

FREE, PRIOR and INFORMED CONSENT

Lessons learned from REDD+ and other conservation strategies

January 2014

What is Free, Prior and Informed Consent?

Free, prior and informed consent (FPIC) is the principle that a community has the right to give or withhold its consent to proposed projects that are likely to affect the lands and resources it customarily owns, occupies or otherwise uses. FPIC has been enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)¹ since 2007 but is increasingly being extended to include the statutory and customary rights of other communities to their lands, territories and resources.

Under FPIC, negotiations between companies, governments or other project proponents and local communities must be **free** from force, intimidation or other pressure. Consent must be sought from communities **prior** to authorisation by other bodies (e.g. government issuing of licenses) and before any activities are undertaken that may affect them. The form of the **consent** will be context specific and should be sought at various stages of a project, rather than as a one-off. Communities must be given sufficient time to decide whether they will agree to the project or not. They need to have a full and accurate understanding of the implications for them and their lands so that they can make an **informed** decision *according to the decision-making process of their choice*.

Information provided by project proponents should cover at least the following aspects²:

- The nature, size, pace, reversibility and scope of any proposed project activity.
- The purpose and duration of the activity.
- The location of the areas that will be affected.
- A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit sharing in a context that respects the precautionary principle.
- Personnel likely to be involved in the execution of the proposed project including Indigenous Peoples, private sector staff, research institutions, government employees and others.
- Procedures that the project may entail.

¹ *United Nations Declaration on the Rights of Indigenous Peoples* (2008) United Nations
www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

² *Report of the International Workshop on Methodologies Regarding Free, Prior and Informed Consent* E/C.19/2005/3,
United Nations Economic and Social Council
<http://undesadspd.org/IndigenousPeoples/MeetingsandWorkshops/InternationalWorkshoponFPIC.aspx>

How does FPIC relate to consultation, negotiation and participation?

There are many steps on the hierarchy, or ladder, of participation. Awareness-raising or providing information to stakeholders is the lowest step. Consultation is the next step up - a process to inform and receive feedback from people about a proposal or project. Consultation does not usually imply that those consulted have a say in the final decisions. The 'consent' element of FPIC however clearly defines the right of community stakeholders to make decisions i.e. to either give or withhold their consent.

It is likely that consent will be needed at several points in a project cycle. If consent is not reached on initial proposals, project proponents can enter into negotiations with communities to try to establish under what conditions consensus may be reached. Negotiation is where conditions are proposed and compromises are made by the different parties involved. Even if a negotiation process is entered into, *consent* still remains the point at which affected communities have the power to say 'yes' or 'no'. Provision of information, consultation, negotiation and participatory engagement with communities are therefore the means by which consent is sought.

Why is FPIC important for conservation?

FFI recognises that biodiversity conservation and sustainable natural resource use are inextricably linked to people's rights to secure their livelihoods and live in dignity. We believe that the maintenance of ecosystem goods and services can contribute positively to the realisation of many human rights. At the same time, secure rights – e.g. land tenure and participation in decision-making – can enable more effective environmental stewardship. However, we also acknowledge conservation activities can have negative impacts on local people. Therefore, FFI has made an organisational commitment to respect human rights and to ensure that our activities do not disadvantage poor, vulnerable or marginalised people dependent upon natural resources³.

In the context of REDD+, internationally recognised voluntary standards require free, prior and informed consent. The stakeholder engagement section of the **Climate Community & Biodiversity Standards** (version 3) requires project proponents to describe the measures taken to enable effective participation of all communities that want to be involved in project design, implementation, monitoring and evaluation. This includes a description of how such measures have been implemented in a culturally appropriate, gender sensitive manner. Project proponents must document how communities and other stakeholders have influenced project design and implementation. Project activities must have the free, prior and informed consent of all relevant rights holders, not just Indigenous Peoples. In addition activities must not lead to involuntary relocation of people or activities important for the livelihoods and culture of communities.

The **Plan Vivo standard** (2012 draft) includes a number of requirements for stakeholder communication and participation, including a requirement for any PES agreements to respect the right of communities to free, prior and informed consent (section 7.3). Section 3.5 requires the project coordinator to "undertake a stakeholder analysis to identify key community, organisations and local and national authorities that are likely to be affected by or have a stake in the project, and to take appropriate steps to inform them about project interventions". Barriers to participation in the project must be identified and reasonable measures taken to encourage participation of those that experience such barriers (section 4.3).

In addition to the legal requirements under UNDRIP and the conditions set by REDD+ voluntary standards, and increasingly statutory and other donors, there is a very practical reason why conservation practitioners should respect the right to FPIC. FFI recognises that the regular, face-to-face communication and engagement that the FPIC process requires, where project teams enter into discussions with communities in good faith, is fundamentally important to build the mutual trust and respect that is crucial for the success of any conservation or REDD+ project.

³ FFI's position and approach to conservation, livelihoods and governance is available at <http://www.fauna-flora.org/wp-content/uploads/FFIs-position-and-approach-to-conservation-livelihoods-and-governance.pdf>

When and how do we start an FPIC process?

Respecting the right to FPIC cannot be reduced to a ‘tick-box’ exercise. Particularly for Indigenous Peoples, their right to give or withhold their consent to developments on their territory is part of their collective right to self-determination. This includes the right to determine the process by which consultation and decision-making take place. In all cases, communities should be able to participate through their own freely chosen representatives and customary or other institutions. However, we recognise that women and other marginalised groups may not always be well represented in either traditional or modern decision-making institutions and processes in many rural communities. Given the importance of respecting the equal rights of women and men, we need to make extra efforts to address the barriers to women’s participation in culturally appropriate ways. This, in itself, may require a negotiation process based on mutual trust and respect⁴. One of the first steps of an FPIC process is therefore coming to an agreement with the community on the process itself. Given the diversity in the range of histories, institutions and resource management approaches among different indigenous and local communities, the specific details of the process that they agree to are likely to vary from one community to another.

A preliminary stakeholder analysis is needed to identify who has the right to FPIC. We then need to develop an in-depth understanding of Indigenous Peoples and other communities in and around the proposed project area. We need to get to know the communities we hope to be working with through formal and/or informal socio-economic research. This includes gaining an understanding of local and cultural norms, social differentiation and diversity, natural resource use and dependency, and customary and modern-day institutions. Permission needs to be secured to undertake this research and engagement with clear information provided on why it is being undertaken.

FFI has had some positive experiences of working with anthropologists to undertake both qualitative and quantitative socio-economic research. Their specialist skills have helped build trust with communities and enabled us to have a much more nuanced understanding of local culture, natural resource values and livelihoods. It is important for project staff to thoroughly brief social specialists to ensure they understand the conservation or REDD+ project and what it aims to achieve. They can then focus their research on relevant issues related to how natural resources are valued (economically, socially and culturally), and how they are used and managed. Such research should pay attention to the different roles, responsibilities, knowledge and aspirations of women and men, as well as of different resource user groups, ethnic or religious groups, elders and youth. It is also important to ensure that the particular circumstances of the poorest and most vulnerable people in a community are not overlooked. This analysis informs the development of a context-specific FPIC process and provides invaluable data to inform project design and social impact assessment⁵.

FPIC is a right. It is not a linear process that ends with the signing of a single binding agreement with a community. FPIC recognises the rights of indigenous and local communities to be treated as the rightful managers of their customary territory and therefore guarantees them a voice in decisions at *every stage* of the planning and implementation of projects that affect them. FPIC should therefore be understood as a *right* that requires an *on-going* process of communication and engagement with consent being sought at key stages in the process:

- Consent to discuss the idea of a project that will affect people’s lands and resources.
- Consent to participate in developing a detailed plan for the project.
- Consent to project implementation, including resource management and benefit-sharing arrangements.

⁴ See the paper in this series on gender

⁵ See the paper in this series on Social Impact Assessment

How can we fulfil the right to FPIC in practice?

There are some very practical steps we need to take to fulfil the elements of Free, Prior and Informed Consent. Many of these are equally applicable to any empowering engagement with communities but those highlighted are additionally fundamental for FPIC⁶.

Free

- Discussions with community members are held at an agreed time and location.
- Meetings do not include participants that are considered to be coercive or intimidating.
- Project proponents state their commitment not to proceed with the next stage of a project without consent from the community.
- Communities are made aware of their right to withhold their consent and to negotiate the conditions under which they would give their consent. Project proponents have to accept that project plans may have to change – or withdrawn completely – if communities do not agree. This has already been our experience in one location in Liberia where communities chose an oil palm plantation development rather than a REDD+ project.
- Communities have enough time to consider the information provided in consultations and negotiations. We cannot always expect agreement at the end of a meeting. Project proponents need to give communities sufficient time to undertake their own decision-making processes; both parties should respect agreed deadlines.
- Those facilitating the process should provide full disclosure of their own interests in the project, sources of funding etc.
- Independent verification confirms that the process was free from coercion.
- If negotiations break down, access is provided to a third party to provide additional information and help mediate resolution. This may include legal advice, if necessary.

Prior

- The first stage of consent is sought at the project identification stage and subsequently at agreed points in the project development process before proceeding to the next stage.

Informed: Who is informed and how?

- The wider community, not just community leaders, are informed about all aspects of project development. Do not assume that leaders will communicate with the rest of the community or that male participants will discuss issues with female community members.
- Particular efforts are taken to remove the barriers to the participation of marginalised community members such as women, youth and poor and vulnerable groups.
- All information is provided, and all meetings held, in local languages.
- Face-to-face meetings are important and community meetings should include use of creative, visual and interactive methods (such as use of graphics, PRA techniques, role play), particularly where there are high levels of illiteracy.
- Effectiveness of communication methods – and people's understanding of technical information and agreements - should be assessed on a regular basis and adjustments made if levels of understanding are low.

Informed: What information needs to be collected, provided and discussed?

- Information on the right to FPIC should be widely disseminated and include details on the stages at which consent should be sought, as well as agreed decision-making processes.

⁶ Adapted from Anderson (2011) *Free, Prior and Informed Consent in REDD+* and informed by FFI project teams' experience

- Potential *negative* as well as positive impacts of the project, as identified by both parties, should be discussed. This must include both direct and opportunity costs, possible alternatives and the likely outcomes of different scenarios.
- There must be public disclosure of the details of agreements provided in accessible formats (local languages, graphically where literacy is low).
- Information on grievance mechanisms⁷ and the right to legal advice if required.
- Community participation in monitoring project implementation helps to increase understanding of project impacts and implications and to inform adaptive (co)management. This should include involvement in analysis i.e. discussing what data collected means, not just being paid to collect it.

FFI has found that engaging community members in the development of a Theory of Change as part of a Social Impact Assessment⁸ process can be particularly helpful to enable mutual understanding of potential costs, risks and benefits. This in turn helps inform both project design and the consent process itself.

Consent: Who gives consent?

Consent in FPIC doesn't mean that every single person within a community must agree. Rather, consent is a collective right based on the community's own (often customary) processes of dialogue, deliberation and decision-making. An essential early step is therefore participatory resource, stakeholder and institutional mapping and analysis. This enables identification of the 'rights-holders' – those who have either statutory and customary claims to lands and resources and from whom consent must be sought - and of the community institutions considered to be able to legitimately enter into negotiation with project proponents.

The following points are key to these mapping processes:

- It is good practice to recognise the rights of both indigenous and non-indigenous peoples. This can help to identify and mitigate latent and potential future conflicts.
- Where there are multiple groups with different claims, there may also be differential rights. In such cases, FPIC may only apply to those with the strongest customary, historical or legally supported claims. Other community stakeholders (such as recent in-migrants without land title) with an interest in the project area because their livelihoods are dependent on local resources, might only have the right to be consulted but not the right for their consent to be sought or the right to stop a project by withholding consent.
- Communities' preferred decision-making institutions for FPIC may be existing traditional or modern, formal institutions (e.g. state sanctioned village committees). In some cases, for some REDD+ projects for example, communities may decide to form a new institution specifically to manage the decision-making process in order to ensure inclusive representation.
- In many cases, particularly for complex REDD+ projects, decision-making institutions are likely to need considerable capacity-building support in order both to understand the implications of a project and to effectively represent all their constituents, including women, youth and other marginalised groups.

Consent: How is consent given and maintained?

- Identify communities' procedures for giving consent and what form that will take – written, oral, video, formal ceremony etc. Written consent may be a requirement in some instances but may not always be the most culturally appropriate so the form of consent needs to be negotiated and agreed.

⁷ See the paper in this series on grievance mechanisms

⁸ See the paper in this series on Social Impact Assessment

- There may be different forms of consent for different stages of a project. For example, those agreements which have major implications for the wider community, such as changes to the management of community land or common pool resources, and benefit-sharing arrangement, are likely to need broad-based community consent.
- In a REDD+ project, consent to each stage needs to be documented and to include information on the next stage at which consent will be sought⁹.
- To maintain consent, a locally appropriate grievance and dispute resolution mechanism needs to be agreed¹⁰.

What challenges do we face and how have we tried to overcome them?

Frequently, community representatives do not represent their constituencies effectively. There is often a need for leadership training for community representatives and strengthening of local institutions as part of the FPIC process. We need to be aware of the potential for elite capture and take measures to deal with it including helping the wider community to understand how to ensure decision-making and resource allocation is transparent and how to hold their leaders and representatives to account. We also need to create an environment where people can express their opinions. Sometimes this will mean that we need to meet with individuals or different stakeholder groups separately – such as holding separate meetings at appropriate times for women or young people.

For those community stakeholders, such as recent in-migrants without land title, who have the right to consultation but not to FPIC, early and active engagement is still important. This can help identify any potential issues and enable measures to be taken to address them. Such stakeholders may still be key to the success of the project, particularly if they are likely to be affected by project activities or are in a position to undermine the project's objectives. In addition, they are also entitled to have their internationally recognised universal basic human rights respected.

Accurate information is key to FPIC but communicating REDD+ in particular is challenging and open to misunderstanding. Because there is a much uncertainty related to REDD+, it can be difficult to get the right balance between being open and transparent about the project but not raising false expectations or confusing people. It is better to admit where uncertainties lie rather than provide inaccurate information or make commitments that cannot be guaranteed. In addition there are often language difficulties. We need to ensure that local staff who know the local language also have all of the relevant information about the project so that they are able to communicate this effectively. We need to use information tools in local languages and in formats relevant to local communities. Use of context-specific comics to explain REDD+ has been helpful for community understanding in Indonesia.

It is a challenge to carry out FPIC when we do not know the details of the conservation interventions from the start. Understanding that securing the right to FPIC is a process to move step-by-step can help us identify the key points where we will need to seek consent. We need to keep coming back to the question 'are community rights affected or potentially affected?' If the first step of a project is in fact to secure community tenure, then to begin with we may only need to get agreement that this is what communities want help with.

Tenure security and opportunities for livelihoods enhancement and diversification are often key issues. Land and resource use mapping¹¹ is therefore often a very important component of an FPIC process and, for REDD+ projects, now a requirement in the CCB and Plan Vivo standards. Addressing overlapping claims by different groups makes FPIC very challenging. Participatory land

⁹ For more detail on consent points in REDD+ see page 23 of Anderson (2011) *Free, Prior and Informed Consent in REDD+*

¹⁰ See the paper in this series on grievance mechanisms

¹¹ See the paper in this series on tenure and resource use rights

and resource mapping processes are an important part of addressing these challenges. Often they cannot be resolved quickly.

It is important to document each stage, including outcomes of meetings and agreements reached. It is likely that there will be a series of small agreements developed over time with community representatives and reference will often need to be made to previous agreements. Wherever possible, if it is culturally acceptable we should ask workshop attendees to validate the meeting notes and to sign minutes of any decisions reached. Sometimes it is useful to video record significant meeting outcomes, again with the permission of the participants.

FPIC takes time and resources¹² – budgets and work plans need to allow for flexibility and uncertainty. Socio-economic expertise needs to be structured in to all levels of project management (field teams, project managers, technical advisers).

Building a relationship of mutual trust and respect between project proponents and communities takes time, but is critical for project success. Partnerships with local organisations with existing relationships with local communities can be invaluable as they often have an in-depth understanding of the local context. However, we should not take this for granted. At least some project staff should be based full-time in the field, in order to be as accessible as possible to the communities.

Key References

Anderson, P (2011) *Free, Prior, and Informed Consent in REDD+* RECOFTC and GIZ
Download at: http://www.recoftc.org/site/uploads/content/pdf/FPICinREDDManual_127.pdf

¹² For more on factors to be taken into account when planning and budgeting for FPIC in REDD+ see page 26 of Anderson (2011) *Free, Prior and Informed Consent in REDD+*

This document is one of a series of outputs from a learning event held in Cambridge in April 2013 to share experience, tools and lessons learned on the social aspects of REDD+ and other conservation strategies.

Topics discussed included: equitable benefit sharing; Free, Prior and Informed Consent; gender; grievance mechanisms; Opportunity Cost Analysis; Social Impact Assessment; sustainable livelihoods; and tenure and resource use rights.

All outputs are available to download from FFI's Livelihoods and Governance library: <http://www.fauna-flora.org/initiatives/livelihoods-and-governance-library/#learning>



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