FPIC in Practice

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15 June 2022
Key Principles
• **Trust.** At the heart of respecting FPIC lies the process of building relationships of mutual trust and understanding through transparent, two-way information sharing, proven accountability, wide-ranging discussion, repeated negotiation and good faith engagement...*how to build this, with who, and for how long?*

• **Process.** As the requirement to obtain FPIC is not a stand-alone right, it should be seen as a process and not be reduced to a linear ‘tick-the-box’ process that ends with the community signing an agreement. **An FPIC process is not time bound...how to build FPIC into projects as a ongoing concern?**

• **Resources.** In addition to time, the **availability of material** and human resources is critical to a strong and verifiable process of respecting FPIC...*projects are not limitless, what if there are not enough funds?*

• **Accessibility.** For indigenous peoples and local communities to make informed decisions and give informed consent, **all materials and documentation of activities must be made available to them...to all levels of a community or just the leadership?**
• **Time.** Indigenous peoples and local communities must be consulted for however long is necessary for them to understand, consider and analyse the proposals... *hard to plan a project around an indeterminant time frame?*

• **Wide participation.** Striving for the widest possible participation in decision-making – including, in particular, women, youth, the poor, migrants and the landless – *can reduce the chance that decisions made will subsequently be challenged or cause grievances within the community... how to do that in hierarchical societies?*

• **Cultural sensitivity.** *Cultural norms* and expectations will shape how indigenous peoples and local communities approach and participate in decision-making processes... *what if local norms themselves fall short of FPIC standards?*

• **Respect for the right to say ‘no’.** Companies and governments engaging in good-faith negotiations with communities must recognize that even when a thorough information and negotiation process has been carried out, *indigenous peoples and local communities have the right to say ‘no’ to development or to a project on their customary lands... what then?*
Four Stages

Investigation Stage

Assessment Stage

Negotiation Stage

Implementation Stage
Investigation Stage
How prior is ‘prior’?

Governments have the primary duty to ensure that FPIC is respected, they must take measures as early as possible in land use and project planning to involve affected peoples. No decision to allocate lands should be made without first informing the peoples concerned and securing their consent through the procedures set out below.

Identifying rights-holders

The purpose of this step is to identify who are the existing rights-holders and land users in the targeted project area. This will help determine how local communities make use of the land, as well as what kinds of claims different groups may have to the targeted land and the natural resources therein, and who has the right to be consulted and to give or withhold consent to the project.

Ascertaining the legal status of the land

In any process of land acquisition, a crucial first step in respecting FPIC is to clarify the extent of indigenous peoples’ and local communities rights over lands and other resources, and where possible to secure these rights.
Identifying decision-making institutions and representatives

The purpose of this step is to ensure that rights-holders are represented through individuals and institutions of their own choice, and who are accountable and legitimate to those they represent, in consultation, negotiation, decision-making and consent-seeking.

Carrying out iterative consultations and information-sharing

The purpose of iterative consultation is to share, in a multi-directional process, all relevant information pertaining to the projected development with relevant actors and rights-holders.

Providing access to independent sources of information and advice

Communities have the right to access independent sources of information throughout the process of respecting FPIC, including during the process of reaching consent and, in particular, prior to decision-making and agreement.
Negotiation Stage
Key Issues

Reaching agreement and making it effective

It is essential that the consent-seeking process is free of manipulation, that agreements reached are mutual and recognized by all parties, and that further steps can be introduced where necessary and agreed. Consent from all parties is necessary for completion of each step of the process.

Establishing a grievance process

It is important to establish an independent mechanism for parties to raise concerns that may arise throughout the project’s lifetime. The grievance mechanism should allow consent to be re-established through a more accessible and local alternative to external dispute resolution processes.
Implementation Stage
Monitoring and verifying agreements

Once consent has been reached, it is important to ensure that agreements made through the consultation process are respected in their practical implementation.