



Statement and Guidelines on Free, Prior, Informed Consent

I. Introduction

This document, compiled by the U.S. Fish and Wildlife Service (USFWS) International Affairs program, provides information for applicants and grantees of the program's Division of International Conservation. The guidelines presented here summarize the United Nations Food and Agriculture Organization's (FAO) FPIC manual for practitioners and project managers: [*Free and Prior Informed Consent: An Indigenous Peoples' Right and a Good Practice for Local Communities manual for project managers*](#). The FAO manual offers in-depth information and steps to design and implement an FPIC process. The FAO manual is recommended for applicants relatively new to the FPIC process, or applicants in need of review.

The FAO website for FPIC and Indigenous Peoples is a recommended companion resource as well: [Free, Prior and Informed Consent | Indigenous Peoples | Food and Agriculture Organization of the United Nations \(fao.org\)](http://www.fao.org/indigenous-peoples)

FPIC is a well-established principle in international law, articulated in the [International Labour Organization \(ILO\) Convention No. 169 on Indigenous and Tribal Peoples](#) and the [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#). FPIC is conceived as an expression of the fundamental right of Indigenous Peoples to self-determination.

The FPIC process is an adaptive management tool. Any of the following outcomes can result from an FPIC process: overall consent from the IPLCs; consent after a period of negotiations; or the withholding of consent. *It is important to note that consent, once given, can also be withdrawn at any stage.*

II. USFWS DIC FPIC Process

FPIC Parameters and Guidelines:

If a proposal is selected for funding with potential risks, DIC will request additional social safeguards documentation starting with the submission of the Social Impacts Assessment (SIA). Impacts identified in the SIA process will determine whether or not the FPIC process is required. There are international laws and regulations that require FPIC outside of USFWS DIC FPIC parameters, addressed in the section below.

DIC FPIC Parameters:

Project activities with foreseeably high risk of potential impacts to IPLCs may require the FPIC process as commensurate mitigation. These activities can include, but are not limited to:

- Assisting and/or participating in the legal expansion of protected area boundaries into or through community lands.

- Establishing new, legally recognized conservation areas that are part of IPLCs lands and natural resources.
- Wide-spread restrictions to natural resources, legal livelihoods, subsistence activities, and areas of cultural and religious importance.

FPIC International Regulations:

Additionally, if any of the bullets listed below apply, FPIC is mandatory regardless of USFWS DIC determinations.

- Applicants must determine if Regional Human Rights Courts have ruled on Indigenous Peoples' right to FPIC in the project area(s).
- Host countries have legal requirements to obtain FPIC.
- IPLCs in the project area(s) have pre-existing, established FPIC protocols.

Partners are required to research the FPIC laws and regulations of the country, region, and communities where their work is occurring to determine if any of the above bullets apply. Partners must submit their findings to the Technical Point of Contact.

For in-depth resources and guidelines on determining host-country FPIC laws and regulations, please see sections B and C in the Annex. Some starting points to investigate the above FPIC requirements are as follows:

- UNDRIP Voting Record: [United Nations Declaration on the Rights of Indigenous Peoples :](#)
- UN International Labor Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169) list of ratifications: [Ratifications of ILO conventions: Ratifications by Convention](#)

III. Selected Proposals Requiring FPIC Attachments:

If a project requires FPIC, the following must be submitted to the Technical Point of Contact:

1. FPIC implementation schedule.
2. A monitoring and evaluation plan with FPIC processes included.
3. Acknowledgement that FPIC will be included in the project progress reports.
4. Findings on FPIC regulations for the country where the project is taking place.
5. List of staff dedicated to the FPIC process.

Applicants new to the FPIC process must attach the following (in addition to items 1- 5 above):

1. A brief outline or description of how the FPIC process will be developed.
2. Applicants may also include additional line items in their budget proposals to capture costs required to develop and maintain new social safeguard protocols and processes such as the FPIC process. Applicants are encouraged to build organizational capacity for ongoing social safeguards implementation.

NOTE: The FPIC process requires time for consultations with IPLCs. Absent existing relations, in order to develop trust and understanding with communities on a project proposal, it is not uncommon for FPIC to take a year or more. This may mean proposed activities requiring FPIC cannot proceed in the first year of an award. Applicants whose timelines include FPIC contingent activities should discuss options and next steps with the Technical Point of Contact.

Applicants with existing FPIC policies and processes in place must submit the following (in addition to items 1-5 at the top of this section):

1. Statement on applicant organization’s FPIC policies and practices.
2. Any outlines, summaries, and overviews of the applicant’s FPIC process.

IV. Guidance for FPIC Design, Implementation, Monitoring and Evaluation

FPIC processes will vary according to the specific local context in which a project is to be developed. The guidance in this section is compiled from the following organizational guidelines on FPIC: the UN Food and Agriculture Organization, the United Nations Human Rights Office of the High Commissioner, the Convention on Biological Diversity, the UN Development Program Social and Environmental Toolkit, and the UN-REDD Programme.



Diagram sourced from: United Nations Food and Agriculture Organization “Free and Prior Informed Consent: An indigenous peoples’ right and a good practice for local communities’ manual for project managers”. UN FAO. 2016.

Step 1: Identify All Cultural and Governance Factors:

To develop your baseline for the FPIC process you must understand who you will interact with and their decision-making structure(s). It is recommended to identify the following items.

A) IPLC sociocultural elements:

- Language(s) spoken.
- Cultural and religious practices (spiritual).
- Sacred sites and sacred resources.
- Customs and traditions (unique governance structures).
- Communication means and methods.

B) Land Usage:

- Land usage patterns and land rights.
- Cross-check for mobile communities that seasonally migrate across the area(s).

C) Governance Systems and Representatives:

- Identify self-governance systems (traditional chiefs, specialized councils, autonomous governments, parliaments, etc.).
- Identify the community(ies) designated representatives (from within). If none exist, design a community-based participatory approach.
- If representation excludes women, youth, the elderly, the disabled or other marginalized groups, respectfully encourage broader community participation (as appropriate).

D) FPIC Regulations, Roles of State:

- Research local FPIC laws in order to (i) involve local authorities and (ii) be prepared before approaching IPLCs.

NOTE: Step 2 guidelines recommend further detail and expansion of bullets in Step 1.

Step 2: Document Geographic and Demographic Information through Participatory Mapping:

Participatory mapping is a group-based qualitative research method that gives participants the freedom to shape discussions with minimal intervention from researchers. Mapping generates an understanding of the connections between people, places, and organizations over space and time. This process is integral to successful IPLC engagement for project activities.

A) Research, map, and document the following:

- Where IPLCs live
- Their land usage
- Natural resources they rely on
- Their resource rights
- Customary rights
- Communication channels
- Areas of cultural and religious significance

- Areas communities consider “off limits” for discussion
 - Lands or resources currently under any legal deliberations
 - Judicial frameworks, self-governance systems, etc.
- B) If it is unclear who to engage during the early stages, conduct a preliminary mapping for future development with appropriate community members once they have been identified.
- C) Ensure all communities affected are equally involved in the participatory mapping.
- D) Consider all data gathered to navigate project activity implementation (and possible modification) as you are going through the FPIC process.

Step 3: Design a Participatory Communication Plan:

This step will shape the FPIC agreement. The communities must be informed transparently so they can freely decide on the project activities that impact them. It is recommended to consider the following when designing and implementing your participatory communication plan.

- A) Communication mediums, timing, accessibility, protocols, levels of interest:
- Openly share project information and ensure the process is as participatory as possible.
 - Provide timely information in accessible and intelligible formats. Use their language and medium(s) for communication.
 - Respect verbal and non-verbal communication protocols: body language, personal space, eye contact, pointing with the chin or mouth instead of hands or fingers.
 - Consider levels of literacy and interest, especially for technical activities that may require different forms of communication.
- B) Where and when to hold discussions:
- Defer to the communities on the most convenient time and place for discussions in their territory.
 - Ensure they feel safe to express themselves with the support of their community.
- C) Clearly convey their rights as follows:
- The right to privacy in all negotiations and deliberations.
 - The right to accept, reject, partially accept, or choose not to give an opinion.
 - There is no obligation to decide if they are unsure.
 - The right to request as much time as needed for discussion and decision-making.

Step 4: Reach Consent:

Aim to reach suitable consent by all parties involved before activities commence. Agreements **must** be mutual and recognized by all parties.

- A) Consider customary modes of decision-making and consensus-seeking which may include (but are not limited to):
- Voting
 - Show of hands.
 - Third-party witnesses for document signatures.

- Ritual ceremonies that make the agreement binding.
- B) Document the agreement process and outcome:
- Document the proceedings and outcomes of the discussions and provide the documentation for all stakeholders' review and authentication.
 - Ensure the documentation is available and accessible to all parties.
 - Documentation should clarify if consent was given or withheld.
 - Affirm the decisions therein are binding using appropriate traditional methods if applicable.
 - Include all issues discussed and decided upon in the event of a grievance or dispute.
 - For sensitive issues the community must be asked what is permissible to document.
- C) Identify additional needs in the project activities during discussions with IPLCs:
- Make sure to identify any needs based on discussions and negotiations with IPLCs.
 - Work closely with the communities to identify activity risks and modifications to remediate or mitigate possible negative impacts.
 - If a community is opposed to certain activities, clarify which elements are acceptable and those that need to be adapted or abandoned.
- D) If consent is withheld:
- a. Determine if there are any conditions or adaptations under which IPLCs would provide consent.
 - b. The right to refuse any renegotiation must be respected.

Step 5: Agreement Structure:

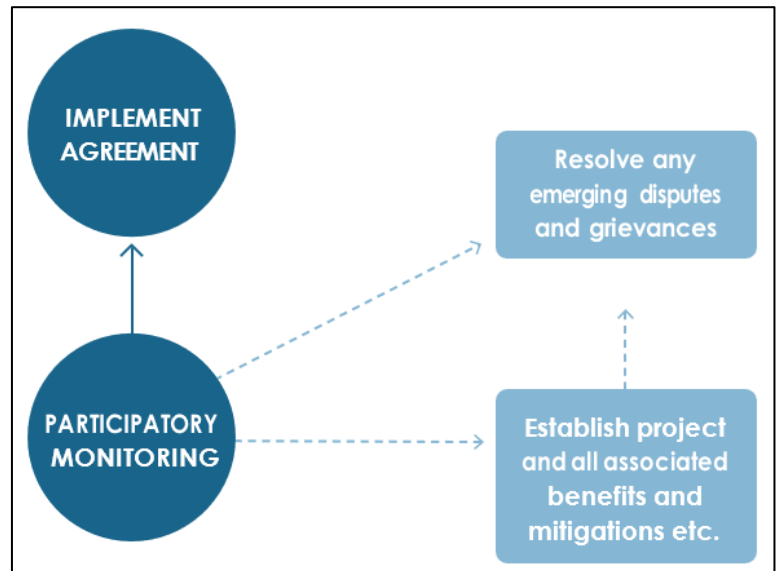
The agreement should include the following elements:

- A) Signatory event and/or customary binding practice that will be used to close the agreement.
- B) Mutually agreed substantive evidence of consent.
- C) Summary of project information (duration, area of influence, objectives).
- D) Communication arrangements:
 - The best way to communicate with community representatives.
 - How the representatives will ensure they speak for the entire community (including women, youth, the elderly, and disabled persons).
 - How the dialogue will be shared with constituents.
 - How constituents' ongoing input will be solicited for decisions in progress.
- E) Agreed upon grievance and redress mechanism(s).
- F) Agreed upon monitoring and evaluation plan.
- G) Terms for withdrawal of consent.

Step 6: Conduct Participatory Monitoring and Evaluation of the Agreement:

The agreement reached should be properly monitored and evaluated transparently. FPIC is an iterative process and project managers should make sure the impacted communities receive regular progress updates. Provide the communities frequent opportunities to ask questions, raise concerns, and inspect activities taking place on their lands as appropriate.

Diagram sourced from: United Nations Food and Agriculture Organization "Free and Prior Informed Consent: An indigenous peoples' right and a good practice for local communities' manual for project managers". UN FAO. 2016



- A) Select monitors that are acceptable to all parties. Use independent monitors if available.
- B) Design the Monitoring and Evaluation Approach:
 - Activities to be monitored.
 - Monitoring methods.
 - How results will be recorded and shared with the community.
 - Ensure community members and their representative(s) understand the time commitments required for monitoring and evaluation.
- C) Include all voices of the communities, including marginalized groups of:
 - Women
 - Youth
 - Disabled
 - Elderly
 - Disadvantaged
- D) Solicit feedback on findings:
 - Provide opportunities to confirm or contest findings
 - Offer anonymity
 - Maintain anonymity of inputs when requested
- E) Should disagreements occur:
 - Specify how problems will be addressed
 - Establish a process for discussion and evaluation of any disagreements.
 - Establish the conditions under which the consent process can be reinitiated, and the agreement renegotiated.
 - Maintain a record of all related activities.

V. Suggested Framework to Determine FPIC Host-Country FPIC Legislation

These questions are designed to help understand whether Free, Prior, and Informed Consent is included in any host-country legal frameworks. As stated in Section II. USFWS DIC FPIC Process of this document, the applicant's findings must be submitted to Project Officers.

1. Has the country expressed support for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)?

- *Check if the host country is listed as supporting UNDRIP.*
- *UN Resources: www.un.org/esa/socdev/unpfii/ and the [UNDRIP Voting Record](#)*

2. Is there FPIC legislation in the host country's national laws or regulations?

If Yes:

- *Note the provisions and understand what is required under law.*
- *Determine if the legislation applies to all project-affected communities or is specific to Indigenous Peoples.*
- *Understand the legislation's required procedures. Cross-reference Article 32 of UNDRIP to see whether each aspect of FPIC is covered.*

If No:

- Determine if the host country has legislation with processes similar to FPIC:
 - These could be found in laws relating to infrastructure development e.g. planning or development legislation.
 - Look in detail at defined processes and procedures. Examples may include community consultation procedures; planning requirements; and environmental and social impact assessments.
 - If any of the elements in the above bullet points are present, adhere to those laws and regulations and incorporate into the project implementation plan.
3. Does the host country have any case law that supports Free, Prior and Informed Consent (FPIC)?

If Yes:

- *What was the courts' decision and how broad is the scope of the decision?*
- *Look at FPIC cases across all sectors (e.g.: mining, dams, logging, development).*
- *Assess the circumstances of cases similar to the proposed project activities.*
- *What was decided by the courts, and can it apply to the proposed project activities?*

If No:

- *Research for other communities affected by large development projects within the host country.*
 - *What actions did the communities take at that time?*

- *Are there local community groups currently taking action against proposed development projects?*
 - *Check for local organizations that may have more information and resources for FPIC.*
4. Check what human rights and indigenous peoples' rights organizations in the country are saying about the inclusion of FPIC and its implementation.
 5. Check with the UN Country Team to find out the precedents of other UN organizations, Companies, and Ministries undertaking FPIC processes in the country.

VI. The FPIC International Regulatory Framework:

Free, Prior, and Informed Consent (FPIC) is well-defined principle of international law as per:

- ***The United Nations Declaration on the rights of Indigenous Peoples (UNDRIP)***, endorsed by 143 countries at the UN General Assembly in 2007, is considered as the minimum standard for the treatment of Indigenous Peoples around the world.
- ***The International Labor Organization Convention 169*** (also known as the “Indigenous and Tribal Peoples’ Convention”) was ratified by 22 countries as of 2015. This convention is binding and guarantees the rights of indigenous peoples to their land and to be involved in any decisions that affect their resources and livelihoods.
- ***The Convention on Biological Diversity (CBD)***, signed by 150 governments in 1992 at the Rio Summit and ratified by 196 countries by 2015, protects indigenous knowledge by allowing its use only with prior approval. It also affirms explicitly the principle of prior informed consent. The Programme of Work on the implementation of Article 8(j) and related provisions of the Convention on Biological Diversity states that “access 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”.

Other relevant, legally binding instruments include:

- The International Covenant on Civil and Political Rights (ICCPR);
- The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- The American Convention on Human Rights; and
- The African Charter on Human and Peoples’ Rights (ACHPR).

VII. Additional Resources:

The resources listed below offer practical step-by-step guidance for the design and implementation of FPIC processes.

1. Primary Resource (Full Manual on FPIC):United Nations Food and Agriculture Organization: *Free and Prior Informed Consent: An indigenous peoples' right and a good practice for local communities' manual for project managers*: [i6190e.pdf \(fao.org\)](#) See also: [Free, Prior and Informed Consent | Indigenous Peoples | Food and Agriculture Organization of the United Nations \(fao.org\)](#)
2. FAO Policy on Indigenous and Tribal Peoples: [i1857e00.pdf \(fao.org\)](#). See also: [FAO Policy on Indigenous and Tribal Peoples | FAO](#)
3. The United Nations Social and Environmental Standards Toolkit: [HomePage | UNDP SES Toolkit](#)
4. United Nations Human Rights Office of the High Commissioner: *Free, Prior, and Informed Consent of Indigenous Peoples*: [Microsoft Word - FPIC \(final\) \(ohchr.org\)](#)
5. The National Forestry Council and UN-REDD Programme Indonesia: *Policy Recommendation: Free, Prior, and Informed Consent (FPIC) Instrument for Indigenous Communities and/or Local Communities Who Will Be Affected By REDD+ Activities*: [FPIC English version.pdf \(un-redd.org\)](#)
6. The UN Department of Economic and Social Affairs: Indigenous Peoples website: [Indigenous Peoples | Division for Inclusive Social Development \(DISD\) \(un.org\)](#)
7. The Living Convention on Biological Diversity, 2012: [kr8sFD4jQtCwiArhJB0_9EOKIMr.pdf \(fpic.info\)](#)
8. The International Work Group for Indigenous Affairs (IWGIA) - Training Manual on Free, Prior and Informed Consent (FPIC) in REDD+ for Indigenous Peoples: [Training Manual on Free, Prior and Informed Consent \(FPIC\) in REDD+ for Indigenous Peoples - IWGIA - International Work Group for Indigenous Affairs](#)