultation procedure that is required will necessarily vary depending upon the nature of the proposed measure and the degree to which it may impact underlying rights.⁴⁷

The UNDRIP recognizes several situations in which the State is under an obligation to not just seek, but secure the consent of the indigenous peoples concerned. Particularly relevant to the UN-REDD Programme, States must 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:

- i. Relocating an indigenous population from their lands;*
- ii. Taking “cultural, intellectual, religious and spiritual property;”*
- iii. Causing “damages, takings, occupation, confiscation and uses of their lands, territories and resources;”*
- iv. “Adopting and implementing legislative or administrative measures;” and*
- v. Approving “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.”⁴⁸*

As mentioned above, the relevant UN monitoring bodies have interpreted a number of binding conventions and treaties, including the ICCPR, the ICESCR and the CERD as affirming that States must secure consent from indigenous peoples through their own freely identified representatives or institutions, more generally with respect to ***any decisions “directly relating to their rights and interests” and in connection to: mining and oil and gas operations (extraction of subsurface resources); logging; the establishment of protected areas; construction of dams; development of agro-industrial plantations; resettlement; compulsory takings; and any other decisions affecting the status of their land rights.***⁴⁹

The Convention on Biological Diversity provides that FPIC is required ***before “access[ing] traditional knowledge, innovations and practices of indigenous and local communities.”***⁵⁰

The African Court of Human Rights, interpreting State obligations under the Banjul Charter has found that States are required to secure consent in the event of ***“any development or investment projects that would have a major impact” within the territory of indigenous peoples.***⁵¹

In the same vein, the Inter-American Court of Human Rights has held that consent was required in the cases of ***“development, investment, exploration or extraction plan[s]” (defined as “development and investment plans[s]”)*** and specifically ***“large-scale development or investment projects that have a significant impact on the right of use and enjoyment of [tribal] ancestral territories.”***⁵² The Court also described it in terms of ***“major development or investment plans that may have a profound impact on the property rights.”***⁵³

The Inter-American Commission on Human Rights has also affirmed the need for FPIC in cases involving ***relocation of indigenous peoples.***⁵⁴ Similarly, in *Awás Tingni Community v. Nicaragua*, the Inter-American Court found in favor of the community where the Nicaraguan government had granted a ***natural resource concession on community lands*** without consent⁵⁵ and violated the community’s property rights over their communal lands (which were not officially titled or otherwise recognized by the State).⁵⁶

The International Finance Corporation has found it useful to specifically enumerate the activities that require FPIC in the latest draft of its Policy and Performance Standards related to indigenous peoples. The new standards state that not only must consultation be undertaken, but also the FPIC of indigenous peoples must be obtained, ***if the proposed***

activities — (i) are to be located on or make commercial use of natural resources on lands subject to traditional ownership and/or under customary use by indigenous peoples; (ii) require relocation of indigenous peoples from traditional or customary lands; or (iii) involve commercial use of indigenous peoples’ cultural resources.⁵⁷

The European Bank for Reconstruction and Development, in its Environmental and Social Policy recognizes “the principle, outlined in the UN Declaration on the Rights of Indigenous Peoples, that the prior informed consent of affected Indigenous Peoples is required for “project-related activities that the policy specifically lists out to include: **(i) if a project affects the “ties” indigenous peoples have to “their customary lands and its forests, water, wildlife, and other natural resources”; (ii) if there is a proposal to “locate the project on, or commercially develop natural resources located within, customary lands under use, and adverse impacts can be expected on the livelihoods, or cultural, ceremonial, or spiritual uses that define the identity and community of the Indigenous Peoples”; (iii) when relocation is “unavoidable” then before such relocation occurs; and (iv) “where a project proposes to use the cultural resources, knowledge, innovations, or practices of Indigenous Peoples for commercial purposes.”**⁵⁸

In light of the above, a first step for partner countries in determining whether consent should be sought is to carefully consider, in collaboration with relevant rights-holders, whether the proposed activity/policy will impact their rights, lands, territories and/or resources such to trigger one or more of the circumstances described above.

In doing so, consistent with international law and jurisprudence such as those cited above, partner countries might consider that what constitutes a significant impact could be that which merely “affects indigenous peoples rights and interests” as opined by the Human Rights Committee as well as the CERD Committee (see *Legal Companion*). The Inter-American Court of Human Rights also affirmed the following:

“there are acceptable levels of “impact” a proposed development plan may have on Indigenous Peoples..., as long as that impact does not amount to a denial of their survival... [W]hen the Court uses the term ‘survival’ it does not refer only to the obligation of the State to ensure the right to life of the victims, but rather to take all the appropriate measures to ensure the continuance of the relationship of the Saramaka People with their land or their culture.”⁵⁹

In terms of determining what lands, territories, and resources might be subject to the consent standard, it is important to recognize that communal property rights based on traditional use, culture, and customary laws must be respected whether or not they are explicitly recognized by the national government.⁶⁰ Furthermore, in the case of the Saramaka peoples, the Court was very clear that “[u]ntil the demarcation and titling of indigenous peoples’ lands are completed” the State must refrain from acting or authorising others to affect the existence, value, use or enjoyment of such territory ... “unless the State obtains the free, prior and informed consent of the [indigenous]...people.”⁶¹ The Inter-American Commission on Human Rights has found that this principle applies, stating that “States cannot grant concessions for the exploration or exploitation of natural

resources that are located in territories which have not been delimited, demarcated or titled, without effective consultations with and the informed consent of the people.”⁶²

Based on the above sources outlining when FPIC is required, the UN-REDD Programme has developed the below checklist to support partner countries in thinking through whether or not an activity will require FPIC in the context of their REDD+ work. This is not necessarily an exhaustive list, but a useful source for partner countries.

CHECKLIST FOR APPRAISING WHETHER AN ACTIVITY WILL REQUIRE FPIC	Yes/No
1. Will the activity involve the relocation/resettlement/removal of an indigenous population from their lands?	
2. Will the activity involve the taking, confiscation, removal or damage of cultural, intellectual, religious and/or spiritual property from indigenous peoples / forest-dependent community?	
3. Will the activity adopt or implement any legislative or administrative measures that will affect the rights, lands, territories and/or resources of indigenous peoples / forest-dependent community (e.g. in connection with the development, utilization or exploitation of mineral, water or other resources)?	
4. Will the activity involve mining and oil and/or gas operations (extraction of subsurface resources) on the lands/territories of indigenous peoples / forest-dependent community?	
5. Will the activity involve logging on the lands/territories of indigenous peoples / forest-dependent community?	
6. Will the activity involve the development of agro-industrial plantations on the lands/territories of indigenous peoples / forest-dependent community?	
7. Will the activity involve any decisions that will affect the status of indigenous peoples' / forest-dependent community's rights to their lands/territories or resources?	
8. Will the activity involve the accessing of traditional knowledge, innovations and practices of indigenous and local communities?	
9. Will the activity involve making commercial use of natural and/or cultural resources on lands subject to traditional ownership and/or under customary use by indigenous peoples / forest-dependent community?	
10. Will the activity involve decisions regarding benefit-sharing arrangements, when benefits are derived from the lands/territories/ resources of indigenous peoples / forest-dependent community?	
11. Will the activity have an impact on the continuance of the relationship of the indigenous peoples/forest dependent community with their land or their culture?	

If the answer is ‘Yes’ to any of these questions, it is likely that FPIC will be required of the potentially affected peoples for the specific activity that may result in the impacts identified in the questions.

In order to further support partner countries to determine which activities may require FPIC, the UN-REDD Programme is exploring 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). An HRIA could support partner countries to identify potentially affected stakeholders and their composition including who the rights-holders are and which rights they are entitled to. As a starting point, the UN-REDD Programme will review and learn from the [International Finance Corporation’s \(IFC\) Guide to Human Rights Impact Assessment and Management](#), and other relevant tools.

3.3 At What Level is FPIC Applied?

Given that an FPIC process often concerns a specific proposed activity with potential impacts on a specific community, and that consent is given or withheld collectively by the community, FPIC is most often applied at the community level.

As mentioned in the table above, however, components of a national REDD+ strategy may have implications for the rights of indigenous peoples or other forest-dependent communities (e.g. proposed legislation related to changes in land tenure or agreements on benefit sharing, etc.) and therefore at least those components require some form of consent.

Therefore, in the development of national REDD+ strategies, partner countries must guarantee effective, good faith consultations with indigenous peoples and forest-dependent communities 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 REDD+ strategy and may affect indigenous peoples’ rights and interests and, where relevant, forest-dependent communities’ rights, especially their rights to self-determination; to own, use and control their lands, resources and territories; to their culture; to their health and environment, to ensure their traditional livelihoods or survival; to their equality before the law; or to be free from forced relocations, FPIC of the rights-holders through representative institutions shall be required under these Guidelines. The partner country will have a duty and obligation to secure FPIC as a mechanism to ensure the protection and effective enjoyment of the underlying substantive rights at issue.

Where specific policies and determinations are being formulated in the development of a national REDD+ strategy and may have more direct impact on a specific community, representation of these communities should be ensured.

Consent at the national level (e.g. for a national REDD+ strategy) does not remove the State’s duty and obligation to secure FPIC at the community level for a specific proposed activity (after the approval of a national REDD+ strategy).

3.4 Who Seeks Consent?

The National Implementing Partner⁶³, as designated in the NPD⁶⁴ is responsible for seeking consent. The National Implementing Partner should designate more specifically who (e.g. ministry, department, institution, local authority) is responsible for seeking consent for each activity identified as requiring consent in the Consultation Plan. The duty and responsibility to secure consent ultimately belongs to the State. This obligation cannot be delegated to a third party/private party.

3.5 Who Gives Consent?

Partner countries are required to seek FPIC from rights-holders which will be affected by the decision/policy/activity in question. In determining which communities are indigenous, the partner country should refer to the definitions of indigenous peoples in Annex I. As evidenced by Annex I, the partner country's own recognition or identification of the community as "indigenous peoples" shall not be the dispositive factor. As such, the determination shall not be dependent on whether the national government has recognized the subject community an indigenous peoples.⁶⁵

Partner countries should engage the rights-holders through their own representative institutions and those representatives chosen by the peoples themselves in accordance with their own procedures.⁶⁶ While respecting the norms, values and customs of the peoples and communities in question and the consultation and decision-making methods they utilize, it is strongly encouraged that all customary and formal rights-holders be represented in the decision-making process, especially women.⁶⁷ Note, under human rights law (e.g. the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)) and the UNDRIP, women have the right to equality in the exercise of the right of indigenous peoples to participate in both internal and external decision-making processes and institutions.⁶⁸

It is recommended that the partner country secure from the rights-holders the identification of the specific individuals or entities with the authority to negotiate as well as those individuals or entities with the authority to make decisions on behalf of the people or community. Bear in mind that those with the authority to negotiate may not always be the same individuals or entities with the power to decide.

3.6 Outcome of the FPIC Process

The FPIC process and outcome should be well-documented in writing and made publicly available. The written document should clarify if consent was provided or withheld and it should affirm that the decisions therein are binding and enforceable.

Note, it is important to document the whole FPIC process, including ideas, questions and concerns raised, so that it is possible to review the whole process in the event a grievance or dispute arises. However, documenting sensitive issues can be difficult. The rights-holders should be asked what is sensitive and what is not, and what it is permissible to document.

It is also important to revert back to the rights-holders to inform them of the outcome of the FPIC consultation. Not all people in the community might have participated in the consultation, yet all community members should be informed of the outcome.

The territories and resources of the rights-holders in question which are not subject to the consent should not be included in the proposed REDD+ policy/activity.

Rights-holders may choose to grant their consent on the basis of certain conditions (e.g. benefits continue to be derived from the project, restrictions on access to certain areas, limitations on contact with certain sectors of society or members living in voluntary isolation, etc.). If these conditions are not met, the community may review and either reaffirm or refuse consent. This option may be invoked at any stage of programme implementation. Consent is an iterative process.

Given the significant time and resources that may have been invested during the process, the rights-holders should not be able to withdraw consent arbitrarily; thus, if the conditions upon which the original consent was based are being met, ongoing consent is implied. If there is disagreement over whether conditions are being met or not, communities can express their grievance with the relevant national-level grievance mechanism (which may have functions at the community/sub-national level).



4. OPERATIONAL FRAMEWORK FOR SEEKING FREE, PRIOR AND INFORMED CONSENT

Below is an outline of steps that should be undertaken by partner countries when seeking FPIC in a community or territory.⁶⁹

a. Partner countries, in collaboration with relevant rights-holders, and taking into account the duties and obligations under international law, will undertake an FPIC Scoping Review, including the following components:

- A description of the proposed policy or activity;
- A description of the rights-holders, their governance structures and how they wish to be engaged, including the institutions and individuals that are empowered to represent them;
- A description of the legal status of the land, territory and resources concerned, including a description of the geographical area under formal, informal and/or customary use by the rights-holders (including whether women have access to formal, informal and/or customary use of lands and resources), including maps and methodology used to establish the maps;
- An assessment of the social, environmental, and cultural impacts of the proposed policy/ activity on the rights-holders, including the specific impacts that have required the partner country to seek FPIC and how these impacts will be mitigated;
- An assessment of the substantive rights of the peoples concerned, as affirmed in domestic and international law, that may be affected by the proposed policy/activity; and
- Resources allocated for seeking FPIC.

Special attention should be paid by partner countries to supporting community efforts to describe many of these items in their own terms, including traditional uses of their lands, territories and natural resources and community-based property rights.⁷⁰

Consultations on the FPIC Scoping Review should be undertaken until it has been mutually agreed upon.

b. Once the FPIC Scoping Review has been mutually agreed upon, the partner country, in consultation with the rights-holders, should develop an FPIC Proposal that outlines the proposed process to seek FPIC, including the following components:

- Capacity and information needs of the National Implementing Partner and/or rights-holders that need to be addressed before the FPIC process can take place;
- A designation of whether the process will require a facilitator and, if so, who it should be;⁷¹
- Where and how the consultations will take place;
- A timeline for the proposed consultation process to seek FPIC;
- The appropriate language and media for information sharing and distribution;
- How decisions will be taken by the community in accordance with their traditions and customs, and whether special measures have to be adopted to ensure the participation of women and other vulnerable groups within the community;
- The geographical territory and communities that the decision will cover;
- How FPIC will be given, recognized and recorded;
- The role of others in the process (if any), including local government officials, UN agencies, institutions, donors, independent observers (strongly recommended) and other stakeholders;
- Methods of verifying the process including, where relevant, participatory monitoring arrangements;
- Terms and frequency of review of the agreement(s) to ensure that conditions are being upheld; and
- Process for voicing complaints and seeking recourse on the FPIC process and proposed policy or activity.

Mechanisms for ongoing dialogue, participation, decision-making and consent throughout the various phases of the activity or project should be established and identified clearly between the State and affected peoples and communities, including how those processes will be maintained throughout, for example, the development, assessment, planning, implementation, oversight, monitoring, dispute resolution, and closure stages of the project. Such processes can avoid misunderstandings in the future.

As long as the rights-holders in question maintain their interest in negotiating (as there is no legal requirement that they negotiate), the consultations on the FPIC Proposal should be undertaken until it has been mutually agreed upon. The FPIC Scoping Review and FPIC Proposal should be combined into one document and signed (or agreed upon in a culturally appropriate manner) by all relevant parties. Once this document has been signed/agreed upon, the FPIC process can proceed as outlined in the Proposal.

c. An independent evaluation should be undertaken by an institution, to be mutually agreed by all relevant rights-holders, to verify that the process was aligned with the definition of each of the terms of the FPIC Process outlined in section 2 above.⁷²

5. NATIONAL-LEVEL GRIEVANCE MECHANISMS

As outlined in Attachment 4 of the R-PP:

“The complexity of issues and diversity of stakeholders engaged may lead to numerous questions, inquiries, and potentially grievances about the REDD-plus strategy or process. A grievance mechanism is part of the country’s REDD+ management framework. Such a mechanism needs to be available to stakeholders early in the R-PP implementation phase, in order to be ready to handle any request for feedback or complaint that stakeholders may have about Readiness activities.

A grievance mechanism is a process for receiving and facilitating resolution of queries and grievances from affected communities or stakeholders related to REDD-plus activities, policies or programs at the level of the community or country. Typically, these mechanisms focus on flexible problem solving approaches to dispute resolution through options such as fact finding, dialogue, facilitation or mediation. Designed well, a feedback and grievance mechanism should improve responsiveness to citizen concerns, help identify problems early, and foster greater trust and accountability with program stakeholders. Additionally data on complaints or feedback can be used to improve program performance.

Effective grievance redress mechanisms should address concerns promptly and fairly, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected stakeholders, and at no cost and without retribution or impeding other administrative or legal remedies. Effective grievance redress mechanisms are also typified by a number of characteristics, such as multiple grievance uptake locations and multiple channels for receiving grievances; prompt, clear, and transparent processing guidelines (including reviewing procedures and monitoring systems); the availability of a variety of dispute resolution approaches for flexible response to specific grievances; and an effective and timely system for informing complainants of the action taken. If appropriate, the grievance mechanism should provide special provisions for women, and the youth.”

The national-level grievance mechanism established in the context of REDD+ will be critical to ensuring grievances and disputes are addressed in a proper manner, including in FPIC processes. To better support partner countries, the UN-REDD Programme is preparing a Guidance Note that will outline in more detail indicative principles and a methodology for strengthening and/or establishing national-level grievance mechanisms.



FPIC village facilitator talking to a community member during the FPIC pilot in Lam Dong province. (Photo credit: Nguyen Thi Thu Huyen)

ANNEX I: IDENTIFYING INDIGENOUS PEOPLES⁷³

There is no one definition of indigenous peoples, but the term⁷⁴ has become a general denominator for distinct peoples who, throughout history, have been pursuing their own concept and way of human development in a given socio-economic, political and historical context. Often for centuries, these distinct groups of peoples have tried to maintain their group identity, languages, traditional beliefs, worldviews and ways of life and, most importantly, the control and management of their lands, territories and natural resources with which they have a special connection, and upon which their physical and cultural survival as indigenous peoples typically depends. In many cases these individuals self-identify as indigenous peoples and often their existence pre-dates those that colonized the lands within which they were found or disposed them of the lands, territories and resources they traditionally held.

Who are indigenous peoples?

The international community has not adopted a common definition of indigenous peoples, but the prevailing view today is that no formal universal definition is necessary for the recognition and protection of their rights. Indeed, while the draft American Declaration on the Rights of Indigenous Peoples has deliberated on possible definitions --a task arguably easier when addressing a single continent whose historic experiences with indigenous peoples have greater internal consistency-- the matter was discussed and treated differently in the context of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in light of the multitude of experiences spanning across the continents and the globe. Representing the prevailing view, the UNDRIP is affirmatively endorsed now by 148 States (with 11 abstentions).

The absence of a definition with listed criteria or factors has not been a hindrance, however, as there are a number of definitions and descriptions that have emerged over time and become commonly accepted and utilized. For instance, the famous *Study of the Problem of Discrimination against Indigenous Populations* (the “Martínez Cobo Study”) offered one of the earliest “working definitions” still referred to by many today. The Martínez Cobo Study provided that:

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present nondominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”⁷⁵

The ILO Convention 169 applies to:

- Tribal peoples whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.
- Peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.⁷⁶

The Convention also states that self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.⁷⁷

The *Working Paper on the Concept of “Indigenous People”* prepared by the Working Group on Indigenous Populations lists the following factors that have been considered relevant to the understanding of the concept of “indigenous” by international organizations and legal experts, but again repeating the notion of self-identification:

- Priority in time, with respect to the occupation and use of a specific territory;
- The voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions;
- Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and
- An experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist.⁷⁸

Self-identification as indigenous or tribal is considered a fundamental criterion and this is the practice followed in the United Nations and its specialized agencies, as well as in certain regional intergovernmental organizations.⁷⁹ Article 33 of the UNDRIP refers to the rights of indigenous peoples to decide their own identities and membership procedures.

Understanding who indigenous peoples are:

- They identify themselves as indigenous peoples and are, at the individual level, accepted as members by their community;
- They have historical continuity or association with a given region or part of a given region prior to colonization or annexation;
- They have strong links to territories and surrounding natural resources;
- They maintain, at least in part, distinct social, economic and political systems;
- They maintain, at least in part, distinct languages, cultures, beliefs and knowledge systems;
- They are resolved to maintain and further develop their identity and distinct social, economic, cultural and political institutions as distinct peoples and communities; and
- They typically form non-dominant sectors of society.

In some countries, it is controversial to use the term “indigenous.” In some cases, however, the notion of being indigenous has pejorative connotations and people may choose to refuse or redefine their indigenous origin. Such choices must be respected, while at the same time any discrimination based on indigenous peoples’ cultures and identity must be rejected. This different language use is also reflected in international law. In some countries, it is controversial to use the term “indigenous” or to self-identify as “indigenous.” Also, the terminology to describe the distinct collectives differs one country from the next. There may be local terms such as “tribal people,” “first peoples,” “ethnic minorities,” “traditional communities,” “Native Americans,” and “scheduled tribes” etc. There also may be occupational and geographical labels such as “hunter-gatherers,” “pastoralists,” “nomadic or semi-nomadic,” “hill people” etc. For all practical purposes, and specifically for purposes of the application of these Guidelines, the term “indigenous peoples” will be used to encompass all of these collectives. The issue is neither what a people is called nor whether the State in question has recognized them as an indigenous people, but whether the collective satisfies the most commonly accepted definitions of indigenous peoples elaborated here -- even where the political situation has dissuaded a people or community to identify themselves as indigenous or prevented them from understanding the rights implications of doing so.

How to identify indigenous peoples

The most fruitful approach is to identify, rather than attempt to define, indigenous peoples in a specific context. Indigenous peoples’ representatives themselves have taken the position that no global definition is either possible or desirable. Identification is a more constructive and pragmatic process, based on the fundamental criterion of self-identi-

cation. The identification of indigenous peoples must thus be undertaken with the full participation of the peoples concerned. The purpose of the exercise is to gain a better understanding of the specific situations of exclusion, discrimination and poverty faced by particular groups of people so that public policies can address these issues by developing targeted programmes and inclusive processes.

Below is a list of some practical questions suggested for consideration when working on matters involving indigenous peoples in the preparation of projects and/or relevant activities. Local indigenous organizations and leaders, and academic constituencies in addition to government, may be well placed to help answer these questions. The list is neither exhaustive nor mandatory, but provides elements for consideration and reflection as part of any preparatory work.

Identifying indigenous peoples:

- Are there peoples identifying themselves as indigenous?
- Are there local terms that identify indigenous peoples?
- If so, are they recognized in legislation (the Constitution or other laws, for example)?
- What term is used in the national policy discourse and mainstream media with regard to these groups of people to distinguish them from the dominant societal group?
- Are there provisions in relevant laws regarding these groups' collective rights as peoples/communities or any other specific group rights?
- Who are these groups and what are these provisions?
- What is their general situation compared to the mainstream dominant society?
- Do the people have distinct customs and norms that differ from those of the dominant society?
- What is their relationship to the lands and resources they inhabit?
- Has a census been conducted in recent years in the country?
- If so, are these peoples reflected in the census?
- If so, how are they identified as a specific group of people? By self-identification or other criteria?
- Is any other disaggregated data on these specific groups of people available or can it be generated?
- Are there indications that the peoples concerned are unaware of the rights that attach to the designation as indigenous peoples or that they may fear the implications of calling themselves indigenous peoples?

Indigenous peoples often have much in common with other marginalized segments of society, i.e. lack of or very poor political representation and participation, lack of access to social services, and exclusion from decision-making processes on matters affecting them directly or indirectly. However, the situation of indigenous peoples is different because of their history and their intimate relationship with their lands, territories and resources which, in many cases, not only provide them with the economic means for living but also sustain them as peoples along with their culture. As distinct peoples, indigenous peoples claim the right to self-determination, including the right to control their own political, social, economic and cultural development as enshrined in the UNDRIP, ILO Convention 169, and other international human rights instruments. Furthermore, many indigenous peoples have a profound spiritual relationship with their land and natural resources. Indigenous peoples' rights to manage their traditional lands, territories and relevant resources are fundamental to their physical and spiritual survival. However, all too often, indigenous communities have been displaced and dislocated from their ancestral lands in the name of development, by oil and gas or other natural resource exploitation projects, the construction of dams, conservation parks, roads or other national development priorities, which have been designed without the FPIC of indigenous peoples—and indeed, often without any form of consultation with them at all.

ANNEX II: TYPES OF PARTICIPATION⁸⁰

Types of Participation	
Information Sharing	<p>After getting permission to consult, this activity will commence immediately and will mostly be a one-way flow of information, e.g. from government to public, or public to government. Objectives are to keep actors informed, provide transparency, and build legitimacy. This can be done through simple outreach approaches (e.g. website, fact sheets, press releases, presentations). This information sharing will be done in a culturally appropriate way so that it is accessible by the rights-holders. Preliminary information from the project proponent or partner country should at a minimum include: (i) an identification of the project proponent and all other interested parties (e.g. investors, partners, third party beneficiaries); (ii) proof of their status as a legal entity; (iii) a full description of the proposed project including its intended scope, duration, the preliminary assessment of social and environmental impacts, expected benefits and risks to the affected peoples and other communities; (iv) a full description with supporting documentation of how the project will fully comply with national and international law and best practices; and (v) a point of contact for the project proponents.</p>
Consultation	<p>Two-way flow of information and the exchange of views. This involves sharing information, garnering feedback and reactions and, in more formal consultation processes, responding to stakeholders about how their recommendations were addressed (including if they were not, why not). Information exchanges may occur through meetings with individuals, public meetings, workshops, soliciting feedback on documents, etc. This is done with a view toward achieving agreement. It shall be done in a culturally appropriate way when dealing with indigenous peoples and forest-dependent communities and in a manner that respects their norms and traditions related to communications and decisions-making. Good faith consultations mean a constant exchange of information between the parties such that any agreement reached is done knowingly by all parties and they have the opportunity to be heard and to have their questions and requests for clarifications addressed. To avoid miscommunications, the perpetuation of faulty assumptions and misunderstandings, and to ensure the proper documentation of the consultation and negotiation processes, the parties may agree on mechanisms to summarize their exchanges and any mutual understandings reached at meetings (e.g. the drafting of Meeting Minutes). The documentation of these exchanges could even be acknowledged by the delegations attending the respective meetings with copies maintained by all parties.</p>

Types of Participation	
Collaboration	Collaboration should begin with each party clearly outlining how its decision-making processes function. This includes, at a minimum, an identification of all individuals and entities that need to take part in the process for each party (e.g. a Board of Directors, a project manager, a Council of Elders), those with ultimate decision-making power as opposed to simply the power to participate in negotiations, the timing typically required by each party to arrive at decisions, and information relevant to the duration of the terms of each party's authorized decision-makers (e.g. if elections of a new company board or community council are pending, such disclosures shall be made). Indeed, collaboration entails moving beyond collecting feedback to involving external actors in problem-solving, policy design, and monitoring and evaluation. Approaches may include advisory committees, joint missions, and joint implementation activities. In such initiatives, likely affected rights-holders such as indigenous peoples and forest-dependent communities shall be equitably represented in said activities, committees and missions.
Joint decision-making	Collaboration where there is shared control over a decision made. Shared decision-making is useful when the external actor's knowledge, capacity, and experience are critical for achieving policy objectives. As referenced above in "collaboration," it is helpful if the parties exchange their ideas and customs around decision-making and agree on a reasonable timeline.
Consent	Consent refers to a freely given decision from the rights-holders based on full, prior and objective information; a decision made by the people or community in question, through their designated representatives and in accordance with their traditions, customs and norms. It is a collective decision that will determine how and if an activity or action will be carried out. To ensure the integrity of the process, respect for the rights-holders' customs, and security in the decisions taken, it can be helpful if early on both the project proponent and affected people identify themselves, their representatives and specifically the individuals or entities with the authority to negotiate as well as those individuals or entities with the authority to make decisions on behalf of the party. Those with the authority to negotiate may not always be the same individuals or entities with the power to decide. Our contemporary history demonstrates that seeking consent from the wrong individuals (not those that represent the collective as designated by the people in question) can lead to a decision without credibility or durability.

Types of Participation

Empowerment	Transfers control over decision-making, resources, and activities from the initiator to others, including stakeholders and rights-holders. This is when external actors, and preferably the holders of the rights and interests in the lands, resources or territories in question, acting autonomously and in their own interests, can carry out policy mandates without significant government involvement or oversight (e.g. local natural resource management zones). One mechanism to increase the opportunities for empowerment is to ensure that the rights-holders in question have the capacity to secure advisors and legal counsel of their choice to accompany them in the consultation and negotiation process, especially on technical or legal matters. It is often the case that it benefits the partner country and/or project proponent to finance the reasonable costs related to securing independent legal counsel and technical advisor to directly serve the communities in question such that they can more effectively contribute to and evaluate legal, social and environmental assessments related to the proposed project and addressing all other matters necessary for them to participate in the consultations in a fully informed and effective manner.
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ANNEX III: STAKEHOLDER ENGAGEMENT: EFFECTIVE AND EQUITABLE GENDERED PARTICIPATION AND REPRESENTATION IN DECISION-MAKING⁸¹

Women and men's specific roles, rights and responsibilities, as well as their particular use patterns and knowledge of forests, shape their experiences differently. As such, gender-differentiated needs, uses and knowledge of the forest are critical inputs to policy and programmatic interventions that will enable the long-term success of REDD+ on the ground. To ensure that national REDD+ systems and programmes are inclusive and resilient, specific attention must be paid to the specific roles, requirements and contributions of women and men at every stage of policy and programme development, from design through implementation and evaluation.

A gender-responsive REDD+ stakeholder engagement strategy recognizes the role of women as primary users of forest resources in REDD+ policy and programme design, implementation and evaluation. Data from the health, nutrition and education sectors show that engaging both women and men in consultations advances an understanding of women's practical needs and therefore the relevance of the consultations' outcomes. Moreover, whenever possible while maintaining respect for the customary laws and practices of the community or peoples in question, a participatory REDD+ initiative would take appropriate steps to ensure that women have appropriate and adequate representation in **decision-making**. This has been shown to better address their strategic needs, resulting in greater uptake of the desired shifts in behaviour.

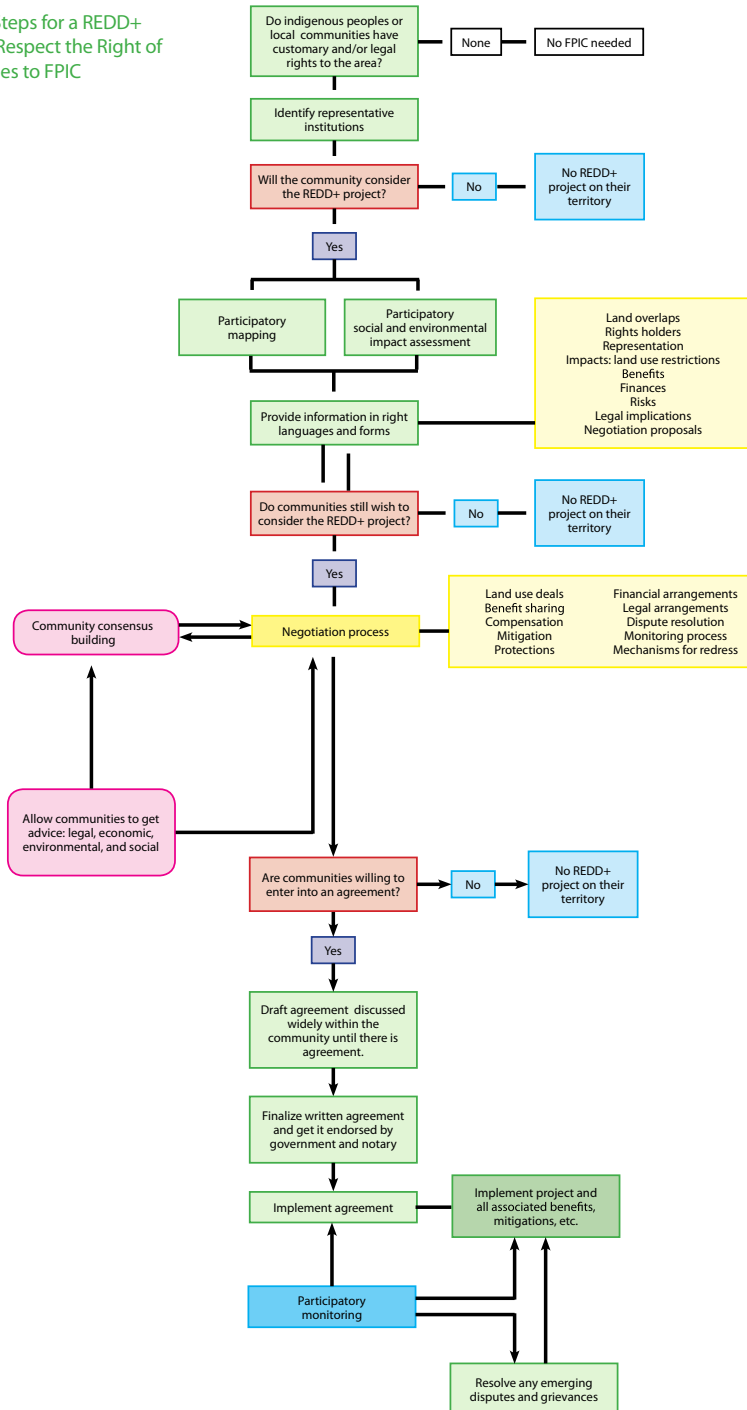
Participatory REDD+ interventions that effectively engage both women and men in decision-making could also result in a greater likelihood of sustained change in the way forest resources are used, thereby contributing to the sustainability of the REDD+ mechanism. If women are to be involved in decision-making, their full and effective participation may depend on additional training.

Gender-responsive participatory processes include the use of women-only interviews and gender-specific focus groups and group consultations. These approaches enable women to fully participate and make their voices heard with minimal distortion of message. Other methods to support women's engagement that are not meeting-based are also worth considering.

It is important to note, however, that this is not a "box-ticking" exercise: getting women into meetings, ensuring that they actively participate in those meetings and finally enabling women as decision-makers requires addressing the asymmetries of power and other cultural norms that influence gender equality. Ultimately, increasing the role of women in consultations can help increase implementation efficiency, increasing women's full and effective participation will increase efficacy, and increasing women's roles as decision-makers will increase sustainability.

ANNEX IV: INDICATIVE STEPS FOR A REDD+ PROCESS TO RESPECT THE PRINCIPLE OF FPIC⁸²

Indicative Steps for a REDD+ Process to Respect the Right of Communities to FPIC



ANNEX V: THE ROLE OF FACILITATORS IN SUPPORTING THE FPIC PROCESS

Facilitators should be sensitive to the cultural context, with technical knowledge of the issue under consideration. Facilitators are mutually accountable to the UN-REDD Programme, the government and the community; they must be neutral, trustworthy and competent.

Facilitators, in cooperation with the government and stakeholders, are responsible for ensuring, among other things, that the following key arrangements are part of the FPIC process:

- Full, accurate information is communicated that is easily understandable by everyone, including through innovative and creative forms, in the most appropriate language and medium, to communicate issues, as well as access to other sources of information;
- Decision-making process is determined by the community without interference;
- Timeline to undertake the decision-making process is decided by the community;
- Respect for the customary laws and practices of the community in question;
- The language in which they wish to be addressed, including the language used for written materials and to convey decisions, is determined by the community;
- Additional information be sought from community members and they should be encouraged to verify information;
- Transparent, accurate and complete information is communicated; positive and negative and potential short-term and long-term impacts, risks and benefits are described;
- Information reaches all community members and is consistent with the community's mechanisms for information sharing; and
- A secure, culturally appropriate and trusted decision-making environment.

Facilitators should support the rights-holders to determine and document the collective decision-making process (if the rights-holders agree):

- Use, build on, or improve existing transparent and participatory consultation and consent processes (e.g. raising hands, voting, signing, deferring to leaders, etc.);
- Document process, discussion, comments, questions 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-evaluation process (e.g. village head signs) - if information is disaggregated, record the relevance of this disaggregation to the decision, and to follow-up activities; and
- Respect at all times that role as a facilitator, which is not a mediator, or a decision-maker.

Facilitators should support capacity building for the community to effectively review agreement conditions to ensure that they are met, including the delivery and proper distribution of benefits agreed.

Lessons from engagement facilitators in UN-REDD Programme FPIC pilots in Viet Nam and Indonesia include:

- The selection and training of suitable FPIC facilitators is critical to the success of the FPIC process, but it is not always easy to get the right candidates. Consideration should be given to language skills, ethnicity, gender, experience in consultation processes, age profile (some elders prefer to speak to older facilitators), and knowledge of REDD+.
- Facilitators will often have very low capacity initially. Training facilitators takes time and money, as they are unlikely to be familiar with the issues to start with. Establishing a systematic way to train and maintain a team of experienced FPIC facilitators may help to reduce the cost of doing FPIC over the long term.
- Training on both the substance of climate change and REDD+ issues must take place, as well as training in facilitation and FPIC skills.
- Communicating complex issues associated with REDD+ is even more difficult when speaking a person's second language. Communication in a person's first language is essential, and this will normally mean that it is necessary to recruit facilitators from the local area who can communicate without the need for translation.

Tools and Resources

[Guidance for community-level FPIC process facilitators](#), WISE Inc., Philippines.

[A Manual for Interlocutors to Conduct FPIC Village Consultation Meetings](#), UN-REDD Programme, Viet Nam, 2010.

ANNEX VI: LESSONS LEARNED FROM UN-REDD PROGRAMME FPIC PILOT EXPERIENCES

Some key lessons learned from FPIC pilots in Indonesia and Viet Nam are provided below:⁸³

- The audience in the consultations should be segmented so that the most appropriate communication materials can be used for different members of the local community. For example, written materials will be more suitable for people with higher levels of literacy. In Indonesia, the comic books explaining the forest rehabilitation proposal were particularly popular.
- FPIC guidelines are best tested in a location where there is a concrete proposal that requires community consent (in the case of Indonesia, it was the replanting programme proposed by the local Forest Management Unit). This can be contrasted with the FPIC pilot carried out in Viet Nam, where villagers were asked generally if they agreed to a programme of proposed UN-REDD activities, but a subsequent evaluation found that villagers did not really understand what was being proposed.
- Local facilitators are essential for effective awareness-raising and discussion. Using trained facilitators from the community that is being approached for their consent can accelerate understanding because the process of building confidence between the facilitator and community is faster.
- Adequate time needs to be allowed for awareness-raising as the concepts of climate change and REDD+ are complex and difficult to grasp, particularly for local officials and communities with less education. Using a concrete proposal, such as tree-planting, can be an easier way to explain a REDD+ project.
- Adequate time must be given to absorb information and for internal discussion. Local FPIC events can be very time-consuming and complex and communities may tend to be distrustful of new initiatives and need time to absorb information. There must be sufficient separation between the early visits to introduce the idea of REDD+ to the community and the time when they are asked to make a decision. It is recommended that the same facilitator/interlocutor make at least three visits to a village before any decisions are made.
- Engagement with local authorities needs to be managed carefully and flexibly. There can be tension between engaging local authorities who may play a very visible role in negotiations, while at the same time ensuring that the consultation remains “free” (without coercion).

- Documenting FPIC decisions can be challenging, and rights-holders may fear submitting written statements or signing documents. However, only relying on verbal agreements leaves open the possibility of future disagreements. A compromise may be needed.
- Managing expectations of communities is important. Understandably, community members may focus on short-term benefits and will ask “when will we see some benefits?” and “how much?” Although consultations need to be “prior,” they should not be so far in advance of an activity that villagers lose interest in a proposal.
- A mechanism for addressing grievances and disputes should be identified/established at the outset.

ANNEX VII: TOOLS AND RESOURCES

FPIC - General

- [FSC guidelines for the implementation of free, prior and informed consent \(FPIC\)](#). Forest Stewardship Council (FSC), Version 1, 30 October 2012.
- [Free, Prior and Informed Consent for REDD+ in the Asia-Pacific Region: Lessons Learned](#), UN-REDD Programme, 2012.
- [Training Manual on Free, Prior and Informed Consent \(FPIC\) in REDD+ for Indigenous Peoples](#), Asia Indigenous Peoples Pact Foundation (AIPP) and International Work Group on Indigenous Affairs (IWGIA), 2012.
- [Putting Free, Prior and Informed Consent into Practice: A Training Manual](#), RECOFTC, 2012.
- [Free, Prior, and Informed Consent in REDD+: Principles and Approaches for Policy and Project Development](#), RECOFTC and GIZ, 2011.
- [Guide to Free, Prior and Informed Consent](#), Oxfam, 2010.
- [Free, Prior and Informed Consent: Making FPIC work for forests and peoples](#), Colchester, M., The Forests Dialogue, New Haven, CT, USA, 2010.
- [FPIC and UN-REDD: Legal and Practical Considerations](#), Center for International Environmental Law (CIEL) prepared for the UN-REDD Programme, 2010.
- [The Forests Dialogue \(TFD\) Dialogue Stream](#), The Forests Dialogue, New Haven, CT, USA.
- [Guidance for community-level FPIC process facilitators](#), WISE Inc., Philippines.
- Proposed Protocol for a Consultation and Consent Process with the Indigenous Peoples of Paraguay (prepared by Federation for the Self Determination of Indigenous Peoples (FAPI) with support from the Forest Peoples Programme (FPP) and UNDP) ([EN](#), [SP](#)).

Reports of the Human Rights Council and Special Rapporteur on the Rights of Indigenous Peoples

- [Report of the Special Rapporteur on the rights of indigenous peoples](#), 2012.
- [Follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries](#), 2012.
- [Final report of the study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples](#), 2011.

- [Progress report on the study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples](#), 2010.

FPIC Pilot, Indonesia's UN-REDD National Programme

- [Policy Recommendation: Free, Prior Informed Consent \(FPIC\) Instrument for Indigenous Community and/or Local Community who will be Affected by REDD+ Activities](#), Indonesia's UN-REDD National Programme, 2011.
- [Draft Guidelines for Implementation of Free Prior Informed Consent \(FPIC\) in UN-REDD Project in Central Sulawesi](#), Indonesia's UN-REDD National Programme, 2011.

FPIC Pilot, Viet Nam's UN-REDD National Programme

- [Lessons Learned: Viet Nam's UN-REDD National Programme, Phase 1](#), prepared by Vickers, B., and Hang, N., Viet Nam's UN-REDD National Programme, 2012.
- [FPIC Verification and Evaluation Toolkit](#), RECOFTC and the UN-REDD Programme - Asia/Pacific Region, 2010.
- [Evaluation and Verification of the Free, Prior and Informed Consent Process under the UN-REDD Programme in Lam Dong Province, Vietnam](#), RECOFTC, 2010.
- [A Manual for Interlocutors to Conduct FPIC Village Consultation meetings](#), Viet Nam's UN-REDD National Programme, 2010.
- [Fact Sheet on Work on Free, Prior Informed Consent in Viet Nam](#), Viet Nam's UN-REDD National Programme, 2010.

Grievance Mechanisms

- [Addressing Grievances from Project-Affected Communities: Guidance for Projects and Companies on Designing Grievance Mechanisms](#), International Finance Corporation (IFC), Good Practice Note, Number 7, September 2009.
- [A Guide to Designing and Implementing Grievance Mechanisms for Development Projects](#), The Office of the Compliance Advisor/Ombudsman for the International Finance Corporation (IFC) Multilateral Investment Guarantee Agency (MIGA), 2008.
- Feedback Matters: Designing Effective Grievance Redress Mechanisms for Bank-Financed Projects [Part 1: The Theory of Grievance Redress](#), and [Part 2: The Practice of Grievance Redress](#), the World Bank.

Indigenous Peoples and Consultations

- [Forest Peoples: Numbers across the world](#), FPP, 2012.
- [REDD Community Protocols: A Community Approach to Ensuring the Local Integrity of REDD](#), Natural Justice, 2011.

- [A Draft Framework for Sharing Approaches for Better Multi-Stakeholder Participation Practices](#), Florence Daviet, WRI for FCPF and the UN-REDD Programme, 2011.
- [Guidelines on the Protection of Indigenous Peoples in Voluntary Isolation and in Initial Contact of the Amazon Basin and El Chaco](#), Human Rights Council Expert Mechanism on the Rights of Indigenous Peoples, Second Session, 2009.
- [UN Resource Kit on Indigenous Peoples Issues](#), United Nations, 2008.
- [Key Elements to the Initiation, Performance and Maintenance of Good Faith Consultations and Negotiations with Indigenous and Tribal Peoples and Communities](#), FPP, 2008.

Endnotes

- 1 In some countries, it is controversial to use the term “indigenous” or to self-identify as “indigenous.” Also, the terminology to describe the distinct collectives differs from one country to the next. There may be local terms such as “tribal people,” “first peoples,” “ethnic minorities,” “traditional communities,” “Native Americans,” and “scheduled tribes” etc. There also may be occupational and geographical labels such as “hunter-gatherers,” “pastoralists,” “nomadic or semi-nomadic,” “hill people” etc. For all practical purposes, and specifically for purposes of the application of these Guidelines, the term “indigenous peoples” will be used to encompass all of these collectives. The issue is neither what a people is called nor whether the state in question has recognized them as an indigenous people, but whether the collective satisfies the most commonly accepted definitions of indigenous peoples elaborated in Annex I.
- 2 For the purpose of these Guidelines, forest-dependent communities shall refer to communities that would not satisfy the commonly accepted definitions of indigenous peoples found at Annex I, irrespective of whether they themselves choose to identify themselves as such (owing, for example, to a fear of doing so or a lack of awareness of the legal rights that would attach, etc.).
- 3 *See Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge*. Mr. Olivier De Schutter, Special Rapporteur on the right to food, 11 June 2009, at p. 15, para 10 (citing Human Rights Committee, *Concluding Observations: Sweden*, 7 May 2009 (CCPR/C/SWE/CO/6), para. 20).
- 4 *Ibid.*, at pp. 13-15 (the Special Rapporteur identifies the following as one of the main human rights principles that is applicable in this context: “Indigenous peoples have been granted specific forms of protection of their rights on land under international law. States shall consult and cooperate in good faith with the indigenous peoples concerned in order to obtain their free and informed consent prior to the approval of 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”).
- 5 For more information, see: [Asia- Pacific workshop report](#); [Latin America and the Caribbean workshop report](#); [Africa workshop report](#).
- 6 [Special Rapporteur on the Rights of Indigenous Peoples](#), Professor James Anaya.
- 7 Click [here](#) for all documents related to this Workshop, including the Final Report.
- 8 *See report: Free, Prior and Informed Consent for REDD+ in the Asia-Pacific Region: Lessons Learned*, UN-REDD Programme, 2012; and Annex VI.
- 9 [FPIC and UN-REDD: Legal and Practical Considerations](#), Center for International Environmental Law (CIEL), 2010, prepared for the UN-REDD Programme. Note that the reference to “continued engagement” is meant to connote an engagement in good faith, not a relentless engagement designed to pressure a given people or community to change its mind about a consent previously withheld.
- 10 *Concluding Observations: Togo*, CCPR/C/TGO/CO/4, para. 21 (11 March 2011); *Concluding Observations: Colombia*, E/C.12/COL/CO/5, para. 9 (21 May 2010); *inter alia, Concluding Observations: Canada*, CERD/CAN/CO/19-20 (9 March 2012), at para. 20; Permanent Forum on Indigenous Issues, *Report on the tenth session* (16-27 May 2011), Economic and Social Council Official Records, 2011, Supplement No. 23, E/2011/43-E/C.19/2011/14, para. 34.; *Final report of the study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples*, A/HRC/18/42, para. 63 (17 August 2011) (hereinafter “*EMRIP Final Report on the right to Participate*”) (*See Legal Companion for all these sources*).
- 11 Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, A/HRC/21/47, para. 49 (July 6 2012) (hereinafter, *Report of the Special Rapporteur on the rights of indigenous peoples*) (*see Legal Companion*); *Information Note by the Secretariat of the World Intellectual Property Organization*, International Workshop on Methodologies Regarding Free, Prior and Informed Consent and Indigenous Peoples, January 17-19, 2005, para. 2 (January 10, 2005).

- 12 *EMRIP Final Report on the right to Participate, supra note 11, para. 63 (See Legal Companion); Standard-Setting Legal Commentary on the Concept of Free, Prior and Informed Consent*: Expanded working paper submitted by Mrs. Antoanella-Iulia Motoc and the Tebtebba Foundation offering guidelines to govern the practice of implementation of the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources, E/CN.4/Sub.2/AC.4/2005/WP.1, para. 6, 14 July 2005; Intervention by: Raja Devasish Roy, Member, *UN Permanent Forum on Indigenous Issues*, 10th Session of the United Nations Permanent Forum on Indigenous Issues (16-27, May 2011).
- 13 *Report of the Special Rapporteur on the rights of indigenous peoples, supra note 12, para. 49 (See Legal Companion)*.
- 14 *Ibid.*, at paras. 50-51 (explaining, at para. 51, that “the consultation and consent standard that applies specifically to indigenous peoples is a means of effectuating these rights, and is further justified by the generally marginalized character of indigenous peoples in the political sphere, but it is a standard that certainly does not represent the full scope of these rights”).
- 15 See United Nations Declaration on the Rights of Indigenous Peoples adopted by General Assembly Resolution 61/295 on 13 September 2007, Arts. 10, 11(2), 19, 28(1), 29(2), 30(1), 32(2) (employing language that focuses on the requirement — the duty and obligation — of the State to secure FPIC where its activity or omissions may affect an impact on other substantive rights of indigenous peoples (e.g. through the adoption of legislation, authorization of resource exploitation, disposal of hazardous wastes, in the case of relocation) (hereinafter UNDRIP). (See *Legal Companion*).
- 16 Committee on Economic, Social and Cultural Rights, General comment No. 21, *Right of everyone to take part in cultural life* (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), adopted at the Committee’s forty-third session, 2–20 November 2009. UN Doc. E/C.12/GC/21 (21 December 2009), at para. 36-37.
- 17 See *Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 28 November 2007. Series C No. 172, paras 137 (providing that the “safeguard of effective participation...must be understood to additionally require the free, prior, and informed consent” of indigenous peoples (hereinafter “*Saramaka Merits Judgment*”).
- 18 The inter-American Commission on Human Rights explains that the “requirement of consent must be interpreted as a heightened safeguard for the rights of indigenous peoples, given its direct connection to the right to life, to cultural identity and other essential human rights, in relation to the execution of development or investment plans that affect the basic content of said rights. The duty to obtain consent responds, therefore, to a logic of proportionality in relation to the right to indigenous property and other connected rights.” *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources*, OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, at para. 333 (footnotes omitted).
- 19 See *Legal Companion* where all sources cited above are included in greater detail.
- 20 National Programmes are identified and led by the host government and supported by UN country and regional teams.
- 21 Targeted support is demand-driven specific support under one or more of the UN-REDD Programme’s six work areas. All UN-REDD Programme partner countries are eligible to receive targeted support, depending upon availability of funds and capacity of the three agencies. In practical terms, targeted support means specific technical advice and other capacity strengthening support that a country may request on a critical REDD+ readiness aspect it has identified, which is not covered through other multilateral or bilateral initiatives and where the UN-REDD Programme has comparative advantage to provide such support. It can be provided in the form of backstopping of National Programmes, or other specific technical support under the Global Programme on a critical aspect of REDD+ readiness in a country, which is not available through National Programmes or through other initiatives.
- 22 *Ángela Poma Poma v. Peru*, CCPR/C/95/D/1457/2006, 24 April 2009, Human Rights Committee Views on Communication No. 1457/2006, adopted on 27 March 2009, paras. 7.2-7.6. See also Special Rapporteur on the Right to Food, Mission to Mexico A/HRC/19/59/Add.2, 17 January 2012 in the *Legal Companion*.

- 23 See Annex I.
- 24 *Report of the Special Rapporteur on the rights of indigenous peoples*, supra note 12, para. 84.
- 25 *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies*. UNDG, 2003. For more information on the Common Understanding, please see <http://hrbportal.org/>.
- 26 Including in the statements and decisions, respectively, of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Inter-American Court of Human Rights, A/HRC/12/34, para. 41.
- 27 ILO Convention 169, entered into force Sept. 5, 1991, Art. 6(1)(a) & (2). Note that Article 35 further provides that any State party to ILO Convention 169 that has ratified other instruments requiring consent would need to comply with those instruments and their respective Committee jurisprudence requiring the same (hereinafter *ILO Convention 169*).
- 28 *Ibid.*, at Art. 16(2).
- 29 *Concluding Observations: Togo*, CCPR/C/TGO/CO/4, para. 21 (11 March 2011).
- 30 *Concluding Observations: Colombia*, E/C.12/COL/CO/5, para. 9 (21 May 2010).
- 31 See e.g., *Angela Poma Poma v. Peru*, CCPR/C/95/D/1457/2006, 24 April 2009, para. 7.6; *Concluding observations of the Human Rights Committee, Togo*: CCPR/C/TGO/CO/4, 11 March 2011, para. 21; *Panama*, CCPR/C/PAN/CO/3, 17 April 2008, para. 21; *Concluding observations of the Human Rights Committee, Colombia*: CCPR/C/COL/CO/6, 4 August 2010, para. 25; *Colombia*. 30/11/2001. E/C.12/1/Add.74, paras. 12, 33; Letter to the Permanent Mission of the Philippines, UN CERD Urgent Action and Early Warning Procedure, 24 August 2007, p. 2.; General Recommendation XXIII on Indigenous Peoples, adopted by the Committee on the Elimination of Racial Discrimination at its 51st session, 18 August 1997, para. 4(d); *Australia*: CERD/C/AUS/CO/14, 14 April 2005, para. 11; *Guyana*: CERD/C/GUY/CO/14, 4 April 2006, paras. 17, 19; *Guatemala*: CERD/C/GTM/CO/11, 15 May 2006, para. 19; *Suriname*: Decision 1(67), CERD/C/DEC/SUR/4, 18 August 2005, para. 3; *Cambodia*: CERD/C/304/Add.54, 31 March 1998, paras 13, 19; *Botswana*: UN Doc. A/57/18, 23 August 2002, paras. 292-314; *Botswana*: CERD/C/BWA/CO/16, 4 April 2006, para. 12; *India*: CERD/C/IND/CO/19, 5 May 2007, paras. 19 & 20; *Indonesia*, CERD/C/IDN/CO/3, 15 August 2007, para. 17; *Laos*: CERD/C/LAO/CO/15, 18 April 2005, para. 18; *Australia*: CERD/C/AUS/CO/14, 14 April 2005, para. 11; *United States of America*, A/56/18, 14 August 2001, paras. 380-407; *Peru*. 15/08/2002. A/57/38 (Part III), paras. 484, 485.
- 32 See UNDRIP, supra note 16, Arts. 10, 11(2), 19, 28(1), 29(2), 30(1), 32(2).
- 33 Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural, including the Right to Development, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James P. Anaya, A/HRC/9/9 (11 Aug. 2008), Chapter III, paras. 34 - 43 (noting that while “clearly not binding in the same way that a treaty is, the Declaration relates to already existing human rights obligations...and hence can be seen as embodying to some extent general principles of international law...insofar as they connect with a pattern of consistent international and state practice, some aspects of the provisions of the Declaration can also be considered as a reflection of norms of customary international law.”).
- 34 Extract from the Final report on the study on indigenous peoples and the right to participate in decision-making. A/HRC/18/42, 17 August 2011, at para. 21.
- 35 Cancun Agreements, paras. 69, 72; and Appendix I, paras. 2(a), (c) and (d).
- 36 *Report of the Special Rapporteur on the rights of indigenous peoples*, supra note 12, para. 49.
- 37 *Ibid.*, at para. 41.
- 38 Report of the *International Workshop on Methodologies Regarding Free Prior and Informed Consent* E/C.19/2005/3, endorsed by the UNPFII at its Fourth Session in 2005.
- 39 *Ibid.*, at 46(i).
- 40 *Ibid.*, at 46(i).

- 41 *Saramaka Merits Judgment*, *supra* note 18, at para. 133.
- 42 See e.g. Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (February 2010), para. 226 & 291, available at <http://www.minorityrights.org/9587/press-releases/landmark-decision-rules-kenyas-removal-of-indigenous-people-from-ancestral-land-illegal.html> (hereinafter “*Endorois Case*”) (interpreting State obligations under the Banjul Charter and providing that in the case of “any development or investment projects that would have a major impact within the Endorois territory, the State has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions.”); ILO Convention 169, *supra* note 29, para. 6(1) (a) (“Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions”); *Saramaka People v. Suriname. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of 12 August 2008. Series C No. 185*, para. 37 (interpreting the American Convention on Human Rights and providing that “when large-scale development or investment projects could affect the integrity of the Saramaka people’s lands and natural resources, the State has a duty not only to consult with the Saramakas, but also to obtain their free, prior, and informed consent in accordance with their customs and traditions.”) (hereinafter “*Saramaka Interpretation Judgment*”).
- 43 The Handbook is available [here](#).
- 44 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.
- 45 See Philippines, E/C.12/PHL/CO/4, 1 December 2008, para. 6 (interpreting the Covenant on Economic, Social and Cultural Rights and providing that the “Committee also notes with satisfaction the various legislative, administrative and policy measures adopted by the State party to recognize, protect and promote the individual and collective rights of the indigenous peoples living in the territory of the State party, including... (b) The Free and Prior Informed Consent Guidelines...”); See Ecuador: CERD/C/ECU/CO/19, 15 August 2008, para. 16, (interpreting the Convention on the Elimination of all Forms of Racial Discrimination and welcoming the adoption of the Consultation and Participation Act...that require[s] prior and informed consent...[and] urg[ing] the State party to enforce” the Act).
- 46 See Guidelines on the Protection of Indigenous Peoples in Voluntary Isolation and in Initial Contact of the Amazon Basin and El Chaco, para. 66, available at <http://acnudh.org/2012/05/directrices-de-proteccion-para-los-pueblos-indigenas-en-aislamiento-y-en-contacto-inicial-de-la-region-amazonica-el-gran-chaco-y-la-region-oriental-de-paraguay/>. For more guidance and information (note: the English version of the Final Guidelines has not been prepared yet).
- 47 [Report of the Special Rapporteur on the rights of indigenous peoples](#), *supra* note 12, para. 47
- 48 UNDRIP, *supra* note 16, at Arts. 10, 11(2), 19, 28(1), 32(2).
- 49 See *supra* note 33 and the *Legal Companion*.
- 50 Convention on Biological Diversity, Art. 8(j).
- 51 *Endorois Case*, *supra* note 43, at paras. 226, 291, available at <http://www.minorityrights.org/9587/press-releases/landmark-decision-rules-kenyas-removal-of-indigenous-people-from-ancestral-land-illegal.html> (interpreting state obligations under the Banjul Charter).
- 52 *Saramaka Merits Judgment*, *supra* note 18, paras. 129, 137.
- 53 *Saramaka Merits Judgment*, *supra* note 18, para. 137.
- 54 *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin*, OEA/Ser.L/V/II.62, doc.26. (1984), 120.
- 55 As detailed in the Inter-American Commission on Human Rights findings in Report No. 27/98 (March 1998); see also *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001, Inter-Am. Ct. H.R., (Ser. C) No. 79 (2001) (hereinafter “*Awás Tingni*”), para. 25 (quoting para. 142 of the IACHR report).

- 56 *Ibid.*, at paras. 2, 25.
- 57 [IFC Performance Standard 7 – V2 Indigenous Peoples](#), para 16. Note that these standards went into effect on January 1, 2012.
- 58 European Bank for Reconstruction and Development (EBRD), ‘Environmental and Social Policy’ (London, 12 May 2008), PR7, paras. 4, 32-37, *available* at <http://www.ebrd.com/downloads/research/policies/2008policy.pdf>.
- 59 *Saramaka Interpretation Judgment, supra note 43, at para. 29*. The Court defined the term ‘survival’ to mean indigenous peoples’ “ability to ‘preserve, protect and guarantee the special relationship that they have with their territory’, so that ‘they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected.’”
- 60 See, e.g. *Awasi Tingni, supra note 57, at paras. 140-155*. The Mayagna Community “has communal property rights to land and natural resources based on traditional patterns of use and occupation of ancestral territory. Their rights ‘exist even without State actions which specify them.’ Traditional land tenure is linked to a historical continuity, but not necessarily to a single place and to a single social conformation throughout the centuries.” See para. 140(a). See *Endorois Case, supra note 43, at para. 209*, which concluded “(1) traditional possession of land by indigenous peoples has the equivalent effect as that of a state-granted full property title; (2) traditional possession entitles indigenous peoples to demand official recognition and registration of property title; (3) the members of indigenous peoples who have unwillingly left their traditional lands, or lost possession thereof, maintain property rights thereto, even though they lack legal title, unless those lands have been lawfully transferred to third parties in good faith; and (4) the members of indigenous peoples who have unwillingly lost possession of their lands, when those lands have been lawfully transferred to innocent third parties, are entitled to restitution thereof or to obtain other lands of equal extension and quality.”
- 61 *Saramaka Merits Judgment, supra note 18, at para. 194(a)*.
- 62 *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources, OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, at para. 103*.
- 63 As stated in Financial Regulation 27.02 of the UNDP Financial Regulations and Rules, an implementing partner is “the entity to which the Administrator has entrusted the implementation of UNDP assistance specified in a signed document along with the assumption of full responsibility and accountability for the effective use of UNDP resources and the delivery of outputs, as set forth in such document.” By signing a project document an implementing partner enters into an agreement with UNDP to manage the project and achieve the results defined in the relevant documents. Categories of possible implementing partners include: government entities (eligible government entities include: a ministry of the government; a department within a ministry; a governmental institution of a semi-autonomous nature, such as, the central bank, a university, a regional or local authority or a municipality); United Nations agencies; civil society organizations; approved inter-governmental organizations that are not part of the UN system.
- 64 Or, where relevant, the FCPF and UN-REDD Readiness Preparation Proposal (R-PP) Template.
- 65 See Annex I for more information regarding the identification of Indigenous Peoples.
- 66 Cameroon, CERD/ C/CMR/CO/15-18, 30 March 2010 (interpreting State obligations under the CERD, and affirming that States must “[c]onsult the indigenous people concerned and cooperate with them through their own representative institutions, in order to obtain their free and informed consent, before approving any project that affects their lands, territories or other resources, in particular with regard to the development, use or exploitation of mineral, water or other resource”); *Saramaka Interpretation Judgment, supra note 43, paras. 18-22*); also UNDRIP, *supra note 16, art. 19*.
- 67 See Annex III for more information on Effective and Equitable Gendered Participation and Representation in Decision-Making.

- 68 *EMRIP Final Report on the right to participate*, supra note 11, para. 36.
- 69 See Annex IV for Indicative Steps for a REDD+ Process to Respect the Principle of FPIC (RECOFTC and GIZ, 2011).
- 70 The case of the *Saramaka People v. Suriname* illustrates that indigenous and tribal peoples may have rights to resources even when national laws provide otherwise. As such, the National Implementing Partner may find it helpful to ask indigenous peoples and other forest-dependent communities to assist in the identification of their traditional land and resource uses with respect to proposed REDD+ activities.
- 71 See Annex V for more information on the potential role of facilitators in the FPIC process.
- 72 For more information, see: [FPIC Verification and Evaluation Toolkit](#), prepared by RECOFTC for the UN-REDD Programme, 2010; and an example [Evaluation and Verification of the Free, Prior and Informed Consent Process under the UN-REDD Programme in Lam Dong Province, Vietnam](#), prepared by RECOFTC for the UN-REDD Programme, 2010.
- 73 Adapted from [UN Resource Kit on Indigenous Peoples Issues](#), United Nations, New York, 2008.
- 74 In almost all indigenous languages, the name of a group simply refers to “people,” “man” or “us.” In many cases, the group name also includes the name of the place with which the group identifies (peoples of X, Y places) or adjectives such as “free,” “stand up,” or “black,” “red” and so forth. In any event, it is clear that the term “indigenous” has been adopted by many “indigenous” peoples as an instrument mostly used at the international level to advance their rights and improve their situation.
- 75 Study of the Problem of Discrimination Against Indigenous Populations, Cobo, J. M., 1986/7. UN Doc E/CN.4/Sub.2/1986/7.
- 76 ILO Convention 169, supra note 29, at Art. 1(1).
- 77 ILO Convention 169, supra note 29, at Art. 1(2).
- 78 Working Paper on the Concept of “Indigenous People,” Daes, E A, prepared for the Working Group on Indigenous Populations, 1996. UN Doc E/CN.4/Sub.2/AC.4/1996/2.
- 79 There are two additional resources that are particularly relevant in the specific context of Africa: the definition included in the *Report of the African Commission on Human and Peoples’ Rights Working Group on Indigenous Populations/Communities*, adopted by the African Commission at its 28th session (available from <http://www.iwgia.org/sw2186.asp>) and the *Response Note to the “Draft Aide-mémoire of the African States on the UN Declaration on the Rights of Indigenous Peoples,”* prepared by the African Group of Experts (available at: <http://www.iwgia.org/sw21505.asp>).
- 80 Adapted from: Foti, J., with L.deSilva, H.McGray, L.Shaffer, J.Talbot, J.Werksman (2008). [Voice and Choice: Opening the Door to Environmental Democracy](#), World Resources Institute; and Daviet, F. (2011). [A Draft Framework for Sharing Approaches for Better Multi-Stakeholder Participation Practices](#), for FCPF and the UN-REDD Programme. With its permission, substantial text in this section was reproduced from Forest Peoples Programme’s publication “[Key Elements to the Initiation, Performance and Maintenance of Good Faith Consultations and Negotiations with Indigenous and Tribal Peoples and Communities](#).”
- 81 Adapted from [The Business Case for Mainstreaming Gender in REDD+](#), UN-REDD Programme, 2011.
- 82 Excerpt from [Free, Prior, and Informed Consent in REDD+: Principles and Approaches for Policy and Project Development](#), RECOFTC and GIZ, February 2011.
- 83 For more information refer to: [Free, Prior and Informed Consent for REDD+ in the Asia-Pacific Region: Lessons Learned](#). UN-REDD Programme (2012).

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