



---

A POLICY BRIEF WITH RECOMMENDATIONS FOR POLICY MAKERS ON  
HOW TO IMPLEMENT THE FPIC PRINCIPLES

---



DECEMBER 7, 2020  
BODGER SCOTTJOHNSON  
CONSULTANT

# A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

## Contents

1.0 ACRONYMS .....	2
2.0 Executive Summary.....	2
3.0 Introduction .....	6
4.0 Background .....	8
6.0 Section 1 – FPIC Fundamentals .....	10
6.2 What are the Key Elements of FPIC? .....	10
6.3 When is Free, Prior and Informed Consent (FPIC) Required .....	11
6.4 What are the benefits of the FPIC process? .....	11
7.0 Section 2 – Implementing Free, Prior and Informed Consent (FPIC) in Liberia .....	12
8.0 Reach, Consent, Document Indigenous Peoples’ Needs That Are to be Included into the Project, and Agree on a Feedback and Complaints Mechanism. (NBC and the Ministry of Internal Affairs are responsible for these processes) .....	15
9.0 Practical Steps How to use FPIC to Protect the Rights of the Community People. ....	18
10.0 Recommendation for Policy Makers on Implementing FPIC. ....	22

# A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

## 1.0 ACRONYMS

ACPHR	African Commission on Human and People's Rights
AML	Arcelor Mittal Liberia
FAO	Food and Agricultural Organization of the United Nations
FPIC	Free, Prior and Informed Consent
SPAMAC	Sustainable Partnership for Mine Affected Communities
GoL	Government of Liberia
UNDRIP	United Nations Declaration on the Rights of Indigenous People
RSPO	Roundtable on Sustainable Oil Palm
ILO	International Labor Organization
MSP	Multi Stakeholder Platform
LC	Land Commission
LGA	Land Governance Act
LLA	Liberia Land Authority
NGO	Non-Governmental Organization
MIA	Ministry of Internal Affairs
NBC	Bureau of Concessions

## 2.0 Executive Summary

Free, prior and informed consent (FPIC) is an operational principle empowering local communities to give or withhold their consent to proposed investment and development programs that may affect their rights, access to lands, territories and resources, and livelihoods. FPIC is solicited through consultations in good faith with the representative institutions endorsed by communities. It ensures that they participate in decision- making processes concerning a given development project or concession area. In Liberia there is no recognition given to the practice of FPIC, communities and customary land is literally taken away from the indigenous people without prior consultations with communities dwellers<sup>1</sup>. In this policy brief document, the author highlights the

---

<sup>1</sup> Sustainable Development Institute Duarzon Village, Margibi County, Liberia 2012

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

consent violence and issues surrounding the concession communities in Grand Cape Mount County, in the Mano Concession area formerly Sime Darby. (*World Bank Report 2016*).

FPIC is a principle protected by international human rights standards that state, ‘all peoples have the right to self-determination’ and – linked to the right to self-determination – ‘all peoples have the right to freely pursue their economic, social and cultural development. (*UNDP report 2103*). Backing FPIC are the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on Biological Diversity and the International Labor Organization Convention 169, which are the most powerful and comprehensive international instruments that recognize the plights of Indigenous Peoples and defend their rights. In Liberia the rights of indigenous people are taken for granted by the government and potential concessions.

### **Why this Policy brief? The importance of this policy brief. (*USAID 2016*)**

Every multinational company answers to both the government of the country where its headquarters are located (the home government) and the government of the country where its activities take place (the host government). This policy brief highlights the extent to which host governments, eager to attract foreign investment, too often put the interests of companies above those of communities. Systemic problems allow this to continue.

At the root of conflict in Liberia concession sector is the enormous power imbalance between communities on the one hand, and companies and governments on the other. Communities also have a different conception of what constitutes appropriate development and who owns the resources below, on and above ancestral lands. While the states continue to insist on their rights to these resources, international courts continue to clarify and recognize Indigenous rights. In this context, free, prior and informed consent processes are recognized not only as a minimum requirement for upholding Indigenous rights; they are also critical tools for bridging fundamental cultural differences.

Another critical issue is lack of appropriate consultation and consent processes when concessions are issued and permits granted for exploration and exploitation. In all of Liberia, companies can secure a concession without any consultation at all, contrary to international norms and legal precedents. Even when a company or government initiates consultation, community participants usually feel it is an empty formality. This is the case involving consent violence around Mano plantation former Sime Darby, there were no consultation involving the community people and no FPIC conducted.

### **What is FPIC?<sup>2</sup>**

Free — The proponent cannot use violence, threats, intimidation, pressure, manipulation or bribery, and must act in good faith.

---

<sup>2</sup> UNDRIP 2014

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

Prior — Negotiations should start before plans are decided, before permits are issued, before prospectors start exploring, and long before construction begins.

Informed — The proponent must provide all information on the proposal, in forms and languages communities can understand; communities should also be supported in their efforts to gather additional information on the full range of possible impacts and be given the time they need to understand these.

Consent — Any decision to say “yes” or “no” that comes from traditional or other authorities freely chosen by the people to represent them. These decisions should respect customary laws and decision making processes that take into account the concerns and interests of different community members — women and men, young and old.

### **The Existing legal framework/international and national with regards to FPIC<sup>3</sup>.**

Ultimately, there is a disconnect between national legislative frameworks and international commitments (all countries involved in FPIC now support the United Nations Declaration on the Rights of Indigenous Peoples). There is also policy incoherence. For example, Ghana welcomes and encourages largescale mining, while committing to preserve its forests and promote low-carbon development under climate change mitigation schemes. Many governments lack the capacity to conduct impact assessments or monitor extractive activities. And appropriate domestic remedies for legitimate complaints are largely absent. The Government of Liberia lacks the capacity to monitor extractive activities and implement a comprehensive FPIC program. (*UNDP 2013*)

The potential for conflict over concession development is extremely high in Liberia where land claims are not settled, environmental impact assessment procedures are weak or non-existent, Indigenous rights are not officially recognized, judiciaries are weak and the people interest are not protected as it relates to their land<sup>4</sup>.

Many companies and industry associations have policies on corporate social responsibility. Some even have far-reaching policies on Indigenous Peoples. On their own, these voluntary mechanisms are largely ineffective because in Liberia there is no sanction for ignoring them. They cannot take the place of strong protection, regulation and enforcement by host and home governments. (*UNDRIP 2014*)

### **What is the importance of implementing the FPIC in the framework of the disputes between concessionaries and communities?<sup>5</sup>**

---

<sup>3</sup> SDI & Namati, 2013. Community Guide: Getting a Fair Deal from Companies and Investors, Liberia.

<sup>4</sup> SDI & Namati, 2013. Community Guide: Getting a Fair Deal from Companies and Investors, Liberia.

<sup>5</sup> Sustainable Development Institute Duarzon Village, Margibi County, Liberia 2012

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

The rights of Indigenous Peoples, particularly the right to free, prior and informed consent over developments affecting their territory, are enshrined in a variety of international instruments, and increasingly in national laws and international jurisprudence. If concession projects are to proceed peacefully and deliver maximum benefits to all concerned, then relations between companies, governments and Indigenous Peoples must be transformed. (*UNDP report on Liberia 2013*) The goal in drafting this policy brief was to find out how this could be achieved. A large part of the answer is ensuring that free, prior and informed consent is understood, respected and implemented.

### **How to Implement FPIC in Liberia<sup>6</sup>**

If a community is interested in letting a private company use community land, it is important for the community to negotiate and agree a full and final legally binding Community Land Lease Agreement with the company, in writing, before any company activity starts, and before the community receives any benefits and payments from the company. This is because in Liberia, communities have a right to own the customary lands they have used, possessed or acquired, whether they have a deed or not.

Key questions that the community needs to decide if it wants to lease its land to a company include:

How long does the community want to lease some land to the company?

How much land does the community have, and how much of this land is the community willing to let the company use?

Which areas of land and what natural resources is the community willing to let the company use, and which areas and resources does the community not want the company to use?

What kinds of uses will be allowed by the community and what kind of uses will be prohibited?

What payments and benefits will the community require from the company in return for the use of its land?

Will the land-use lease be exclusive to one company or is it appropriate that the community lease to more than one company or retain the option to lease to more than one company?

The community will also need to decide who will sign the lease on behalf of the community. If this is only a few selected community representatives, those representatives will need to have the written signed authority of the whole community, as proof of their authority to sign.

A clear statement that the company recognizes the community's collective ownership rights over the entirety of their customary land (including the areas of land to be used by the company) including a formal recognition of this fact confirmed by an authorized government agency. Common borders of the community's land will need to be recognized and agreed by neighboring communities in advance of formal government recognition. The Liberia Land Authority (LLA),

---

<sup>6</sup> Sustainable Development Institute Duarzon Village, Margibi County, Liberia 2012

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

Ministry of Internal Affairs and, The National Bureau of Concession (NBC) are the government agencies responsible for monitoring the FPIC process working alongside with communities.

### **Concrete recommendations for implementation per government agency<sup>7</sup>**

1. Recognize that Indigenous Peoples have a right to free, prior and informed consent.  
Governments and companies must recognize that Indigenous Peoples are not simply other stakeholders to be consulted in projects affecting their territories. They have a right to free, prior and informed consent. Their self-determination, autonomy, cultural identity and responsibilities to future generations are inextricably linked to this right.
2. Strengthen host country governance Host governments should:  
Develop effective, fair and transparent mechanisms for clarifying territorial rights and resolving land claims issues. These must involve Indigenous representatives and experts chosen by the community.
3. Strengthen home government accountability Home governments should:  
Ensure that in supporting the growth of their companies abroad they are not undermining human rights in the host country. Establish an effective mechanism whereby Indigenous communities can hold companies to account for their actions in the host country.
4. Improve corporate practice Companies should:  
Adopt strong policies governing their relations with Indigenous Peoples that recognize their obligation to implement free, prior and informed consent. Refrain from initiating environmental and social impact activities or consultations until a community has a consent process in place. Provide time and — when asked — support for the development of one.
5. Strengthen Indigenous Peoples Governance Indigenous Peoples should:  
Establish their own ‘development’ plan in order to judge whether a proposed project fits with the community’s aspirations. As part of this, they should research and document socioeconomic, cultural, spiritual and environmental baseline conditions. Develop protocols for free, prior and informed consent to guide decision-making and develop strategies for maintaining community unity.
6. Increase the involvement of international donor’s International donors should:  
Fund and support Indigenous Peoples organizations so they can represent their communities in dealings with governments, corporations and other actors. Ensure that initiatives to strengthen the capacities, policies and decision-making processes of Indigenous Peoples take place in a manner that is independent of companies and not only in areas where projects are imminent.

## 3.0 Introduction

Free, Prior and Informed Consent – known as FPIC for short – is an international human rights standard; which Liberia has agreed to follow and respect. In Liberia FPIC is found in the

---

<sup>7</sup> Sustainable Development Institute Duarzon Village, Margibi County, Liberia

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

Community Rights Law of 2009. (*LLA report 2016*) It is also found in various international best practices standards relating to Liberia, such as the UN Food and Agriculture Organization's Voluntary Guidelines on Land tenure, and the Principles and Criteria of the Roundtable on Sustainable Palm Oil.

The aim of free, prior and informed consent (FPIC) is to establish bottom-up participation and consultation of an indigenous population prior to the beginning of development on ancestral land or using resources within the indigenous population's territory<sup>8</sup>. Indigenous people have a special connection to their land and resources, and they inhabit one-fifth of the earth's surface<sup>9</sup>.

Liberia passed into law the Land Rights Law in 2018 that recognizes customary land rights, but the guidelines, (The guidelines will be developed by the LLA) when finalized, will spell out how communities can exercise their rights to give or withhold their consent to any concession on their land. (*USAID 2013*)

If the Liberia Land Authority (LLA) can educate the communities about these guidelines throughout Liberia, it will provide the opportunity for communities to come-face-to-face with investors in order to reduce riots in concession areas,” said Atty. J. Adams Monibah, Chairman of Liberia Land Authority. Rural communities have been involved in violent clashes with concessionaires countrywide over reported land grab. There have been clashes in Grand Cape Mount with former Sime Darby, Nimba with ArcelorMittal but the most infamous of all has been in Sinoe County with Golden Veroleum.

Persistent conflicts with locals have seen the Roundtable on Sustainable Oil Palm (RSPO) reprimand Golden Veroleum (GVL) over reported land grab in places like Butaw and Tarjuwon in southeastern Liberia, and led the company to withdraw and readmitted to the global oil-palm certification scheme. The RSPO is running the carbon credit awareness project in the country to foster a good relationship between concessionaires and communities by making awareness on its principles<sup>10</sup>. The RSPO project and principle protects communities land from certified oil palm company extension.<sup>11</sup>

Some civil society actors said the community consent guidelines could have prevented the loss of lives and properties over communities-concessionaire's clashes. “If the FPIC process had been introduced to the community from the beginning, things would have been better, but we were left out and were not informed when we used to see yellow machine destroying our crops,” said Saye Thomas, the president of the National Union of Community Forestry Management Body (NUCFMB). It also notes concern over the “disproportionate impact of human rights abuses upon

---

<sup>8</sup> Care Advocacy Tools and Guidelines: Promoting Policy Change, 2001  
[http://www.care.org/getinvolved/advocacy/tools/english\\_00.pdf](http://www.care.org/getinvolved/advocacy/tools/english_00.pdf)

<sup>9</sup> Amnesty International Campaigning Manual, 1997 [www.amnesty.org/en/library/info/ACT10/002/1997](http://www.amnesty.org/en/library/info/ACT10/002/1997)

<sup>10</sup> RSPO report 2016, on Liberia

<sup>11</sup> RSPO report 2016, on Liberia



## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

the rural communities in Africa that continue to struggle to assert their customary rights of access and control over various resources, including land, minerals, forestry and fishing<sup>12</sup>.

Speaking in an exclusive interview, with Hon. Wilson Tarpeh, the current Executive Director of the Environmental Protection Agency (EPA), said a major challenge was securing more funding for the implementation of the FPIC guidelines. “The EPA is trying to source enough funding from other partners to carry out awareness to make sure the FPIC process is for the benefit of the Liberian people regarding the natural resources,” Hon. Tarpeh said.

Indigenous Peoples have fought for the recognition by their national governments, the international community and by companies of their right to give or withhold consent for project development. The right relates directly to the right for Indigenous Peoples to control their own future and the future of their people. It has been stated as the right “to give or withhold their free, prior and informed consent to actions that affect their lands, territories and natural resource. (*Interview with Hon. Wilson Tarpeh, 2020*)

### 4.0 Background

Prior to the establishment of the Multi-Stakeholder Platform, (MSP) the concession area of ArcelorMittal, AML in Nimba was characterized by conflicts that were not considerably managed at the embryonic stage which as the result of less attention developed into violence that caused a huge damage of properties worth millions of dollars belonging to the company and its subcontractors in 2014<sup>13</sup>. According to the Sustainable Partnership for Mining Affected Communities (SPAMAC) a MSP in Nimba, no FPIC were ever carried out to inform the communities about the mining activities of ArcelorMittal, AML in their communities. (*USAID 2013*). Notwithstanding, MSPs had and continues to engage and intervene into issues that are likely to escalate into violence emanating from individual, group, communities as the result of the company and their subcontractor operations.

Liberia’s 15-year civil war fueled in part by conflicts over land and natural resource rights—has had a devastating impact on the lives and livelihoods of its people. Today, more than a decade into the post-conflict reconstruction period, Liberians are working to rebuild their economy and institute reforms that would promote equitable access to land and resources, secure tenure, investment, and development<sup>14</sup>.

The country's land-tenure system reflects a long-standing division between the urban elite—the descendants of freed slaves from the US and Caribbean—and rural indigenous populations, which are largely dependent on agriculture for their livelihoods. Throughout coastal Liberia, the urban elites use a Western statutory system of land ownership based on individual fee simple titles. In

---

<sup>12</sup> Eric J. Joel “Adapting Free, Prior, and Informed Consent (FPIC) Local Contexts in REDD+: Lessons from three Experiments in Vietnam” (2015) *Forests* at 6

<sup>13</sup> NBC Report on Concessions 2017

<sup>14</sup> The World Bank development report on Liberia 2016

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

the Liberian hinterland, indigenous Africans use their own customary systems, which are based on community or collective ownership of discrete territories. (*USAID 2013*).

Large-scale investments in land are spreading faster than ever before across the global south. Often these investments target lands governed by customary rights that are not adequately recognized and protected under national laws, or sites where the government of Liberia lack the capacity to enforce the law<sup>15</sup>. Land deals that change the use of land and natural resources have wide implications for indigenous peoples and local communities who depend primarily on these resources for their livelihoods, welfare and cultural identity. Ill-regulated land acquisition has become a major problem, especially in Sub-Saharan Africa and Southeast Asia, where it threatens food security, local livelihoods and sustainable natural resource management, and has triggered land conflicts and human rights abuse<sup>16</sup>. Marginalized social groups are particularly at risk, including indigenous peoples, other customary landowners, women, lower-caste people and ethnic minorities<sup>17</sup>.

One of the decisive moments in social justice advocacies for land rights in the recent history of Liberia came in 2011, when rural communities, wrote a letter of complaint against the Sime Darby Plantation Company to the Roundtable on Sustainable Palm Oil (RSPO). The communities letter of complaint essentially cited violations of land rights, accompanied by disruptions to the socio-economic and cultural life of the local communities, and failure by the company to abide by the principle of Free, Prior, Informed, Consent (FPIC)<sup>18</sup>. The Sime Darby concession agreement was signed with the Government of Liberia in 2009 for a Gross Concession Area of 311,187 hectares spanning the boundaries of four counties including Gbarpolu; Bomi; Cape Mount and Bong.

Following the complaint to the RSPO, the Liberian government, Sime Darby and Project Affected Communities (PACs), began discussions through an Inter-Ministerial Committee on Sime Darby (*Ministry of Justice, GoL 2017*). However, the government is considered to have exhibited an overall lack of will to protect the rights of its citizens and its general disposition tended to side more with Sime Darby (*Sirleaf, 2012*). For example, in response to a call by Sime Darby on President Ellen Johnson Sirleaf “requesting her intervention in the dispute between the citizens and the company,” (*Inter-Ministerial Committee Report, 2012; quoted in Siakor, 2012*), the President visited the communities and “told citizens that once the government had signed a contract with the company, the communities could not change it.” In recent years, we have witnessed growing volume of outcries by indigenous peoples denouncing the lack of compliance with the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), especially with obtaining their Free, Prior and Informed Consent (FPIC) before

---

<sup>15</sup> World Bank, Operational Policy 4.10 (2005)

<sup>16</sup> Parshuram Tamang, "An Overview of the Principle of Free, Prior and Informed Consent and Indigenous Peoples in International and Domestic Law and Practices", (2005) United Nations Workshop on Free Prior Informed Consent

<sup>17</sup> Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples, Final report on the study on indigenous peoples and the right to participate in decision-making. Expert Mechanism Advice No. 2 (2011): Indigenous peoples and the right to participate in decision making, UN Doc. A/HRC/18/42, 17 August 2011, at para. 21.

<sup>18</sup> United Nations Division of Social Policy and Development indigenous peoples, “Environment” <https://www.un.org/development/desa/indigenouspeoples/thematic-issues/environment>.

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

enacting projects on their land. This is in defiance of their ancestral territories and speaking out about abuses by extractive industries encroaching more and more onto indigenous territories that are rich in untapped natural resources<sup>19</sup>.

### 6.0 Section 1 – FPIC Fundamentals

#### 6.2 What are the Key Elements of FPIC?20

**Free means:** no coercion, intimidation, inducement or manipulation.

**Prior means:** that consent is sought far enough in advance of any authorization or commencement of activities, and that the time requirements of community consultation and consensus processes are respected.

**Informed means:** that all information relating to the activity is provided to communities in advance and that the information is objective, accurate and presented in a manner or form that is understandable to communities. Relevant information includes:

1. The nature, size, pace, duration, reversibility and scope of any proposed project;
2. The reason(s) or purpose of the project;
3. The location of areas that will be affected;
4. The possible economic, social, cultural and environmental impacts on the community and their lands and resources, including potential risks and realistic benefits;
5. Personnel likely to be involved in the implementation of the project;
6. The rights that the community has and the procedures that the project may entail.

Communities therefore have a right to benefit from independent advice from a lawyer and other experts and NGOs.

**Consent means:** that projects can only proceed if communities have agreed to an activity or project that concerns them. Communities also have the right to refuse their consent or to give consent on conditions that meet their needs, priorities and concerns. Consultation and participation are key elements of a consent-seeking process. Consultation must be undertaken in good faith, which, among other things, requires that community views are accommodated in the process or objective justifications are provided as to why such accommodation is not possible.

The parties must establish a dialogue allowing them to identify appropriate and workable solutions in an atmosphere of mutual respect and full and equitable participation, with sufficient time to reach decisions. The whole community (men, women, youth and elderly) must be able to

---

<sup>19</sup> "FPIC and the extractive industries" (PDF). *Institute for Environment and Development*. 2013.

<sup>20</sup> Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples, Final report on the study on indigenous peoples and the right to participate in decision-making. Expert Mechanism Advice No. 2 (2011): Indigenous peoples and the right to participate in decision making, UN Doc. A/HRC/18/42, 17 August 2011, at para. 21.

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

participate in discussions and decisions, including through their own freely chosen representatives and customary or other institutions.

### 6.3 When is Free, Prior and Informed Consent (FPIC) Required

FPIC is required prior the approval and/or commencement of any project that may affect the lands, territories and resources that Indigenous Peoples customarily own, occupy or otherwise use in view of their collective rights to self-determination and to their lands, territories, natural resources and related properties<sup>21</sup>.

Everyone in the community will need to know what their customary and legal rights are; exactly what the company's planned activities are; and what the possible bad and good things that will affect them, including community rights, its land, resources, environment, and traditional livelihoods.

### 6.4 What are the benefits of the FPIC process?

Ultimately, respecting FPIC benefits both the state and companies in the long term by minimizing the risk of disputes escalating into conflict. This prevents the loss of investment opportunities that could disappear if investors choose to target other countries where they feel their investments are more secure. Respecting FPIC thus benefits all parties involved, protecting the livelihoods of local communities, strengthening the practical and financial viability and sustainability of business operations, and therefore increasing the investment potential and opportunities of developing countries. (*World Bank 2013*).

Development activities can be carried out based on needs and priorities, and in line with the rights of Indigenous Peoples which represents an incomparable benefit for all stakeholders involved in any given project intervention.

Inclusive participation throughout all stages of a project helps to maintain consent, minimizes risks (such as disputes and other forms of conflict, harm to Indigenous Peoples and their territories, or damage to the reputation of the implementing organization), allows the building of a trust based relationship, informs project managers on how to better target beneficiaries' needs and expectations, and strengthens possibilities for future collaboration. based relationship, informs project managers on how to better target beneficiaries' needs and expectations, and strengthens possibilities for future collaboration<sup>22</sup>. For Indigenous Peoples themselves, FPIC is a tool to ensure that their priorities are taken into account. The process allows them to be well informed about all aspects of the project that will affect them, to exercise control and manage their lands and

---

<sup>21</sup> Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples, Final report on the study on indigenous peoples and the right to participate in decision-making. Expert Mechanism Advice No. 2 (2011): Indigenous peoples and the right to participate in decision making, UN Doc. A/HRC/18/42, 17 August 2011, at para. 21.

<sup>22</sup> EMRIP. 2011. Expert Mechanism advice no. 2 (2011): indigenous peoples and the right to participate in decision-making. Geneva, The Expert Mechanism on the Rights of Indigenous Peoples.

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

territories, and to command respect for their cultural identity and self-determination, especially regarding their right to development as distinct peoples.

### 7.0 Section 2 – Implementing Free, Prior and Informed Consent (FPIC) in Liberia<sup>23</sup>

The LLA, NBC and the Ministry of Internal Affairs are the primary government agencies that responsible to work with indigenous people regarding the execution of FPIC in the communities, this process also involved the concession. The LLA is responsible to map out the customary land, defined boundaries and informed the indigenous people of their right. NBC is primarily responsible for developing MSPs and working those MSPs in defining and implementing the FPIC. The Ministry of Internal Affairs sole responsibility is to work with indigenous people and the concessions to ensure FPIC procedures are followed. This policy brief will help government officials and stakeholders understand the process and importance of implementing FPIC in potential concessions area.

A clear statement that the company recognizes the community's collective ownership rights over the entirety of their customary land (including the areas of land to be used by the company) including a formal recognition of this fact confirmed by an authorized government agency. Common borders of the community's land will need to be recognized and agreed by neighboring communities in advance of formal government recognition. In Liberia, the indigenous people are left out doing negotiations with central government for a concession area<sup>24</sup>.

**Carry out interviews and talks in and around the project area** to identify indigenous communities in order to understand their language, customs, land usage patterns and their rights regarding the territory or area of investment. Document and disaggregate data for each of the respective Indigenous Peoples' communities that could be affected. Identify women affected by the project, and any challenges to their participation in the interviews.

**Cross-check the existence of mobile communities** that migrate seasonally across a territory depending on their mode of livelihood. Examples include hunter-gatherers, pastoralists, shifting agriculturalists and temporary laborers. Also, bordering communities may also have claims to the land within the project area or to the resources affected by the activities therein (e.g. water), or they may make seasonal use of these resources or have other forms of tenure relationships with people living inside the targeted project area.

---

<sup>23</sup> SDI & Namati, 2013. Community Guide: Getting a Fair Deal from Companies and Investors, Liberia

<sup>24</sup> SDI & Namati, 2013. Community Guide: Getting a Fair Deal from Companies and Investors, Liberia.

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

**Approach the Indigenous Peoples' self-governance systems and structures** traditional chiefs, specialized councils and autonomous governments and parliaments, if any, in order to identify their representatives who are 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. In case there are none, it is recommended to follow a participatory approach with the whole community. The voices of women, youth, and young adults are heard through the MSPs in their respective communities. Women now has leadership positions in different MSPs from the counties. At the recent training workshop conducted for MSPs by Dr. Justine Uvuza, there were more than 50% women participation. (*Justine Uvuza, 2020*).

**Encourage broader community participation** where the chosen mode of representation excludes women, youth, the elderly, disabled or other marginalized groups, prior to each stage of negotiation and discussions. Request separate talks to reach consent with particular groups, but do not assume that these groups or their views are homogeneous. Sometimes special measures might be required to create safe spaces that are also convenient for women to participate. In some cases, local communities cohabit with Indigenous Peoples in a particular area, for example the traditional people (The Gio people) in Nimba County and the community people of Yekepa. In those instances, it is recommended to involve the multiple communities in the FPIC process, provided that they are in agreement.

**Research local laws in relation to Free, Prior and Informed Consent (FPIC)** in order to (i) involve local authorities and (ii) be prepared before approaching Indigenous Peoples' self-governance systems and structures.

**Conduct a participatory mapping and documentation of land usage, natural resources, communication channels/media, and customary rights** as part of the initial project assessment. If it is unclear which community members are appropriate to engage with at such an early stage, the team should conduct a preliminary mapping that will be developed later on with the appropriate participation from the Indigenous community.

**Ensure all communities affected are equally involved in the participatory mapping**, as well as in the rest of the FPIC process. The maps must be made with the full awareness and agreement of, and under the control of, the communities and other parties involved. They must also be verified with neighboring communities to avoid exacerbating or triggering land disputes. Ensure all communities affected are equally involved in the participatory mapping, as well as in the rest of the FPIC process. The maps must be made with the full awareness and agreement of, and under the control of, the communities and other parties involved. They must also be verified with neighboring communities to avoid exacerbating or triggering land disputes.

**Identify customary rights, spiritual practices or traditional ethical codes**, and relevant legal frameworks that should be considered for project formulation and implementation, through community members and through known and trusted individuals from inside or outside of the Indigenous Peoples' community who usually provide legal support to them. For example, the

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

community may count on judges within their own customary juridical system, or on an outside attorney who focuses on land and governance issues, or on legal scholars who support the community's engagement with outsiders.

**Communicate effectively with the Indigenous Peoples** throughout all stages of the process as per the informed aspect of FPIC. Consider the diverse levels of literacy and interest in the technical aspects of the project, which will require diverse ways of communication. Ensure that the process is as participatory as possible, and keep community members informed at every step.

**Develop a participatory communication plan that includes:** information needs, communication channels and media (ranging from traditional/local media to national), and communication activities.

**FPIC communication process:** design the communication activities of the FPIC process. Timely provision of materials in formats and languages accessible and intelligible to the Indigenous Peoples, preferably in their own language; and respect of traditional and customary protocols and dynamics, including norms for both verbal and non-verbal communication. These norms for nonverbal communication can include body language, personal space, eye contact, and pointing with the chin or the mouth instead of with hands or fingers.

**The Ministry of Internal Affairs carry out effective iterative discussions after approaching Indigenous Peoples** with regard to developing a project that could affect them, and once they agree to enter into discussions. Bear in mind the following actions to enable fruitful discussions<sup>25</sup>:

- ✚ Agree with the Indigenous Peoples' on the most convenient time and place for discussions in their territory, where they may feel safer and able to express themselves than in an unfamiliar place, and where they have the support of their community to discuss the issues. This includes the right to privacy in negotiations and deliberations for them to discuss and decide freely.
- ✚ Convey to the affected communities their right to say "no" or "we don't know", making clear that they are not obliged to make a decision if they are not completely sure. Inform them that they can accept, reject, partially accept, or choose not to give an opinion on a proposal, and can request as much time as they need to decide what is best for them.
- ✚ Document the proceedings and outcomes of the discussions and make them available to all parties. Institutions or individuals selected by the Indigenous Peoples for decision-making in the FPIC process will not necessarily be the same as the ones who were

---

<sup>25</sup> SDI & Namati, 2013. Community Guide: Getting a Fair Deal from Companies and Investors, Liberia.



## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

involved in the preliminary discussions, therefore documenting each proceeding will help to retain consistency in matters discussed even if the participants change.

### 8.0 Reach, Consent, Document Indigenous Peoples' Needs That Are to be Included into the Project, and Agree on a Feedback and Complaints Mechanism<sup>26</sup>. (NBC and the Ministry of Internal Affairs are responsible for these processes)

Throughout the entire process of respecting FPIC, indigenous peoples and local communities must be consulted as a whole group for however long is necessary for them to understand, consider and analyses the proposals. The more time that is invested in establishing good communications at the beginning of a negotiation process, the more likely it is that negotiations can proceed in an agreed way thereafter. A rushed process will prevent communities from building general consensus before final decisions are made. This can trigger disputes between and within communities, and with the company and government.

The legitimacy of the agreement may be questioned, and the process may need to restart from the point where dissatisfaction arises. In the end, this requires more time and resources from all parties involved, and the disputes that arise from a rushed process may lead to a breakdown in the mutual trust and accountability critical to obtaining and sustaining consent. Being prepared to invest time and resources in the process substantially diminishes the risk of conflicts and disputes at later stages of the project operations, and is key to the longer term sustainability of these operations. Early identification of communities' rejection of projects can help developers focus their efforts on available lands.

In addition to time, the availability of material and human resources is critical to a strong and verifiable process of respecting FPIC. This includes investment in people, communication materials and strategies, capacity-building activities, independent verification, and technical and legal advice. Rights-holders will also need adequate resources to build up their capacity to consider the proposed project or program. Where rights-holders are interested in being involved in project design and implementation, additional resources will be needed for appropriate training and skills development. Project proponents should understand that respect for FPIC is as an inherent and necessary cost of project development. Where appropriate, developers should find open and accountable ways to channel funds to communities to maintain the integrity of the process and the independence of the community's role. The following are very essential points for policy makers to consider while implementing the FPIC:

---

<sup>26</sup> Edwards, K., Triraganon, R., Silori, C. & Stephenson, J. 2012. A training manual: putting free, prior, and informed consent into practice in REDD+ initiatives. The Center for People and Forests (RECOFTC), the Institute for Global Environmental Strategies (IGES) and the Norwegian Agency for Development Cooperation (Norad).



## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

- ✚ Agreements reached must be mutual and recognized by all parties, taking into consideration customary modes of decision-making and consensus-seeking. These may include votes, a show of hands, the signing of a document witnessed by a third party, performing a ritual ceremony that makes the agreement binding, and so forth.
- ✚ Document the agreement process and outcome in forms and languages accessible and made publicly available to all members of the community, providing for stakeholder review and authentication. The written document should clarify if consent was given or withheld and affirm that the decisions therein are binding and enforceable. It should also include the issues raised, so that it is possible to review the whole process in the event of a grievance or dispute. For sensitive issues, the affected community should be asked what is permissible to document.
- ✚ Identify additional needs to be included in the project during discussions with Indigenous Peoples, as well as the associated risks and possible modifications to remediate or eliminate potential negative impacts of the project. Once the risks are identified, it can be useful to work closely with indigenous peoples to identify indicators that can measure the possible negative impacts of the project during its implementation.
- ✚ When a community is opposed to certain parts of a project, the project manager needs to clarify which parts are acceptable and which parts need to be adapted or abandoned. This would include modifying objectives so all parties are fully satisfied. How well the project manager listens to and incorporates Indigenous Peoples' concerns and solutions into the agreement can make a significant difference in the final outcome of the project.
- ✚ Where consent is withheld, establish the causes and the conditions that would need to be met for Indigenous Peoples communities to give their consent, whether the community will consider renegotiation, and the terms and timing of an eventual renegotiation. The right of Indigenous Peoples to refuse any renegotiation also needs to be respected.

### **The agreement should include the following:**

- ✚ Signatory parties and/or customary binding practice that will be used to close the agreement, indicating the chosen representatives, their role in the community, how they were chosen, their responsibility and role as representatives;
- ✚ Mutually agreed substantive evidence of consent;
- ✚ Summary of project information (duration, area of influence, objectives);

### **Feedback and complaints mechanism:**

Make available appropriate and inclusive channels for feedback and complaints to Indigenous Peoples and their representatives throughout each phase of the project. Feedback ensures timely information regarding, for example, whether targeting was correct, projects are being implemented

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

appropriately, and what impact they are having, whether intended or unintended, positive or negative.

Feedback channels not only respect the right of Indigenous Peoples to have a say, but also very often improve the efficiency and effectiveness of any given project. In an FPIC process, a feedback and complaints mechanism is fundamental to Indigenous Peoples' operationalization of their right to give or withhold consent, especially during project implementation. By establishing a mutually agreed mechanism, an organization can promptly and transparently address concerns that may arise throughout the life of a project, and support the quality assurance imperatives for project management. (*World Bank Report 2013*). The MSP and other CSOs can develop a comprehensive feedback and complaint mechanism in Nimba, Grand Cape Mount, Maryland, and Sinoe Counties.

Effective feedback and complaints redress mechanisms should address concerns promptly and fairly, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected stakeholders, and at no cost and without retribution or the impeding of other administrative or legal remedies.

Steps on how to implement the feedback and complaint mechanism with Indigenous Peoples' communities:

Agree on how to receive and register feedback and complaints. This could be through a panel or committee of key representatives and independent advisors, periodic interviews with community members by independent entities, a collection box for written and anonymous feedback, and so forth. Be aware of the underlying power dynamics at play in this process to ensure that the agreed mechanism can be accessed by all groups within the community – especially those marginalized and most vulnerable. Where customary feedback and complaints mechanisms exist and the communities choose to follow them, this process should be respected as it will make it relevant and meaningful to them.

Agree on how to review and investigate complaints. This should include systems to track and respond to complaints, and relevant timeframes for the complaints-resolution process.

Agree on resolution options that are satisfactory to all parties. These may include forms of compensation, sanctions or restitution.

Agree on how feedback and complaints resolution will be monitored and evaluated by all parties.

Inform communities about government adjudication processes and access to justice in case the complaints cannot be resolved without outside assistance.

Formalize, document and publicize the feedback and complaint process according to customary norms, and/or through its declaration and registration at an official institution (e.g. a regional or local government office) in forms and languages accessible to all parties, and publicize it.

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

### 9.0 Practical Steps How to use FPIC to Protect the Rights of the Community People<sup>27,28</sup>

#### Step 1

Find out who is developing the planned project

First, you need to know who is planning the project that may affect the community. Then you will know who are the people who should be seeking your consent. The project planners and developers may include:

- › your government;
- › a private company (such as a mining or construction company);
- › the government of another country;
- › a local authority (such as an Environmental Protection Agency or Department of Environment and/or Natural Resources) and
- › a bank or international financial institution (such as the World Bank, the Asian Development Bank or the African Development Bank).

Sometimes it may be difficult to find information about the project developers. Large projects usually involve a mix of private and government interests. If you have problems finding information about the project, you can get assistance from other organizations, including local and international NGOs. The media, including international newspapers and industry magazines (for example mining magazines) may also have information on planned projects. Sometimes the project developers are not from your country. This can make it more difficult to contact them and you may need help from others. (*World Report 2013*).

#### Step 2:

##### **Request information from the project developers.**

It is important to know how the proposed project will impact on your community. Then you can make an informed decision on:

- › whether to give or deny consent;

---

<sup>27</sup> CBD. 2004. Akwe: Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. Montreal, Secretariat of the Convention on Biological Diversity.

<sup>28</sup> These are practical steps as compare to the comprehensive section 7.

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

- › changes you would like to the project design; and
- › prior conditions need to be met before the community can agree to the project. If you think your community might be affected by the project, you have the right to ask or to be given information from the project developers in your own language.

It is important for your community to become fully informed about the project, its potential impacts and what the project developer will do to prevent or reduce them. Requesting copies of environmental and social impact assessments in your own language is very important. This helps ensure all members of the community are informed and understand the potential impacts. It also helps in preventing the negotiating process being “captured” by a few community members who may be more interested in personal benefit rather than community benefit.

### **Step 3:**

#### **Hold discussions within your community**

Once you are in contact with the project developers, you should begin to discuss the project in detail within your community. The whole community should be well informed about the proposed project. Tools such as maps, brochures, posters and videos can be used to inform all community members. This will help ensure everybody understands the potential benefits and impacts the project may have. The community should decide what is important. Then the community representatives can negotiate with the project developers if that is what the community decides should be the next step. When discussing what the community want, use practices acceptable to your community to reach an agreement.

It is very important to take into account the views of all community members who may be affected. Try to ensure that all community members, including women and young people, are involved in your decision-making processes. This is because a large-scale project affects everyone differently. Often there are several communities affected by one project. Project developers must tell you about any agreement it makes with other communities. It may be helpful to your community to find out if other communities are affected by the same project. You may be able to work together to negotiate with the project developers or government.

### **Step 4:**

#### **Community negotiations with the project developers**

As a community, they have the right to be consulted and to negotiate with the project developers. Talking with the developers does NOT mean the community agree to the project. The Community simply claiming their right to obtain information about the project. The project developers should consult with the community and obtain your Free Prior and Informed Consent in the early stages of project planning and before each new stage of the project. This means that if the community

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

agree to an aspect of the project at the first stage, the developer must obtain the community FPIC again at the next stage. If resettlement of the community is likely, the terms and conditions must be negotiated with the community before a final decision is made.

The construction of large-scale development projects usually brings major financial benefits to the investors. Unfortunately, local communities are not always given the opportunity to share in the financial or other benefits. Putting in place “benefit sharing” mechanisms can ensure project-affected communities receive benefits from the project. For example, it may enable your community to choose what benefits it wants to receive. This has the potential to improve the livelihoods of your community. It demonstrates how the project can add value to the community.

Some examples of benefits that you could negotiate for your community includes:

- › More jobs for community members;
- › Skills training and job placement programs;
- › New schools and health clinics;
- › Special access and use rights to natural resources in the project areas for project-affected communities;
- › Agreement with the project developers to leave some land untouched - for example, areas of cultural value, and
- › Sharing of revenues from the project.

### Step 5:

Seek independent advice

Negotiating with project developers can be difficult. Project developers sometimes try to avoid involving communities. The issues involved are complex. The community have the right to get independent legal and technical advice to help you understand the effects of the proposed project. For example, the company informs the community that they will be using mercury. If the community have never heard of mercury or don’t know much about it, the community can ask for advice from a scientific expert.

Remember that your decisions should be informed decisions. One of the underlying principles of FPIC is that consent by Indigenous Peoples should be informed consent. For all other project-affected community members, their participation in consultation and negotiation in decision-making processes should be based on being fully informed on the issues being discussed and negotiated. It is important not to rely only on information the project developers give you. Project developers may try to make the project seem attractive to affected communities in order to gain

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

consent. Information from other sources will ensure the community fully understand the impact of the project in the short and long term, and what rights are available to the community.

### **Step 6:**

#### **Make decisions as a community**

Free, Prior and Informed Consent is a collective right. Therefore, the community must make a decision together in accordance with your own traditional decision-making processes. If the community decide to say “yes” to a project, the community members should make sure that the agreement they make with the project developers is recorded in writing. Members can write this in your community’s language(s). This agreement should be legally binding.

This can be a very difficult process and understanding project contracts, government approvals and legal documents is very complex. It is advisable to ask for assistance from an NGO or someone else with relevant expertise to help members if they do not understand the contracts and other documents. If the community does give its consent to a project, the community may choose to enter into an impact benefit agreement (or similar) with the project developer. This is a legal agreement that records the agreement reached between your community and the project developer. It records what conditions the project developer must meet and when these conditions be implemented or delivered.

### **Step 7:**

#### **Ongoing communications with the project developers**

Free, Prior and Informed Consent is an ongoing process. Large-scale development projects take many years to plan and then start, and then may impact on the community for many years or even generations. The project developer should make sure the community members are informed regularly about the project progress. The community members must be given the chance to ask questions and raise concerns. Your community’s right to FPIC must be respected throughout the whole process.

Community representatives also need to monitor the project development if the project proceeds. It is important for the community to keep track of whether the company/government is meeting its commitments. One way to do this is to negotiate specific outcomes or conditions of the project. These should be written down and timelines agreed to. The project developer may change through the life of the project. New project developers should uphold commitments made by previous developers - however, you may want to seek independent advice to understand if a new project developer is bound by previous agreements. This is one reason why it is important to have a written record of your community’s decision about the project and benefits you have negotiated. You may

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

wish to try to negotiate improved benefits for your community with a new developer. Your community may also wish to establish a permanent community and project developer forum for regular and ongoing communications<sup>29</sup>. This forum could also be used to handle concerns or grievances that your community may have with the operation of the project if the project proceeds.

### 10.0 Recommendation for Policy Makers on Implementing FPIC.<sup>30</sup>

In Liberia NBC, LLA and the Ministry of Internal Affairs will work with indigenous people and concessions in implementing FPIC.

**Time:** Throughout the entire process of respecting FPIC, indigenous peoples and local communities must be consulted as a whole group for however long is necessary for them to understand, consider and analyses the proposals. The more time that is invested in establishing good communications at the beginning of a negotiation process, the more likely it is that negotiations can proceed in an agreed way thereafter.

A rushed process will prevent communities from building general consensus before final decisions are made. This can trigger disputes between and within communities, and with the company and government. The legitimacy of the agreement may be questioned, and the process may need to restart from the point where dissatisfaction arises. In the end, this requires more time and resources from all parties involved, and the disputes that arise from a rushed process may lead to a breakdown in the mutual trust and accountability critical to obtaining and sustaining consent. Being prepared to invest time and resources in the process substantially diminishes the risk of conflicts and disputes at later stages of the project operations, and is key to the longer-term sustainability of these operations. Early identification of communities' rejection of projects can help developers focus their efforts on available lands.

**Wide participation:** Striving for the widest possible participation of communities 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. The inclusion of these groups will also better reflect the range of values, uses and resources that need to be taken into consideration in project implementation. It should be kept in mind that communities are not homogeneous and decisions can vary from one to the other based on different needs.

---

<sup>29</sup> United Nations Declaration on Rights Indigenous Peoples (UNDRIP)  
<http://www.un.org/esa/socdev/unpfii/en/declaration.html>

<sup>30</sup> MacKay, F. 2002. Addressing past wrongs: indigenous peoples and protected areas: the right to restitution of lands and resources. Moreton-in-Marsh, Forest Peoples Programed.

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

**The Ministry of Internal Affairs will create 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. This means providing materials openly, in good time and in forms and languages accessible and intelligible to them, preferably in their mother-tongue, with the assistance of translators. Logistical issues, such as the cost and means of transportation and communications, must also be taken into account in the organization of consultations, so that local communities are not disadvantaged in terms of participation.

**Cultural sensitivity:** Cultural norms and expectations will shape how indigenous peoples and local communities approach and participate in decision-making processes. These may affect modes of representation, decision-making mechanisms, time requirements, how agreements are made binding and what constitutes the negotiation process itself. Acknowledging these needs is necessary to achieving robust and legitimate outcomes, satisfactory to both parties. Where indigenous peoples are not recognized or registered as citizens, or where the rule of law is absent and the independence of the judiciary in question, it is all the more important to respect customary laws and honor customary systems for making decisions and achieving consent.

**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. The specific implications of an indigenous decision to say ‘no’ vary according to the circumstances. In general, any project that has a direct, significant impact on the lives and fundamental rights of indigenous peoples should not go forward if they withhold consent. In particular, no relocation of indigenous peoples and local communities, and no the storage or disposal of hazardous materials on their lands should take place without FPIC. In deciding to say ‘yes’, indigenous peoples and local communities can negotiate the terms under which they may agree to a proposed development on their lands. Agreement at any one stage of the process does not automatically imply consent as the final outcome.

### **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’ rights over lands and other resources, and where possible to secure these rights. In expressing or withholding their FPIC to proposed agricultural investments, the peoples concerned need to be assured that the full extent of their customary rights and current system of land use are recognized and respected. Exactly because the legal systems of many countries do not formally recognize customary rights, communities’ right to give or withhold consent for what happens on their lands is all the more vital. The purpose of this step is thus to determine who has rights over the targeted project land, both in state laws and under customary law; how the legal status of the land will change if a company acquires it; and what effect this has on rights-holders.



## **A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.**

As tenure policies and practices will differ from country to country, and as social stability and coexistence can depend largely on the nature of existing tenure regimes, it is critical that these specificities be taken into account. This is particularly important in countries where customary rights are not effectively recognized or protected by national laws and where there are multiple rights-holders (both formal and informal) with claims to the same land. The legal status should be examined for all parts of the targeted project area as well as bordering zones.

### **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 consent is withheld, if this is agreed to by the local communities. Consent from all parties is necessary for completion of each step of the process, even where these steps are repeated. Moreover, even in a case where consent has been obtained from indigenous peoples and local communities, it must not result in the undermining of their human rights.

### **Establishing a grievance process – NBC Recommendations<sup>31</sup>**

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. The mechanism should be discussed and developed early on rather than left until disputes or breakdowns of consent occur. Thus, deciding on the form of the grievance process should be part of the consultation and consent-seeking process. The process should be available for use during pre-agreement stages and should be included in any agreements that are reached.

Agree with the community on how to receive and register grievances. This could be through a panel or committee of key representatives and independent advisors, periodic interviews with community members by independent entities, a collection box for written and anonymous feedback, and so forth. Where customary grievance mechanisms exist and the communities choose to follow them, this should be respected by the other parties. Drawing from customary grievance processes to inform the grievance mechanism will make it relevant and meaningful to the communities.

Agree with the community on how to review and investigate grievances. This should include grievance tracking and response systems, and relevant time frames for the grievance-resolution process.

Agree on resolution options satisfactory to all parties. These may include forms of compensation, sanctions or restitution. Agree on how grievance resolution will be monitored, evaluated and agreed to by all parties.

---

<sup>31</sup> NBC recommendations 2016

## A Policy Brief with Recommendations for Policy Makers on how to Implement the FPIC Principles.

Inform communities about government adjudication processes and access to justice, in case the grievances cannot be resolved without outside assistance.

Formalize, document and publicize the grievance process. Agree with the community on how the grievance mechanism can be formalized according to customary norms, and/or through its declaration and registration at an official institution (e.g. a regional or local government office). Document the grievance process in forms and languages accessible to all parties, and publicize it.