



TFCA FINANCING FACILITY

Free Prior Informed Consent Guidance Note



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TERM	DEFINITION
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
FAO	Food and Agriculture Organization of the United Nations
FPIC	Free, Prior and Informed Consent
GFN	Good Faith Negotiation
GFNF	Good Faith Negotiation Framework
IFC	International Finance Corporation
ILO	International Labour Organization
IP	Indigenous Peoples
IPP	Indigenous Peoples Plan
KfW	KfW Development Bank
NGO	Non-Governmental Organisation
PS	Performance Standards
RAP	Resettlement Action Plan
SEP	Stakeholder Engagement Plan
TFCA FF	Transfrontier Conservation Area Financing Facility
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
WBG ESS	World Bank Group Environmental and Social Standard(s)

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1.

Introduction

The Southern African Development Community (SADC) Transfrontier Conservation Area (TFCA) Financing Facility (TFCA FF or 'the Facility') is a grant funding facility that responds to emerging needs of TFCA in the SADC region. This document provides guidance on developing protocols for 'Free, Prior and Informed Consent' of indigenous people (IP) that may be impacted by a Grantee's projects. Grantees should follow this guide as an extension of the more comprehensive ESMS manual.

Indigenous people are some of the most economically and socially marginalized social groups: often lacking explicit national recognition, legal rights, lack of access to public goods and services, infringement upon their access to resources, and frequently face increased risks of violence from other groups and individuals. Their marginalization renders them extremely vulnerable, yet with little to no capacity to protect their rights, interests or combat their insecurities. Similarly, project proponents often fail to include any relevant indigenous communities and project developments result in making affected communities worse off than they previously were. For instance, relevant IP may not receive information regarding project logistics, projected outcomes or potential compensation. Even if there is indigenous engagement during project development it may not necessarily be culturally appropriate or desirable for the affected groups.

Although international standards such as the World Bank E&S standards do highlight minimum safeguards for indigenous inclusion, obtaining "Free, Prior, and Informed Consent" for project development is an increasing expectation for sustainable project development. FPIC is a governance tool rooted in principles of indigenous self-determination with the purpose of equalizing power imbalances between indigenous people and more "powerful" – economically, socially, legally etc. – actors. It is especially relevant for matters pertaining to land and food security, access, and territorial sovereignty. In 2007 FPIC was adopted in the UN Declaration on the Rights of Indigenous People (UNDRIP) and integrated into various national laws. The UNDRIP maintains that FPIC is an essential right that must be respected by all actors involved in projects that may potentially impact indigenous livelihoods, settlements, safety, and overall well-being. Achieving and maintaining FPIC is an ongoing process that requires open and continuous engagement between indigenous communities, project proponents and other actors; achieving FPIC once does not guarantee IP consent forever but must be worked on and maintained. Consent may be given or withdrawn at any point in a project cycle and that should be clearly acknowledged and respected.

1.1 Purpose

The purpose of this document is to provide a clear framework for Grantees to identify, consult, and properly obtain consent from IP before implementing any activities, programs, or actions that may affect them. It provides guidance on the core elements and structure of an FPIC process (including considerations prior to and after achieving FPIC), initiating engagement and identifying groups, and circumstances under which FPIC can/should be triggered. The FPIC process (section 5) is presented as a general approach, rather than specifically speaking to the people and parties engaged in the project. However, it is intended to inform the Grantee and project developers for their approach to engagement of, and consultation with, indigenous peoples throughout the project lifecycle. This protocol aims to ensure that cooperation and indigenous inclusion is meaningful, done in good faith, is culturally appropriate (includes their own preferred institutions and respects any traditional decision-making processes), and aligned with key international standards.

1.2 Objectives

This FPIC protocol is an add-on to other stakeholder engagement plans (SEP) and should be complementary to an indigenous peoples plan (IPP) refer to the Facility ESMS Manual and respective Annexes for further guidance.

Proper IP engagement and approaches to FPIC will help achieve the following:

- Ensure that the development process of project and/or activities fully respects the human rights, dignity, aspirations, culture, and natural-resource-based livelihoods of IP;
- Ensure the FPIC of IP;
- Respect the knowledge, culture (especially critical cultural heritage) and practices of IP;
- Help to develop a key strategy and program to building and maintaining relationships with IP;
- Align project developments with international standards;
- Sufficiently predict and assess project impacts on/to IP and avoid, mitigate, and compensate when possible;
- To help develop sustainable conservation and development benefits and opportunities for IP in a way that is culturally appropriate and in line with IP self-determination;
- To help fortify IP land management tools and learn from IP strategies.

2. Applicable Standards

This section provides an overview of the international standards used to guide this FPIC protocol. Although references and acknowledgement of FPIC can be found in a multitude of national legislations, this is not included for this protocol but should be considered for specific projects. Regional and national standards are not addressed in this chapter as Grantees should consult and assess them on a project-specific basis.

2.1 International Labour Organization Convention No.169

In 1989 the International Labour Organization (ILO) revised ILO Convention 107 and renamed it to the Indigenous and Tribal Peoples Convention (No. 169). ILO No. 169 acts as the legal foundation for indigenous peoples' collective rights and protections recognizing the intrinsic value of traditional and indigenous structures and systems. This binding international convention highlights IP rights to self-determination within a nation-state and sets standards for national governments for recognizing and protecting Indigenous peoples' economic, social, cultural, and political rights (ILO, 1989). More specifically, it maintains that IP have the right to maintain and fortify their preferred cultures, lifestyles, and institutions and have the right to participate in decisions that may concern them. Thus, it lays out minimum standards to uphold these rights and objectives.

The ILO's key description of indigenous peoples highlights:

- *"Historical continuity* (pre-conquest/colonization societies)
- *Territorial connection* (their ancestors inhabited the country or region at the time of conquest/colonization/creation of the state); and
- *Distinct social, economic, cultural and political institutions* (they retain some or all of their own institutions)" (Henriksen, 2008).

2.2 UN Declaration on the Rights of Indigenous People

The UN Declaration on the Rights of Indigenous People (UNDRIP) was passed in 2007 and is a legally non-binding resolution. This resolution is the founding document for FPIC: acting as a "universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world and elaborating on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous people" (United Nations 2007).

2.3 The World Bank Environmental and Social Standards

The World Bank's Environmental and Social Framework and is an essential set of ten social and environmental standards (WB ESS) for sustainable development. **The following standards are especially pertinent when considering indigenous peoples are aligned with the intended objectives or outcomes that FPIC aims to ensure:**

- **ESS7: Indigenous Peoples/Sub-Saharan African Historically Underserves Traditional Local Communities**
ESS7 explicitly concerns indigenous peoples and mentions FPIC. Its purpose is to ensure that project development fully respects IP human rights, dignity, aspirations, identity, culture, and natural resource-based livelihoods by avoiding and minimizing adverse impacts to affected communities wherever possible. More specifically, it highlights that IP are properly engaged, consulted, and have opportunities to actively participate in project design and implementation (The World Bank, 2018). It helps frame IP as distinct social and cultural group that is essential to project planning, development, and implementation, and highlights how indigenous interests, needs, and capabilities largely differ from those in mainstream society and traditional models of development. **ESS7 also provides criteria for classifying indigenous people – while recognizing that such traits may be expressed with varying degrees:**
- **ESS10: Stakeholder Engagement and Information Disclosure**
ESS10 emphasizes the importance of open, transparent, and meaningful stakeholder engagement as a key element of international best practices in project development. It maintains that stakeholder engagement should be an inclusive process and is most valuable when begun early in the project cycle (planning/development) and is crucial for risk assessment, decision making, monitoring, and management of a projects social and environmental risks early on (The World Bank, 2018).

Other potentially relevant ESS for IP inclusion and related issues are:

- **ESS5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement**
Land acquisition and land use tends to be a primary concern for indigenous people, considering that their traditional livelihoods make them very dependent on their immediate natural surroundings and resources. However, land tenure and legal recognition of indigenous land holdings are frequently contested or non-existent for many indigenous communities and individuals (Alcorn, 2013).
- **ESS8: Cultural Heritage**
Indigenous lands also tend to hold high cultural and/or spiritual value or significant for communities. ESS7 sets out additional requirements for cultural heritage in the context of IP so ESS8 has to be read in conjunction with relevant provisions of ESS7.

3.

Identifying Indigenous People

Although international institutions acknowledge the presence and rights of IP, they are often not explicitly mentioned in national constitutions or legislation.

Definitions of indigenous groups tend to vary. The World Bank ESS7 provides following criteria for classifying IP:

- a) “Self-identification as members of a distinct indigenous social and cultural group and recognition of this identify by others;
- b) Collective attachment to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas;
- c) Customary cultural, economic, social, or political institutions that are distinct or separate from those of mainstream society or culture; and
- d) A distinct language or dialect, often different from the official language or languages of the country or region in which they reside” (The World Bank, 2018).

This criteria applies to groups of “*Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities who, during the lifetime of members of the community or group, have lost collective attachment to distinct habitats or ancestral territories in the project area because of forced severance, conflict, government resettlement programs, dispossession of their land, natural disasters, or incorporation of such territories into an urban area*”; as well as pastoralists, forest-dwellers, hunter gatherers, pastoralists, or other nomadic communities that meet the aforementioned criteria.

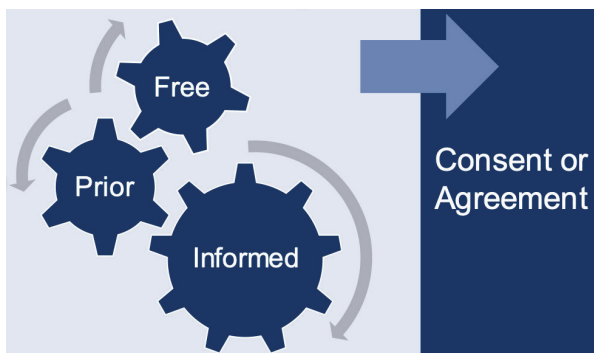
The Grantee should engage experts to conduct a social assessment to identify IP that may be impacted by potential project activities. Then a stakeholder engagement plan (SEP) – including an indigenous peoples plan (IPP) and other documentation should also be developed to highlight how FPIC will be achieved and the relationship will be upheld overtime. Refer to the Facility ESMS Manual and respective Annexes for further guidance.

4.

Free Prior and Informed Consent

The Food and Agriculture Organization of the United Nations (FAO) defines FPIC as a specific right of IP, which allows them to 'give or withhold consent to any project that has the potential to affect them or their territories.' As mentioned above, Applicable standards require FPIC when a proposed project may have adverse impacts on traditional ownership of or access to land and natural resources, result in the displacement of IP from their customary lands and resources, or may affect their cultural heritage.

Figure 1: Free, Prior, and Informed Consent



4.1 FPIC in Practice

In practice, FPIC is an example of a best practice to meaningful consultation and should be achieved through good faith negotiations. It is predominately understood as an on-going and open process that should extend throughout the entire project life-cycle – consent should be attained prior to the project implementation but can be removed at any point, thereafter. It can be understood as a separate but essential process of specific stakeholder engagement that is built upon pillars of respect, trust, and transparency. Processes and outcomes related to FPIC should be differentiated and recorded among project documents and resources; such resources should be made easily accessible for IP to access at any point.

Consent is only legitimate if it meets the following criteria, as defined by the UNDRIP and FAO:

- **Free:** engagement processes are self-directed by the affected community; are given voluntarily, and are free of coercion, intimidation, pre-defined expectations, or externally imposed timelines.
- **Prior:** consent is sought out sufficiently in advance of the authorization of any project commencement activities (i.e. before key project decisions are made, before impacts occur, and with adequate time for meaningful consultation prior to determining consent).
- **Informed:** consultation is supported by the provision of timely, relevant, and accessible information about the proposed project, potential adverse effects, and potential benefits. Information should be provided in understandable (i.e., non-technical) format and in indigenous languages where applicable. The whole truth of the project and its potential outcomes (both positive and negative), as well as mitigation and compensation measures must be communicated in an understandable way.
- **Consent:** decisions are made by indigenous peoples and communities through their traditional and preferred decision-making processes and institutions, with sufficient time provided for consensus building. The affected group or community should determine what is required for consent, and how consent is defined. Consent does not need to be unanimous but it is expected to be a collective process that involves as many members of the community as possible (including vulnerable groups). Since FPIC is on-going, consent must be maintained and assured throughout the remainder of the project – changes in project circumstances must also be communicated in appropriate fashions as this could alter community consensus. Project proponents/the grantee should have a clear plan in place to periodically reassess and attain consent of affected communities. IPPs are especially useful as they detail comprehensive mitigation and compensation measures for the afflicted communities, with actionable implementation schedules and financial plans.

4.2 Good Faith Negotiations

Following Good Faith Negotiations (GFN) are fundamental to the FPIC process and builds on meaningful consultation. It requires the respect of all parties' decision-making processes, while also considering their potential constraints. GFN valuably can help identify concerns or risks early on in project development, allowing for more valuable stakeholder mapping/engagement plans, more meaningful remuneration for afflicted communities, and identifying project opposition early on.

In practice GFN includes:

- Briefing them on new registered issues;
- That all parties must be willing to engage in negotiation
- Mutually agreed upon processes of negotiation, information sharing, and acceptable procedures
- Agreement on which language is preferred for IP understanding
- Allowance of sufficient time for community discussions and decision-making
- The grantee should make it clear that they will respond to community concerns in a quick and regular manner prior to any decision-making
- Dialogue to address any queries and explore community perspectives
- Grantees should reflect their willingness to engage in project amendments based on grievances and feedback, as well as their openness to compromise.

A Good Faith Negotiation Framework (GFNF) should be developed alongside the FPIC protocol development to document the process and outcomes. All documents should be shared with indigenous community members along with other project resources. Contents of a GFNF may include, but are not limited to:

- Clear scope, purpose, and objectives for the engagement/negotiation process
- Guiding principles (i.e., ground rules for engagement)
- Representatives of the affected IP and the proponent who will participate in the negotiation and decision-making process
- Agreement of consultation processes, protocols, and methods, including traditional methods of engagement as well as those that support the inclusion of people who may be otherwise excluded from decision-making processes (e.g., women, youth)
- Roles and responsibilities of all parties
- Agreed definition of how “consent” will be determined (e.g., signing of an agreement, majority referendum, unanimous decision)
- Agreed means of recourse in the event that agreement (on some or all items) cannot be reached
- Processes and timing for engagement of community members and external stakeholders
- Required resources including funding and expenditures.

4.3 Engaging with Indigenous People

Indigenous communities should be approached with respect and imbalances in power should be recognized. Communication should consider the need for using preferred local languages throughout cooperation and negotiation; community illiteracy rates should also be considered, and measures to communicate with any illiterate community members should also be established.

It should be recognized that trust and communication are also key to successful FPIC engagement – trust that IP concerns will be holistically respected and that project developments, impacts and concerns will be comprehensively shared. IP must feel that their inclusion is important in order to provide more meaningful contributions. Potential power asymmetries, differences in knowledge systems and communication, indigenous vulnerabilities, etc. also make trust essential to gain. Strong communication frameworks and GFN will contribute to trust building. Grantees should also try to avoid switching project proponents (that are directly engaging with IP) as this can negatively interfere with trust and relationship building.

4.4 When is FPIC triggered?

Although numerous international standards promote meaningful IP engagement and encourage avoiding and mitigating negative impacts to IP by project activities, FPIC itself is triggered under specific conditions. The following details when FPIC is triggered by **WB ESS7**:

- When there may be adverse impacts on land and natural resources that are under traditional ownership or customary use by IP;
- If project developments cause the relocation of IP from land and natural resources subject to traditional ownership or under customary use or occupation; or
- Project scope of activities has significant impacts on the identity, cultural heritage, ceremonial or spiritual dimensions of the affected IP

5. Recommended FPIC Process

The following section lays out an in depth overview of the suggested FPIC process for grantees and includes initial considerations for beginning the FPIC process, other key steps, considerations for vulnerable groups, and considerations after achieving FPIC.

Figure 2 FPIC Process



5.1 Key Steps

There is no single approach to achieving FPIC and the chosen strategy should be specific to a given project. The grantee must develop the respective FPIC protocol so as to keep it open and ongoing process that seeks to maintain consent throughout the projects entire life cycle; the grantee should also ensure that the a GFN approach is integrated within the FPIC strategy. Thus, if a project is expected to have a long-time frame it might be ideal to develop an FPIC protocol with periodic commitments in multiple phases. Integrating FPIC into the IPP is a valuable approach for projects with a large scope and/or timeline. Documenting information as much as possible and in a clear manner is crucial throughout the entire program duration. The remainder of this section details the key steps in an FPIC process.

5.1.1 Initial Considerations and Understanding the Context

Assembling a Team

The grantee should assemble a negotiation team that will be primarily responsible for engaging with the respective IP. Maintaining a core team will strengthen trust and relationship building. At least one local expert (it is recommended to have a minimum of one expert from each gender,) should also be involved in this team to provide expert insight into local conditions, nuances, and issues. Moreover, the team should have a translator that can communicate exceptionally in the preferred local language of the IP. Engaging with NGOs or local advocacy groups may also be valuable to provide IP communities with additional resources such as information on their rights, land registering etc. The grantee should provide funds for the IP community to select a lawyer of their choosing – this will help with guaranteeing their rights, protections, and best interests and show that the project team is committed to engaging in respectful and meaningful collaboration. Senior project representatives should attend initial meetings, at least, to ensure alignment and display company commitment to the engagement process. It should be clearly documented the roles and responsibilities of each party/group.

Understand Baselines and Expected Impacts and Risks

A preliminary baseline screening will provide a stronger understanding of initial risks, obstacles, and general overview of the land and its population. Anticipated social, environmental, economic, and cultural impacts should be documented, especially their expected impacts relevant to the respective IP. Preliminary research should be completed to some extent before engaging with IP, even if baseline scoping or the ESIA phase has not yet begun. Higher quality baseline research early on will make for better IP identification and engagement.

Preliminary baseline information should include, but are not limited to:

- Demographic information/mapping
- Language and literacy
- Population numbers
- Governance and representation, institutions, decision making authorities etc.
- Migration and settlement patterns
- Cultural norms and practices
- Cultural heritage sites
- Infrastructure and housing profiles
- Specific vulnerabilities and poverty profiles
- Access to resources

It should be noted that information on the conditions and demographics of indigenous communities are less readily available and are not always from high quality resources. There is limited indigenous information included in national censuses and this limitation should be accounted for during planning and research.

Identify Potentially Affected IP

The initial scoping will help with IP identification. Section 4.4 specifies when FPIC is triggered, which will help identifying which IP need to be engaged.

Once IP are engaged a preliminary social infrastructure mapping can be conducted to develop a better understanding of community interests, needs, concerns, risks, and vulnerabilities. This will be discussed more in Section 5.1.3.

Social Risk Analysis

A *preliminary risk analysis* should also be conducted to identify any social risks that may influence the FPIC process. This should pay mind to direct and indirect risks to the IP, as well as any risks to relationships or reputation for the grantee. **If risks are identified, mitigation measures should also be noted. Potential questions to include in the risk analysis are:**

- What parties are involved and how are their interests similarly or differently aligned?
- What experience does the IP have with the project proponent, or with other project developments/ developers? What issues have arisen and how have they been addressed?
- How strong is the current understanding of local entry protocols and leadership/representation of the IP?
- Does the IP (or other parties) have an agenda that may be contradictory (or complementary) to this project?
- Have there been significant socio-cultural, economic, political, environmental, or other changes that have affected the well-being of the IP?
- What is the capacity of the IP for engagement and negotiation, including human capital, financial resources, etc.?

Government involvement

In some instances, governments or their partner agencies are legally required to obtain FPIC. However, even in these cases the grantee is still responsible for also obtaining FPIC. The grantee should collaborate with respective governments during the FPIC process as this may help relieve the burden of engagement from stakeholders. Nonetheless, in some cases it may also be valuable to not have government officials present or involved during IP engagement as this can sometimes lead to feelings of intimidation or fears of speaking out; this should be evaluated on a project specific level based on research on the respective IP's relationship to the government.

Where government processes involve program-level decision and actions, the grantee must review these processes in relation to the FPIC requirements set out by the applicable standards and address and identify gaps where feasible.

5.1.2 Mutual Agreement on Communication and Decision-Making Framework

After identifying the initial baselines and context, initial engagement with IP should be centred around developing a mutual understanding between the program and the affected IP, and how/why an FPIC process must be implemented. It should be made clear how/why an FPIC process will benefit them and why meaningful participation on behalf of both parties is essential.

A clear *communication and decision-making framework* should be devised (combined or separately) and agreed upon by both parties (project proponents and IP). Project affiliates should include a GFNF that should be aligned and related to other project planning documents (SEP, IPP, RAP, LRP etc.). It must be documented explicitly and made certain to both parties when and how meetings will take place; these conditions should be chosen by or together with the IP as negotiations and decision-making should happen under circumstances that are most favourable to them. If the grantee chooses to engage an FPIC expert or facilitator, they will play a key role in the preparation and implementation of these protocols.

This stage is necessary to determine how concerns and differences will be communicated and resolved during the negotiations. Establishing safeguards for conflict resolution should therefore be included in the framework before discussions commence. These tools should integrate or use traditional procedures that the IP already use or prefer and should mention tools to ensure engagement at a variety of community levels and with a range of participants.

Most importantly, this framework will be a collaborative establishment of how FPIC will be achieved. The grantee should suggest a discussion and decision-making framework, including a code of conduct for both parties and critical steps that must be followed. The code of conduct must be rooted in GFN principles emphasizing willingness to collaborate, share information, give each other reasonable time for decision-making, discuss matters peacefully without resorting to violence or threats etc.

The parties must agree on how and when meetings will commence, minutes will be shared/documented, and projected timeline of the negotiations and outcomes. Both parties are expected to respect these tools and act within the expected timeframes once agreed upon. There should also be measures in place for illiterate community members to participate in all steps of these processes. In meetings the code of conduct can be posted on walls or repeated to reinforce all participants of their agreements.

5.1.3 Negotiations

Once a communication framework has been agreed upon, negotiations (discussions and decision-making) can ensue. The negotiation process should be collaborative and two-way dialogue between the grantee's team and the IP. Third party mediators (indigenous and environmental officials or organizations) can and should be

involved in this process to verify transparency, legitimacy, and prevent the possibility of harmful power dynamics from arising. It is likely that the negotiation phase will take place over the course of several meetings, enough time should be allocated for this step. There must be enough time for all proponents to discuss with their respective teams, and groups and the grantee should be mindful that full understanding on behalf of the IP will require time – due to differences in knowledge systems and languages.

Negotiations should discuss interests, issues, concerns etc. Agreed upon compensation measures should be a core outcome of this process; the grantee can already begin offering any potential compensation at this stage. Compensation should be relatively proportional to the severity of impacts, the grantee's involvement, and leverage over the risk causing entity (per the UNGP guidelines).

An initial *social infrastructure mapping* may usefully provide insight into the interests, daily lives, and risks to the community. It will provide more detailed and nuanced insight into issues that were likely not captured by a preliminary baseline assessment and/or desktop research. This is not mandatory but can produce valuable qualitative information and reflects project proponents' commitment to holistically amplifying IP voices.

The following aspects should be considered during the negotiation phase:

- Meetings should take place at a time and place that is most preferable for the IP;
- It must be made apparent that the IP have the right to veto at any point in time; they should not feel pressure to make decisions if they are not yet ready or certain;
- All proceedings and outcomes from this stage should be documented and shared with all parties; documents should be translated if need be and should be culturally appropriate; the IP are encouraged to take note of their meeting minutes from community-only meetings to share with project proponents;
- Agreements reached must be mutual and acknowledged by all parties; it should consider traditional methods of decision-making.

5.1.4 Documentation

The essential documentation that should be included, but are not limited to are:

- Framework document: detailing the principles and method of engagement, program design and implementation process related to IP, and basic principles for attaining FPIC
- Communication framework/Good Faith Negotiation Framework: this can be included in the framework document or documented separately
- IPP and SEP (or similar action plans): further info on this can be found in the full ESMS documentation
- FPIC documentation (e.g. process and agreement)
 - Evidence of mutual consent to the process and actions (engagement and negotiation framework), signed by the project team and indigenous community
 - A final FPIC outcome
 - All attempts, of the project proponents engagement efforts; if attempts to engage with IP are rejected these attempts should certainly be documented, as well.
 - Process of identification of IP and any parties included in this effort, e.g. IP representatives and mediators (if applicable);
 - Process of capacity building of IP representatives
 - Summary of any meetings and consultations
 - Approval and opinion of the third party on the process and outcomes of the FPIC process.

These documents should be aligned with one another and the remainder of the project scope and activities. All documents should also be shared with the indigenous community and it should be clear how they can access these materials at any given time. An independent third party should be present during the determination and signing of the final FPIC outcome to ensure transparency and accountability. The third party is responsible for assessing and reporting whether consent is free of coercion and manipulation, prior, and based on sufficient information. This third party must be a trained expert that has a strong understanding of IP and the given local context.

5.1.5 Maintaining Consent

The FPIC planning and documentation material must also have a clear approach for how to maintain consent throughout the entire project duration and how such matters will be dealt with. Specific indications of how engagement will remain ongoing and open should be documented. It should also be monitored and reported, as for any of the mentioned processes, and progress should be shared with the IP. This could include grievances and how they have been resolved, changing project conditions, rising community concerns etc. Depending on the interests and capacity of the IP, community-based participatory monitoring may be a beneficial approach to improve engagement, support communications, and increase overall acceptance of the proposed project.

Withdrawal of Consent

Signing the FPIC agreement prior to project implementation reflects consent between the grantee and IP at a specific moment in time. If project conditions change in any way that may negatively impact the IP, they reserve the right to withdraw consent at any point. This consent must be preserved overtime, requiring sustained efforts of engagement and information sharing. Issues that may suggest withdrawal of consent must be dealt with urgently and in an open and collaborative manner (with the IP). Effectively utilizing and maintaining the grievance mechanism will help ameliorate risks and issues early on, preventing them from becoming larger issues that may have the potential to compromise the status of consent.

Amending the Agreements

Although the agreement should be written with the expectation to last for the entire project duration, it should be reviewed regularly. It must be made clear that amending the FPIC agreement is permitted if desired. Documentation should specify when/how the agreement will be periodically revisited to evaluate whether the agreed measures are still appropriate.

5.2 Considerations for Vulnerable Groups

Vulnerable groups within the indigenous communities likely consist of women, youth, the elderly, and/or disabled persons. It is important to consider such groups and their unique needs, additional risks, and capabilities compared to other members of the community. Ensuring that there is a diversity of community perspectives provides the most holistic version of consent.

However, it is crucial that inclusion of vulnerable groups are done in appropriate and sensitive ways. Such individuals should not be singled out, as this may dissuade their desire to participate. Moreover, many traditional communities may have particular rules and social norms in place that may complicate certain engagement. Involving third party FPIC experts, a community liaison, or local expert may be a valuable resource for specific community insight and developing a specific FPIC approach. It may also be useful to establish an FPIC committee within the community – comprised of a certain number of members of each demographic (landowners, youth, women, elderly, disabled etc.) – that primarily engage with project proponents and relay information back to the community.

5.2.1 Implications for Gender

Women are particularly vulnerable within the indigenous populations, facing additional unintended impacts to their physical and economic livelihoods and general security of their human rights. This is largely due to widespread gender inequality: women are not always included in local decision-making; they lack access to education, leading to higher illiteracy rates; face discrimination from health care and in land ownership; face disproportionately high rates of poverty; are subjected to high risks of violence (sexual abuse and domestic violence) etc. (UN, 2010). Women are also especially susceptible to family disruption that may arise from displacement and relocation. FPIC in practice may also not always be sensitive to gender related issues, largely due to the lack of involvement of women involved in decision making and the need for external actors to respect local norms and practices.

However, there are numerous steps that the grantee and its proponents can take into account to integrate gender considerations more effectively. The grantee should find ways to explicitly mainstream gender considerations into indigenous inclusion planning and documents. The European Institute for Gender Equality defines 'Gender mainstreaming' as a "strategy involving the integration of a gender perspective into the preparation, design, implementation, monitoring, and evaluation of policies, regulatory measures, and spending programmes". For instance, an FPIC committee can be a valuable tool for promoting decision-making within a diverse group of the community's members. Social infrastructure mapping will also provide valuable insight into the unique and often overlooked needs of the community's women. Overall, the grantee should have explicit documentation, assessment, evaluation, and monitoring of concerns and potential impacts related to gender, as well as a clear strategy to promote female participation.

Other actions may include, but are not limited to:

- Ensuring that FPIC and community meetings are conducted at times and in locations that are convenient for women to attend, for example, holding focus group discussions with women, and youth, allowing a safe space for commentary;
- Involving an external party/facilitator with expertise in gender risk assessment that can help facilitate female participation within the community;
- Ensuring there is a minimum of one female IP present during information sharing, negotiations, and decision-making;
- Identifying female-specific risks and concerns within households early on; this would also include differentiation between the needs of and impacts to female-led households vs. male-headed households;
- Paying explicit attention to the unique constraints that female-headed households may face in participating in consultations, and accommodating these women accordingly;
- Ensuring that chosen compensation is also fitting for women's needs and constraints;
- Providing anonymous/confidential consultation or grievance mechanisms for the women in the community to bring their concerns or queries forward, without fear of repercussions;
- Holding female-only focus groups (if permitted) to create a safer space where women are uninhibited to speak their minds.

Including these measures and a gender mainstreaming approach will allow women to participate meaningfully and fully benefit from the process and outcomes.

5.3 Considerations after achieving FPIC

As previously mentioned, FPIC is an open and ongoing process meaning that consent can be withdrawn at any point. There must be a program in place to ensure the means of informing affected IP of project progress, any significant changes to the program design, implementation arrangements and any additional outcomes or risks that can be anticipated. In other words, the grantee must have a clear strategy in place to continue to maintain FPIC throughout the remainder of the project life cycle. For projects with a long timeline it may be helpful to lay out periodic checkpoints or timelines.

Similarly, because trust is a key component of achieving FPIC and solidifying relationships with indigenous communities, it is ideal for the grantee to limit the rate and amount of the turnover of project proponent as much as possible. This helps ensure that pre-established relationships that likely allowed for FPIC to be reached are only growing stronger and information can be disseminated at a higher rate and with better quality. Maintaining a consistent and core project team is ideal for ensuring that the negotiations determined to achieve FPIC are upheld and respected.

Additional monitoring and evaluation measures/plans should be in place and documented during all project phases. This will help track the efficacy and success of maintaining FPIC and delivering support or compensation to affected IP. These provisions should be made explicit in the IPP or another separate document.

6. Additional Resources

For further guidance please refer to the sources below.

Other International Standards:

- Guidance Note: Evaluating Projects with Affected Indigenous Peoples (IFC, 2020)¹
- Indigenous Peoples and Conservation: WWF Statement of Principles (WWF, 2008)²
- Environmental & Social Management System: IUCN Standard on Indigenous Peoples (IUCN, 2019)³
- Free, Prior and Informed Consent of Indigenous Peoples (OHCHR 2013)⁴

Understanding Indigenous Context(s) and Issues:

- The Indigenous World 2020 (IWGIA, 2020)⁵

Additional Resources Specific to FPIC

- FAO FPIC Toolkit (FAO, n.d.)⁶

¹[Guidance Note: Evaluating Projects with Affected Indigenous Peoples \(equator-principles.com\)](https://equator-principles.com/)

²[183113_wwf_policyrpt_en_f.pdf \(panda.org\)](#)

³[iucn-esms-standard-on-indigenous-people.pdf](#)

⁴[Microsoft Word - FPIC \(final\) \(ohchr.org\)](#)

⁵[IWGIA_The_Indigenous_World_2020.pdf](#)

⁶[Free, Prior and Informed Consent | Indigenous Peoples | Food and Agriculture Organization of the United Nations \(fao.org\)](#)

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