



Free, Prior and Informed Consent (FPIC) and UN Guiding Principles on Business and Human Rights (UNGPs)



WORKSHOP REPORT

**Training held August 18th – 20th, 2021
K-Plaza, Buchanan City
Grand Bassa County
Liberia, West Africa**

**Volunteers for Sustainable Development in Africa
August 18th – 19th 2021**

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1. Background

The management of land and natural resources are among the most critical challenges facing developing countries. In Liberia, the exploitation of high-value natural resources and expansion of agriculture plantations have been cited as factors triggering, escalating, or sustaining violent land-related conflicts around concessions. Tensions between communities and concessionaires often arise due to limited knowledge and lack of participation in awarding concession contracts. Consequently, there are reports of blatant violations of human rights in affected communities, by personnel of concession companies. And illegal occupations of indigenous land or clearance of said land without communities' prior consent have been documented. Similarly, studies have shown the lack of transparency in attaining the "Free, Informed and Prior Consent" of local communities. Human rights violations and lack of Free, Informed, Prior Consent" of affected communities usually exacerbate tensions, evictions without compensations, and loss of local livelihoods, access to natural resources such as water and energy, as well as roads and cultural sites (such as shrines). Besides, the operations of the concessionaires often result in competition over diminishing renewable resources including water, and farmland, which is also increasing. As a result, environmental degradation, pollution, and climate change are being aggravated, which are cited as contributing factors to emerging conflicts and obstructing the peaceful resolution of existing conflicts in post-war Liberia.

In response, UN Women, UNDP, and WFP are undertaking the project: Sustaining Peace and Reconciliation through Strengthening Land Governance and Disputes Resolution Mechanism. The project focus on five counties including Grand Cape Mount (17 communities), Sinoe (5 communities), Maryland (5 communities), and Nimba (16 communities) totaling 43 communities. The Liberia Peacebuilding Office, the Ministry of Internal Affairs, Liberia Land Authority, and other local partners implement the project, with funding from the United Nations through the Liberia Multi-Partner Trust Fund/Peace Building Support Office (LMPTF/PBSO).

Within this joint initiative, WFP has a role in improving the socio-economic security, peace-building, and resilience of the affected populations. One of WFP and its partner's significant activities for this project was to conduct training on Free Prior Informed Consent (FPIC) as a specific right that pertains to indigenous peoples, as recognized in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Secondly, provide training on the UN guiding principles on business and human rights.

2. Introduction:

On August 18th - 20th, a total of XXX participants (xx female, xx male) of technical staff from National Bureau of Concessions (NBC), Environmental Protection Agency (EPA), Ministry of Agriculture (MoA), Liberia Land Authorities (LLA), MGCSP, and partner United Nations Agencies in Liberia comprising UN Women, United Nations Development Program (UNDP), United Nations World Food Program (WFP) and Volunteers for Sustainable Development in Africa (VOSIEDA) participated in a training workshop on the Free Prior and Informed Consent principles and the UN Guiding Principles on Business and Human Rights. . The training empowered relevant government entities to increase the participation of communities in the concession awarding processes and mainstream gender into the dispute resolution mechanism with concessionaries. Moreover, prepare state actors to integrate the United Nations Guiding Principles on Business and Human Rights as a framework to assigns responsibility to the state and concessionaires to prevent and address business-related human rights abuses in affected communities around agriculture and mineral concessions.

2.1. Main Expected Output of The Workshop Are:

- a) Relevant institutions of the Government of Liberia, CSOs, and United Nations Agencies have understood the United Nations Guiding Principles on Business and Human Rights (UNGPs), which obligates the state and concessionaires operating in Liberia to prevent and address business-related human rights abuses.
- b) Relevant institutions of the Government of Liberia, CSOs, and United Nations Agencies in Liberia have understood the principles of the Free, Prior and Informed Consent (FPIC), a framework to establish bottom-up participation and consultation of an indigenous population in Liberia before beginning development on ancestral land or using resources in an indigenous or community land.
- c) Relevant government entities are empowered to increase the participation of communities in the concession awarding processes and gender into the dispute resolution mechanism within concessionaries in Liberia.

3. Workshop Day One (1)

3.1.Session 1: Introduction, overview and opening remarks

Self-introduction of participants commenced the opening formalities followed by a welcome statement by Charlene Jallah Freeman, Manager of VOSIEDA Climate and Environmental Sustainability Program. Also, representative from government agencies gave opening statements and pledged supports to making FPIC practical in their various agencies. After the introduction, Michael Vawah from WFP gave an overview of the project. In his presentation, he highlighted the necessity of the Training Workshop.

- To support the capacity strengthening of Government institution as it relates to FPIC and UN Guiding Principle on Business & Human Rights.
- To address persisting frustrations due to lack of community participation and consultation in resources allocation which drives conflict in concessions areas. Free Prior Informed Consent (FPIC) principles have not guided the concessions allocation, regarding benefits of having communities' consent as a prevention measure.

The above reasons for the training workshop gave the participants an understanding of the reason why the two days training was vital. Everyone present resolved to work in support of the FPIC.



Michael Vawah (WFP) demonstrating, during his presentation

He further stressed how **through the use of FPIC** the partners and stakeholders can *strengthen existing semi-formal and informal land dispute resolution mechanisms, make it more sustainable and be able to reduce conflict in a more effective and gender responsive manner.*

3.2. Facilitators' presentations

3.2.1. The first presenter was Mr. James G. Otto from Sustainable Development Institute (SDI).

He presented on the topic:

Overview, Purpose and framework of Free Prior Informed Consent (FPIC)

➤ Objectives of the presentation

- To contribute to existing knowledge on the concept of FPIC - its benefits and application within the Liberian context
- To contribute to ongoing discussions amongst national stakeholders on conflict mitigation processes in communities impacted by concessionaires

➤ Conflict as a driver of change

• Governance collapse

Environmental destruction, exclusion and lack of respect for human rights

• Post conflict reforms

2003 Environmental Protection & Management Law

2006 National forestry reform law, 10 core regulations & forest policy

2013 Land Rights Policy *2016 Land Authority Act * 2018 Land Rights Act

- **Additional measures** Among several things included but not limited to the National Guidelines on FPIC

➤ Global perspectives on FPIC

He explained that FPIC is a key principle of international human rights law with a purpose to protecting the legal and customary rights of **Indigenous Peoples and prevent further destruction of their lives, cultures, and livelihoods**. And it guarantees their right to self-determination, and allows them to give or withhold consent to a project that may **affect them or their territories**.

➤ Overview of the FPIC framework

To give participants a broader understanding of topic under consideration, the presenter gave the definition of FPIC. According to the presenter, FPIC is a mechanism and a process wherein **Indigenous Peoples (IPs)** undertake their own/independent collective decision on matters that affect them, as an exercise of their right to their land, territories and resources; their right to self-determination; and cultural integrity. As to the **rightfulness** of the FPIC process, he said it is a principle protected by international human rights standards that state, 'all peoples have the right to self-determination' and 'all peoples have the right to freely pursue their economic, social and cultural development. This principle was created in 2007 by the United Nations.

➤ **Legal requirements for FPIC in Liberia**

Regarding the legal aspect of FPIC, when he was asked after his presentation, explained that Liberia's constitution calls for the maximum feasible participation of its citizens under conditions of equality (Article 7). Specific laws and regulations on environment, forestry and land rights build on this to give communities the right of Free, Prior and Informed Consent (FPIC).

FPIC Benefits and Consequences for All

Entities	Respected	Not Respected
Community	<ul style="list-style-type: none"> • Protects the livelihood of local communities • Safeguards and preserve ancestral heritage • Ensures that communities can meaningfully participate in decision making related to the 	Violations of customary rights and harsh enforcement measures. Capture by elites (from within or outside the community) Decreased production of food locally, food security risks and deepening poverty
State	<ul style="list-style-type: none"> • Stronger support from constituencies due to greater transparency • Improved investment climate • Stable operating environment 	Instability & civil unrest. Environmental costs. Arbitration damages & fees
Company	<ul style="list-style-type: none"> • Better investment opportunities. • Reduced operational cost. • Improved 'social license to operate' • Improved financial performance 	Diminished productivity & material losses. Credit rating risk. Litigation damages & fees.



Mr. James Otto giving his presentation

3.2.2. Atty. **Jamah Allison Barco, Chief Legal Counsel of NBC (BSc., GD, LLB, LLM),**
His presentation outline was;

- Definition and background of UN guiding principles on Business and Human Rights,
- Measures to be taken and avoidable Human Rights Requirement.

Human Rights according to his definition are the basic rights and freedoms that belong to every person in the world from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life. He referred to those rights as **shared values like dignity, fairness, equality, respect and independence.**

- The presenter said the principles were primarily developed by Professor John Ruggie, Special Representative of the Secretary-General of the United Nations on June 16, 2011 by the United Nations; and was endorsed as a consequence of the **high level of abuses in companies' operations around the world.**

He listed the three guiding principles as: "Protect, Respect and Remedy"

1. The first pillar of the Guiding Principles he said is the state's duty to protect against human rights abuses through regulation, policymaking, investigation, and enforcement.
2. The Corporate responsibility to respect human rights
3. The third is a responsibility for both state and corporation to remedy, prevention, and remediate any infringements.

Measures required to be taken by companies are:

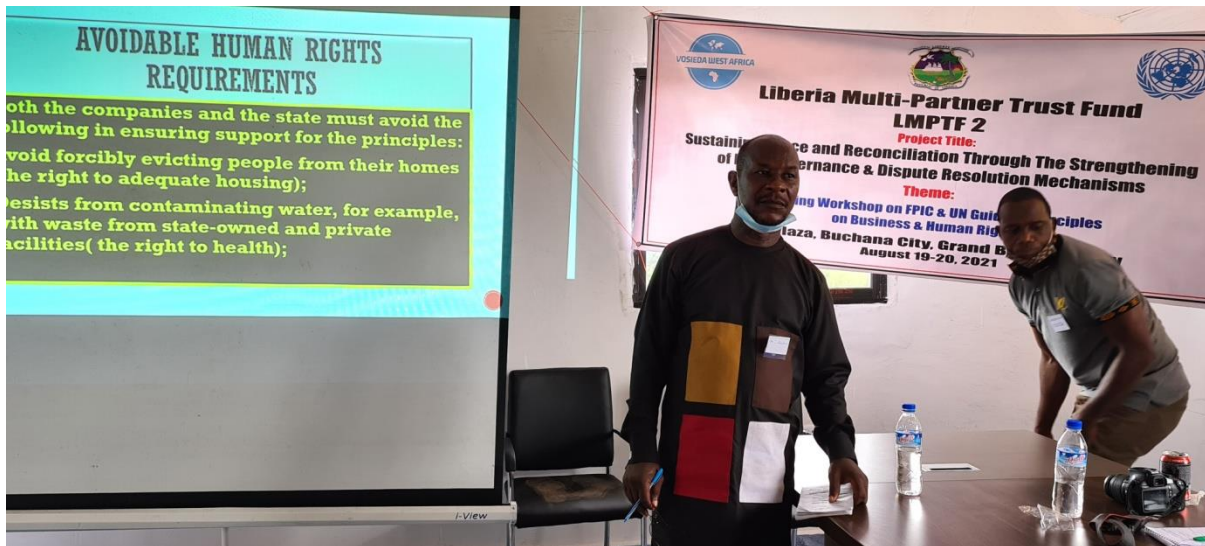
- Make a public commitment to respect human rights;
- Identify, prevent, mitigate and account for damages caused to human rights;

- Adopt procedures for remedying the negative consequences on human rights they caused or contribute to causing.

Avoidable human rights requirements

- Avoid forcibly evicting people from their homes (the right to adequate housing)
- Desists from contaminating water, for example, with waste from state-owned and private facilities(the right to health)

Atty: Barco's presentation was concluded with questions and answers from the participants.



Atty. Allison Barco during his presentation

3.2.3. Break-up section and group presentation on vital action points from the various presentations.

Questions	Responses
What are the first four critical human rights issue?	<ul style="list-style-type: none"> ➤ Forceful Eviction/Land grabbing ➤ Environmental degradation ➤ Bad labour practice/child labour ➤ Cultural infiltration
Are the issues being addressed by government?	<ul style="list-style-type: none"> ➤ Yes, there are laws on the book but weak enforcement
Are the principles being adhered to by parties?	<ul style="list-style-type: none"> ➤ NO. ➤ Project: lack of consultation with local communities
Is there adequate awareness on the FPIC principles in Liberia?	<ul style="list-style-type: none"> ➤ No, there isn't adequate awareness ➤ Conflict in and around concession areas ➤ FPIC principles are not available to communities ➤ It is in fact seen to be very new to many persons

What collaborative efforts/steps can line ministries or agencies take to ensure that company comply to FPIC principles	<ul style="list-style-type: none"> ➤ FPIC process should be enshrined into each concession agreement ➤ Adequate training should be done to enhance the capacity of each line ministries and agencies ➤ Regular monitoring of concessions ➤ Simplified and illustrative version of the FPIC process should be given to the community
What can be done to improve the FPIC principle application in Liberia	<ul style="list-style-type: none"> ➤ To include the locals indigenous people ➤ To ensure gender mainstreaming



4. DAY 2—August 20, 2021

4.1. The second day of the training again began with registration and breakfast.

4.2. Overview and recap of day one was done by Charles D. Slocum.

Highlights of the previous day's activities were given and all the participants did a refresher exercise to remember the important points.

4.3. Presentations for the day

4.3.1. Atty. J. Allison Barco, first presenter for the day

He listed several lines as measures companies could take in accordance with the FPIC. Some of those were:

1. Avoid promoting starvation in all areas and communities in the country (freedom from hunger).
2. Sidestep denying access to information and services related to sexual and reproductive health.
3. Desists from systematically segregating children with disabilities from mainstream school (the right to education).
4. The right to work must not also be denied.
5. The right to food must be promoted.
6. The right to participate in cultural life should not be denied.
7. Denying the right to social security to a person is prohibited.
8. The right to water should not be denied.

He also highlighted that companies are making effort to comply with FPIC for example,

- **Considering** the international requirement for **Free Prior Informed Consent**
- The creation of unions in concessions areas.
- Entering into collective bargaining agreements with workers.

Measures taken by the GOL to apply the principles

- In 2018 the Office of the United Nations High Commissioner for Human Rights was established in Liberia.
- The GoL has established the Independent National Commission on Human Rights; This Commission Act was signed by the President of Liberia on October 27, 1997.
- In addition to the above, the GOL has taken several measures to ensure compliance with FPIC. For example:
 - Force or compulsory labor is prohibited.
 - Workers are allowed to join unions.
 - They are allowed to Peacefully Demonstrate without hindrance to the Companies Operations.

Constraints in the implementation of the principles

In his discussion/presentation Atty. Barco mentioned the following as constraints:

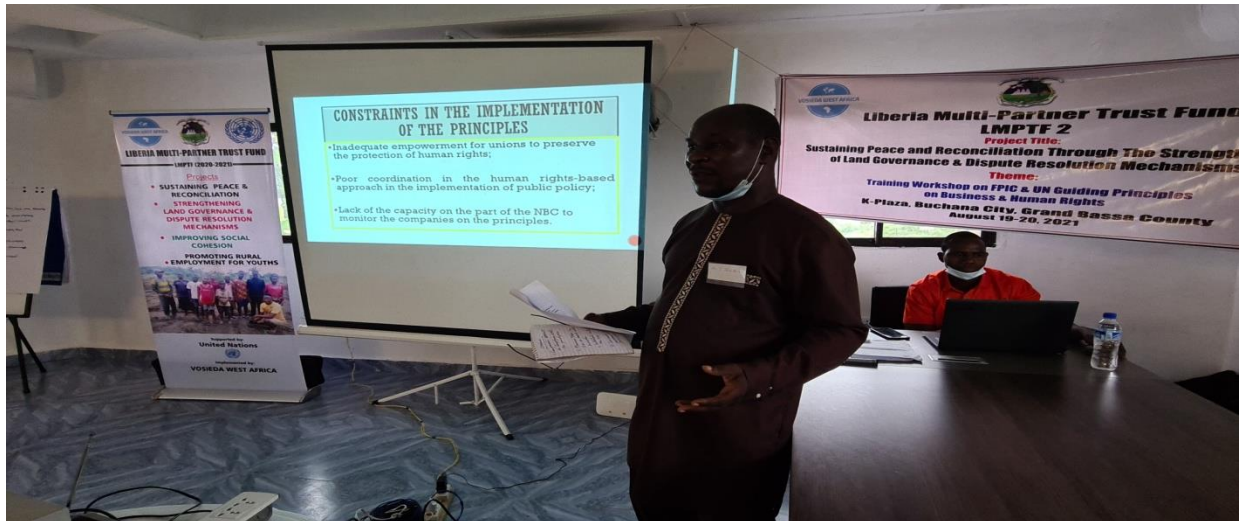
- Foreign aid from the United States and other democratic countries are insufficient to help Liberia move forward.
- Inadequate capacity to fully monitor the implementation of the principles by the NBC in companies' areas.
- Lack of political will to ensure drastic measures for non-compliance in the implementation of the principles against those who carried out abuses or violations.
- Lack of the capacity on the part of the NBC to monitor the companies on the principles.

Lapses in the implementation of the principles by government

- Delay in adjudicating Human Rights cases in the country;
- Uncoordinated handling of Human Rights issues;
- Lack of adequate awareness on the UNGPs
- Lack of political will to critically address Human Rights matters;
- Access to justice particularly for rural dwellers slow or limited;
- Lack of support for free and independence media;

In support of the lapses, the presenter mentioned ways forward as listed below

- Adequate logistics and financial supports from the United States and other democratic institutions and countries are needed to help Liberia move forward in the application of the principles.
- Establish Business and Human Rights Monitoring Group to be hosted in the NBC to monitor the implementation of the principles.
- Create adequate awareness for the principles in companies' operations areas;
- Provide supports to the NBC to monitor the implementation of the principles in the company's operations areas.
- Strong political will to enforce implementation of the principles.
- Ensure gender balance in addressing the implementation of the principles in the company's areas.
- That hereafter, business and human rights issues be placed in the respective agreements of the companies for proper monitoring by the NBC.



4.3.2. Second presenter

James G. Otto: **Unpacking FPIC:**

Key steps in the FPIC Process

The presenter started by exhibiting several photos as food for thought thereby getting the full attention of all participants.



Photo highlighting daily living condition of citizens living in concession area

Following that he listed the below international instruments and treaties that provide protection and support FPIC:

Instruments

- International Labor Organization (ILO) 1957 No. 107 with its revision ILO 1989 No. 169
- United Nations Convention Biological Diversity 1992
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007
- Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) 2012

Treaties

- African Charter on Human and Peoples' Rights, 2009 (ACPHR)
- ECOWAS Directive on the Harmonization of Guiding Principles and Policies in the Mining Sector, 2009
- Pan African Parliament, 2012
- UN Framework Convention on Climate Change (UNFCCC), REDD+ Guidelines, 2012
- Convention on Biological Diversity, 1992 (CBD)

He further went on explaining the FPIC process which is divided into three stages - Planning, Consultation, and Implementation, and further sub divided into five steps. In a logical order, the presenter took time to explain these steps.

Finally in his detailed presentation, Mr. Otto named the following entities as national regulatory bodies for FPIC:

1. **Forestry Development Authority (FDA)** supports and verifies FPIC in the process of forming community forests and developing community forest management plans.
2. **Ministry of Agriculture (MOA)** oversees the requirement in agricultural (palm oil) concessions that they follow RSPO rules on FPIC.
3. **Environment Protection Agency (EPA)** is responsible for governing the requirement for FPIC for bio-prospecting.
4. **National Bureau of Concessions (NBC)** has a technical support role on the preparation of concession agreements and subsequent monitoring.
5. **Liberia Land Authority (LLA)** is responsible for implementation of the FPIC requirement in the Land Rights Article, once this has been defined through regulation.

4.4. Lunch

4.5. Break up section

Group session for day two activity:

Questions	Responses
What are the livelihood challenges in concession areas	<ul style="list-style-type: none"> ➤ Lack of adequate information to the locals ➤ Lack of farmland ➤ Lack of proper resettlement plans ➤ Lack of capacity building ➤ Inadequate crop compensation ➤ unemployment
What are some livelihood intervention in the concession area	<ul style="list-style-type: none"> ➤ Education ➤ Training ➤ Out grower program (seedlings) ➤ Cooperative development/support ➤ Job creation
What project advice as a project manager would you give to CACs if concessionaires were living by the CA	<ul style="list-style-type: none"> ➤ Sustainable livelihood activities <ul style="list-style-type: none"> • Vocational education • Village saving loans • Cooperative development • Business skills (honey production etc)
Identify actors that could support livelihood interventions in concession areas	<ul style="list-style-type: none"> ➤ UNDP ➤ WFP ➤ UNWOMEN ➤ GIZ ➤ VOSIEDA ➤ SDI ➤ Government institution/agencies ➤ ILO ➤ FAO



4.6. Closing of the workshop

4.6.1. Conclusion:

Having gone through two days of educative training which was informative and an eye opening and leaving participants in readiness and fully prepare for implementation of FPIC, there were important lessons learnt.

That the ineffectiveness of FPIC has been due to, though not limited to a lacked:

- Establish Business and Human Rights Monitoring Group to be hosted by the NBC to monitor the implementation of the principles.
- Adequate awareness for the principles in companies' operations areas;
- Supports to the NBC to monitor the implementation of the principles in the company's operations areas.
- Strong political will to enforce implementation of the principles.
- Gender balance in addressing the implementation of the principles in the company's areas.

Through the presentations and questions and answers sections, a lot of information on the FPIC process was unearthed. Therefore, with the knowledge gained, all participants anticipate the next stage of the project.

The program was covered by journalists from various media group from ELBC, OK FM, and other media groups.

4.6.2. Recommendation:

Based on serious need Free Prior Informed Consent **FPIC** is to be made available to targeted communities, it was strongly suggested that a simplified and illustrated version of **FPIC** be produced and distributed by VOSIEDA to targeted communities nationwide.

4.6.3. Closing remarks

- UN agencies
- Government agencies
- VOSIEDA

4.6.4 End of workshop

