



SECURING INDIGENOUS PEOPLES' RIGHT TO SELF-DETERMINATION

A GUIDE ON FREE, PRIOR AND INFORMED CONSENT



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Written by **Cultural Survival** and **First Peoples Worldwide**, with support from the **Securing Indigenous Peoples' Rights in the Green Economy (SIRGE) Coalition**. With gratitude to SIRGE Coalition Steering Committee members and other Indigenous leaders from around the world who took the time to review this guide and gifted their perspectives and expertise. **Contributors:** Rachael Knight, Galina Angarova, Kate R. Finn, Edson Krenak, David Gordon. **Illustrations:** Özgür Uğuz, ozguruguz@gmail.com. **Layout:** Tania Dunster / Onehemisphere, contact@onehemisphere.se. **Images:** Shutterstock. **Copyeditor:** Jenn Goodman. **Pages:** 56. **Geographic Area:** Global. **Date of Publication:** September 2023. Published by **Cultural Survival** www.culturalsurvival.org, 2067 Massachusetts Avenue Cambridge, MA 02140, United States of America.

TABLE OF CONTENTS

	Letter from the Directors	4
	Quick Reference Summary	6
	Introduction	8
01	INDIGENOUS PEOPLES' RIGHT TO FREE, PRIOR & INFORMED CONSENT	10
	What is FPIC?	11
	Indigenous Peoples' own FPIC protocols	13
02	PREPARING IN ADVANCE: BEFORE ENGAGEMENT BEGINS	18
	Prepare yourselves internally	20
	Voice your own FPIC protocol	23
	Consider legal and technical support	26
	Learn about the project's investment chain and its pressure points	27
03	THE NEGOTIATION PROCESS	28
	Choose who will represent your community in all FPIC discussions and negotiations and prepare them for this role	30
	Agree on how the process will proceed	31
	Document the process in real time	32
	Make sure you are fully informed	33
	Negotiate changes to the proposed project necessary to avoid risks and harm	35
	Negotiate what benefits the government or investor must provide if you consent	36
	Make a decision	37
04	AFTER THE DECISION ABOUT FPIC: NEXT STEPS	40
	If you refused: ensure that your refusal is accepted	41
	If you accepted: take further action to protect your rights	42
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	APPENDICES	49
	Appendix A: Definitions/useful words	49
	Appendix B: The legal basis for FPIC	50
	Appendix C: Calculating the value of resources that your community gathers from your lands and ecosystems	52
	Appendix D: Visioning your community's desired future	54
	Appendix E: List of organizations and international bodies Indigenous Peoples can contact for help	55
	Appendix F: List of recommended sources	56

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LETTER FROM THE DIRECTORS

Securing Indigenous Peoples' Right to Self-determination: A Guide on Free, Prior and Informed Consent is written for Indigenous leaders. We have heard you: there is nothing more important than securing your community's individual and collective rights to a thriving future that ensures cultural, spiritual, environmental, and economic well being. We have also heard from you that the implementation of Free, Prior and Informed Consent (FPIC) as set forth under the UN Declaration on the Rights of Indigenous Peoples is complex and sometimes fraught.

We want to be clear that FPIC is meant to protect the full spectrum of Indigenous Peoples' rights beyond land and natural resources, including rights to language, education, Traditional Knowledge, and cultural and intellectual property, among others. Your self-determined priorities must be the cornerstone of discussions with outside entities. We created this guide to support you in asserting your rights and priorities and to help you to best implement FPIC as guided by your systems, values, traditions, and visions for future generations.

With more than 75 years of combined experience between our organizations, we have worked alongside and in support of Indigenous leadership towards the respect and upholding of Indigenous Peoples' rights and self-determined futures. Since the Declaration was adopted in 2007, we have learned a great deal from experience. We often speak to Indigenous Peoples around the world who are navigating the implementation of FPIC in diverse settings grappling with different legal and political frameworks, differing status of formal and informal legal recognition, various permitting regimes regarding land tenure and resource extraction, and different socio-cultural contexts.

This guide has been written to reflect Indigenous Peoples' experiences from diverse legal, political, and socio-cultural contexts around the world. It shares best practices for FPIC in the context of investment projects, particularly those that impact Indigenous Peoples' lands, territories, and resources. It also shares strategies that Indigenous Peoples can use to counter investors' and government officials' efforts to erode or to co-opt the FPIC process.

We recognize the complexity of FPIC implementation in communities and with external parties and the urgent need to elevate Indigenous solutions and priorities. Indigenous Peoples' definitions of wealth go far beyond economic opportunity and financial success; Indigenous definitions of wealth are more expansive and include healthy people, strong communities, and resilient ecosystems. We know Indigenous leaders build their priorities to prosper their communities. We also know there are as many definitions of FPIC as there are different Indigenous Peoples.

Importantly, this guide recommends that Indigenous Peoples proactively create your own self-determined FPIC protocols, outlining specific priorities that reflect your systems of governance and participatory decision making. These protocols are best written in advance of external requests so that when an investor arrives, your protocol can lead the engagements, rather than follow processes set out by the government or investor.

We are well into the era of Indigenous self-determination. This next decade must be defined by respect for Indigenous leadership, in part through the integration of Indigenous FPIC protocols in private and public sectors around the world. We hope this guide provides a starting point for considerations to articulate your priorities around FPIC within and beyond your communities.

In solidarity,

Galina Angarova (Buryat)
Executive Director,
Cultural Survival

Co-chair of the Executive
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Peoples' Rights in the Green
Economy Coalition

Kate R. Finn (Osage)
Executive Director,
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Peoples' Rights in the Green
Economy Coalition



Indigenous leadership presenting FPIC policy proxy resolution on behalf of concerned shareholders at a bank Annual General Meeting.



QUICK REFERENCE SUMMARY

Indigenous Peoples have a right to decide what happens to their land. A Free, Prior and Informed Consent (FPIC) engagement process is required before the start of any project that may affect the lands, territories, and resources that Indigenous Peoples customarily own, occupy, or use. FPIC includes both: 1) a process of engagement and dialogue (being consulted, asking questions, negotiating, taking the time to fully understand the proposed project); and 2) the right to give or withhold consent during or after that process of engagement. The right to FPIC flows from Indigenous Peoples' right to self-determination.

This box provides a brief summary of how your community can prepare for, engage with, and complete FPIC processes. The full guide explains each of these steps in detail.

BEFORE THE FPIC ENGAGEMENT BEGINS

The moment your community is approached by investors and/or government officials seeking land and resources, it is best to take various steps, including:

1. **Work towards community cohesion** by clarifying and agreeing on your community's priorities; strengthening community unity; making space for divergent opinions; and ensuring that good conflict resolution systems are in place.
2. **Proactively write your own FPIC protocol** that sets out how any FPIC engagement will proceed in your community.
3. **Define the boundaries of your land** and mark which areas are reserved for community use.
4. **Understand your legal rights** under national and international laws.
5. **Learn how investors and government officials conceive of the monetary value of your lands and resources, as well as understand the monetary value of your lands and resources to yourselves**, so that you can communicate this clearly to investors and government officials.
6. **Seek legal and technical support.**
7. **Learn about the project's investment chain** so that you understand who you are engaging with and how to best ensure that these actors respect your FPIC rights.

THE NEGOTIATION PROCESS

Once your community and the investors and/or government officials seeking land and resources for a potential investment or infrastructure project begin the formal FPIC engagement process, your community may want to take certain steps, including:

1. **Choose who will represent your community** in all FPIC discussions and negotiations;
2. **Communicate your required FPIC protocol** to the investors and government officials you will be meeting with and **agree on how the process will proceed**;
3. **Document the process** to create evidence that you might need later;
4. **Make sure you are fully informed** by gathering all relevant documents and understanding any impact assessments.

5. **Negotiate changes to the proposed project** that are necessary to avoid risk and harm; and
6. **Negotiate the benefits and positive impacts** that the government or investor must provide if you consent.

MAKING A DECISION

Once your community has accessed all relevant information and engaged in a full consultation and negotiation process with the company and/or government, you will be ready to discuss the project internally and decide whether to grant or deny your Free, Prior and Informed Consent. **In every aspect, your community has the right to self-determination, which includes deciding how you will decide.** You have the right to make the decision according to your traditional decision-making processes. Once your community has made a decision, document your granting or withholding of consent in a number of ways, including by video, photograph, and on paper.

AFTER YOUR FPIC DECISION

IF YOU REFUSED:

Ensure that your refusal is accepted. If your community decided to withhold consent, seek legal counsel on your rights under domestic law. A lawyer can advise your community about various strategies that you may need to follow to assert your right to say no.

IF YOU ACCEPTED:

1. It is best if the **agreements and negotiations that led to your community's consent are documented in a written contract that has been drafted and signed by all parties.** Seek the support and counsel of paralegals, lawyers, technical experts, and other advocates as you work with the investors and/or government officials to draft and finalize a formal contract.
2. **Establish a monitoring and compliance plan** as part of your FPIC agreement and contract. This might include at least three parts:
 - Open communication and proactive regular dialogue;
 - Your right to monitor project activities throughout the lifetime of the project;
 - What the investor and/or the government will do in response to data that indicates illegal pollution, a breach of contract, and other challenges that may harm your community.
3. If the investor and/or government do not resolve the challenges, violations, and/or abuses identified, then your community has the right to initiate a complaints procedure and/or dispute resolution process. **Make sure that your contract includes clear complaints procedures and dispute resolution processes.**





INTRODUCTION

This guide is written to support Indigenous Peoples who are defending their lands, territories, and resources. It is meant to provide clear guidance to Indigenous leaders and communities about how to exercise the right to Free, Prior and Informed Consent (FPIC). It includes technical and strategic recommendations on how best to navigate global systems of power and finance so that Indigenous Peoples can respond successfully when confronted by those systems.

The guide is organized in the following way:

- **Part 1** defines what Free, Prior and Informed Consent means and describes how some Indigenous Peoples are proactively drafting FPIC protocols that define the course of any future FPIC engagements.
- **Part 2** describes steps that Indigenous communities can take to prepare internally. Most important among these is to draft your own FPIC protocol. This section also suggests taking action to understand who exactly the investors/project developers are, and who is funding their work.

- **Part 3** describes what an Indigenous community may want to do during the FPIC engagement process itself, including getting legal and technical support, making sure you are fully informed, requiring the investor to minimize project risks, and negotiating what benefits you will receive in exchange for your lands if you do consent.
- **Part 4** describes the variety of follow-up actions that an Indigenous community may need to take after the FPIC consultation process has concluded. It describes what you may need to do to protect your rights if you consented to the project, and what you may need to do to defend your decision if you withheld consent.

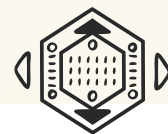
We hope that you will take this guide and translate it into your languages so that your communities can read and use it to prepare for FPIC discussions and engagements with investors and governments. Please contact Cultural Survival for a digital copy of the guide that you can use for translation purposes at culturalsurvival@cs.org.



A NOTE ON WORD CHOICE

- In this guide, we use the terms “**Indigenous community**” and “**community**” interchangeably. This guide is written for Indigenous Peoples to use and is not intended to apply to non-Indigenous local communities. When using the terms “Indigenous community” and “community,” we mean to indicate those groups that fall within the United Nations’ understanding of Indigenous Peoples, namely: “Those Peoples who self-identify as Indigenous Peoples, have a strong link to their territories and natural resources and historical continuity with pre-colonial and/or pre-settler societies, have a distinct language, and have retained social, cultural, spiritual, economic, and political characteristics that are distinct from those of the dominant societies in which they live, and resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.”
- We recognize that within any one “Indigenous People,” there may be many sub-groups. This guide does not address the vast diversity of how Indigenous Peoples organize themselves. Rather, the term “Indigenous community” is meant to include all the various nuanced, overlapping, and complex intra-group systems and sub-divisions.
- We avoid the term “Indigenous Peoples and local communities,” or “IPLC,” because local communities do not share some rights held by Indigenous Peoples.
- In this guide, we use the term “**resources**” to mean the enormous variety of resources within Indigenous Peoples’ territories, both tangible and intangible. This includes the biodiversity of a given local ecosystem, including the plants, animals, minerals, waters, and soils located therein. We also include Indigenous knowledge, intellectual property, and cultural heritage within this definition of “resources.”
- In this guide, we use the term “**territory**” to mean the ancestral and current connections of Indigenous Peoples to a geographical area, including all lands, bodies of water, and ecosystems contained within that area.
- In this guide, we use the terms “**investors**” and “**project developers**” interchangeably. By these terms, we mean the full range of companies, business decision-makers, project financiers, and government officials who stand behind any infrastructure project, investment, or policy that has any impact on Indigenous Peoples.

See [Appendix A](#) for additional definitions.





INDIGENOUS PEOPLES' RIGHT TO FREE, PRIOR AND INFORMED CONSENT 01



Indigenous Peoples' representatives advocating for stronger FPIC rights at a UN forum.

WHAT IS FPIC?

Free, Prior and Informed Consent (FPIC) ensures Indigenous Peoples' right to give or withhold consent to any activities that affect their lands, resources, and territories. The right to FPIC flows from Indigenous Peoples' right to self-determination. It encompasses and protects all rights of Indigenous Peoples, including land rights, collective rights, participatory rights, cultural rights, food and water security rights, and more. The principles of FPIC form a framework that informs the protocols, processes, rules, and regulations that Indigenous Peoples can require from companies, governments, and other sovereign nations when designing investments and infrastructure projects on Indigenous lands.

In 2007, the United Nations General Assembly adopted the **United Nations Declaration of the Rights of Indigenous Peoples**, recognizing Indigenous Peoples' individual and collective rights and making specific mention of Free, Prior and Informed Consent as a prerequisite for any activity that affects Indigenous communities. As a resolution of the General Assembly, the Declaration carries global consensus on the minimum standards necessary to respect Indigenous Peoples' rights. **Every country that signed the Declaration is required to pass national laws that give it legal standing.** The Declaration includes provisions expressly recognizing the duty of States to secure Indigenous Peoples' FPIC in the following circumstances:

- Before Indigenous Peoples' relocation or resettlement (Article 10);
- Before the use of Indigenous Peoples' cultural, intellectual, religious, and spiritual property (Article 11);
- Before implementation of any legislative or administrative measures that could affect Indigenous Peoples (Article 19);
- Before the use of Indigenous Peoples' lands (Article 28);
- Before the storage or disposal of hazardous materials on Indigenous Peoples' lands (Article 29); and
- Before state approval of any project affecting Indigenous Peoples' lands, territories, and resources, especially projects related to the development, use, or exploitation of mineral, water, or other resources (Article 32).


(See [Appendix B](#) for a full explanation of all the international, national, multilateral organization, and industry-based laws and policies that articulate Indigenous Peoples' FPIC rights).

FPIC includes both:


1. A process of engagement and dialogue (being consulted, asking questions, negotiating, taking the time to fully understand the proposed project); and
2. The right to give or withhold consent during or after that process of engagement.

FPIC is required before the approval and start of any project that may affect the lands, territories, and resources that Indigenous Peoples customarily own, occupy, or otherwise use.

Negotiations between Indigenous Peoples, governments, and investors often occur amidst power imbalances and oppressive policies. Any process that upholds Indigenous Peoples' right to FPIC must include meaningful efforts to balance power. This process must allow Indigenous Peoples to conduct independent and collective discussions and arrive at decisions through their own decision-making processes. Indigenous Peoples have the right to make these decisions in an environment where they do not feel intimidated, and with sufficient time to discuss the issues in their own language and in a culturally appropriate way.



The right to FPIC flows from Indigenous Peoples' right to self-determination. It encompasses and protects all rights of Indigenous Peoples, including land rights, collective rights, participatory rights, cultural rights, food and water security rights, and more.





FPIC is an ongoing process. If your community consents to a project, your consent must then be sought for every significant new element or change throughout the lifetime of that project. Importantly, even if your community gives consent, you can withdraw that consent at any time.



Under international law, “Free, Prior and Informed Consent” is understood to mean:

“FREE”

“Free” refers to consent given voluntarily and without coercion, intimidation, manipulation, threat, violence, or bribery. Only consent given without coercion can be considered legitimate. “Free” also means that:

- Your community can **determine the details of the overall processes around FPIC**, including the number of meetings, timing and location of meetings, language(s) spoken at all meetings, and the decision-making process that ends in giving or withholding consent, as well as any other details that can impact your community’s full and free participation in engagement around your FPIC.
- **All community members can participate freely.** This means that there must be time and space for *all* Indigenous community members to ask questions, voice opposition or criticism, express interests and preferences, make suggestions, offer feedback, explain how the proposed project will likely affect them, and otherwise speak freely and without fear.
- **Affected Indigenous Peoples are free to build coalitions**, coordinate efforts, share information with other affected communities, and take part in exchange visits to see how similar projects have impacted other communities. A proposed project may impact more than one Indigenous community. All affected communities have the right to communicate their FPIC priorities and participate in creating coordinated FPIC protocols.

“PRIOR”

“Prior” means that:

- **Your consent must be sought in the project’s design phase, well before project activities begin.** Importantly, this means that affected Indigenous Peoples must be involved before the government issues “exploration” permits and/or licenses so that you can withhold consent to exploration if you choose.
- **You must be given enough time to meet and discuss the proposed investment or infrastructure project before making a decision.** Investors and government officials must respect your community’s decision-making processes and ensure that you have enough time to fully understand all relevant information about the proposed project. The amount of time required will depend on your community’s decision-making processes, according to your own customs.

“INFORMED”

“Informed” means that Indigenous communities have the right to be *fully* informed about the planned project or investment. This means that the government and project developers must tell you—and provide documentation—about:

- The nature, size, purpose, and scope of the proposed project, the land required, the water required, the resources that will be used, all expected annual profits, and *all* other plans and details.
 - Any and all likely economic, social, cultural, or environmental impacts and risks. This may be delivered in the form of a technical study (often called an “impact assessment”) of all the project’s possible risks. Many countries have laws requiring impact assessments.
 - The investor’s business plan, all permits and licenses issued by the government; a list of all known funders/investors backing the project, including information about any related parent companies or subsidiary companies; and all other important information that you may request.
- » **The information must be provided in a language and format that your community can easily understand.** You have the right to request that this information is provided:
- In your language;
 - In a culturally appropriate manner;
 - In your community’s chosen location(s); and

- By people who understand your culture and context and are prepared and capable of fully answering all questions your community asks.
- » **The information given to you must be accurate, clear, and understandable to all community members.** It must be delivered with enough time for your community to receive it, understand it, analyze it, and use it to make your decisions. It must also be provided throughout discussions and negotiations about FPIC; if new information emerges, or the context changes, your community has a right to receive the updated information. **You can require that all technical studies are explained in plain language.**

“CONSENT”

“Consent” means an Indigenous community’s right to freely say “yes,” “no,” or “yes with conditions” to any project or initiative that will impact your lands, territories, resources, and livelihoods. Your community’s decision to grant or deny consent should be the result of your self-determined decision-making process.

- » **Consent is not a one-time event:** FPIC can be given or withheld as new information or impacts emerge, as the project changes, and if the company’s or government’s actions harm your community. You can also require that your community consents to each distinct stage of the project.

THE DIFFERENCE BETWEEN CONSENT AND CONSULTATION

An FPIC engagement generally includes a series of consultation meetings that provide your community with the information necessary to fully understand the proposed project and its likely risks and impacts, then make an informed decision to give or withhold your consent.

When an FPIC engagement is done properly, it includes multiple community “consultations” that clearly explain the proposed project, provide all necessary project documentation and information, and give community members adequate time and opportunity to ask questions, object to part or all of the proposed project, and/or negotiate its terms.

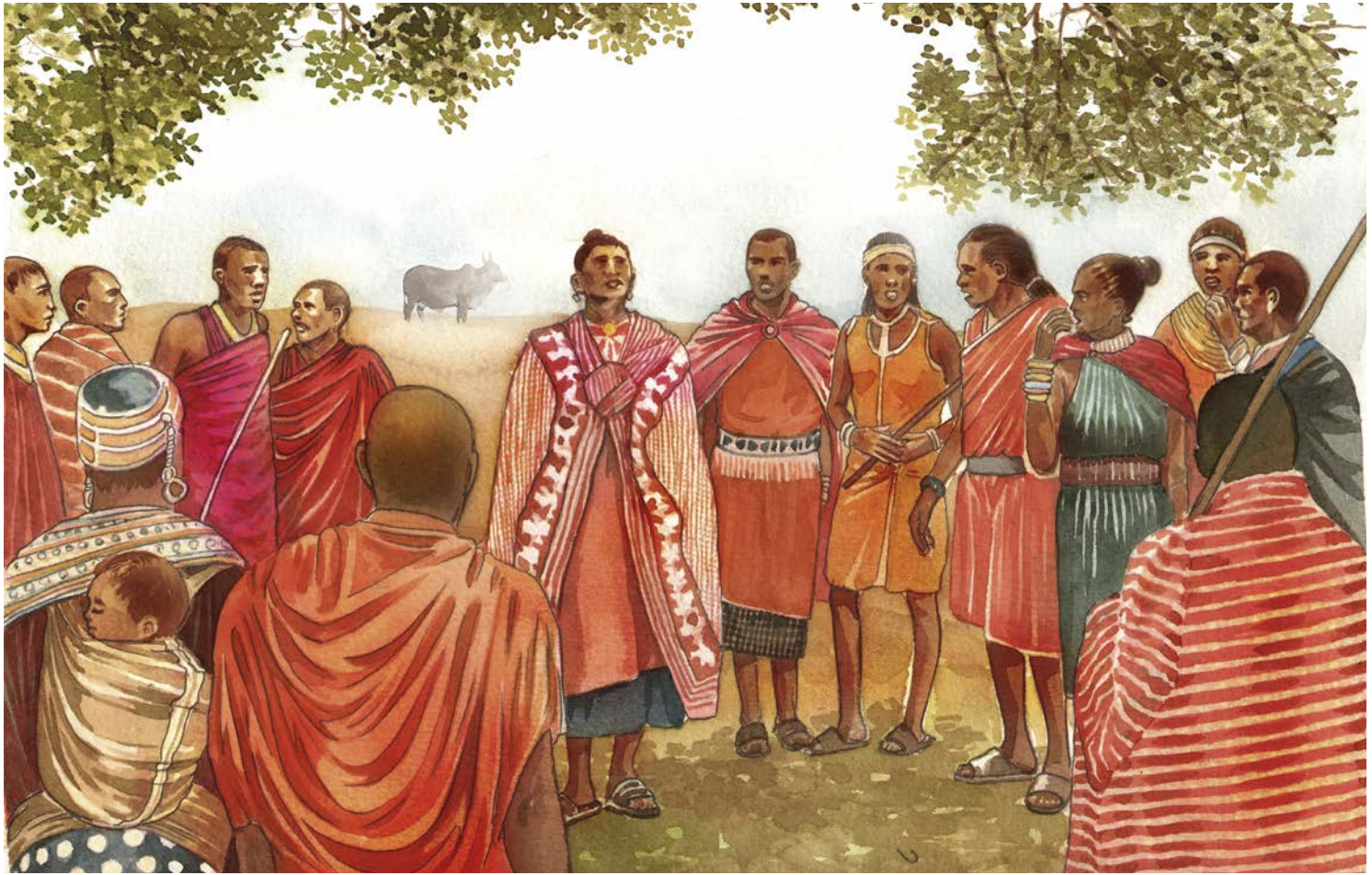
Your community must have time to meet privately to review project documents, discuss the proposed investment among yourselves, and then decide to agree to the investment, reject the investment, or require that the investment is modified to be acceptable to you. The process ends when your community communicates your decision. **When properly done, consultations allow a community to provide or withhold its Free, Prior and Informed Consent.**



INDIGENOUS PEOPLES' OWN FPIC PROTOCOLS

FPIC was designed to implement Indigenous Peoples’ right to self-determination. **An Indigenous community has the right to determine every aspect of a process around FPIC**, including how it wishes to be consulted, how the consultation process shall proceed, how it will make decisions, and whether it chooses to give or withhold its consent.

Yet in practice, the government officials, investors, and organizations seeking Indigenous Peoples’ lands and resources often try to lead and control FPIC processes.



Community meeting to proactively draft their own FPIC protocol.

In response to outside actors' efforts to control FPIC processes, more and more, Indigenous Peoples are **proactively drafting their own FPIC protocols that define how they would like to engage with investors and government officials**. By clearly setting out how investors and government officials seeking land and resources must proceed, these protocols help to address power and information imbalances, strengthening authentic self-governance, territorial, and cultural rights. Such protocols are externally facing legal instruments that formalize Indigenous Peoples' own laws and desired procedures for FPIC engagements with government and investors.

Throughout time, Indigenous Peoples have always had protocols governing engagement with people from outside the community, including complex, nuanced protocols about whether and how other groups could access their lands, resources, and territories. These rules were often contained within oral traditions and non-written systems and had force in terms of governing and organization interactions between

Indigenous Peoples and outside entities. Written FPIC protocols are just the newest development of a long line of Indigenous law-making.

Many of these new, proactively-drafted FPIC protocols have been **recognized as legitimate by national courts** as well as local, national, regional, and international oversight and administrative bodies. ([See box on page 17](#)) This means that Indigenous Peoples have the right to decide how an FPIC engagement will proceed. As more and more Indigenous Peoples develop their own FPIC protocols—and have them recognized in court as valid—the power and authority of these protocols is growing. The more that Indigenous communities require that investors and governments follow their FPIC protocols, the greater the likelihood that a new “standard of practice” will emerge that centers Indigenous law and custom as the foundation of FPIC. **Part 2** covers how to write an FPIC protocol and what to include.

WHEN FPIC CONSULTATIONS DO NOT AUTHENTICALLY SEEK FREE, PRIOR AND INFORMED CONSENT

Experience has shown that FPIC consultations are often characterized by significant power imbalances and withheld information. In practice, this means that:

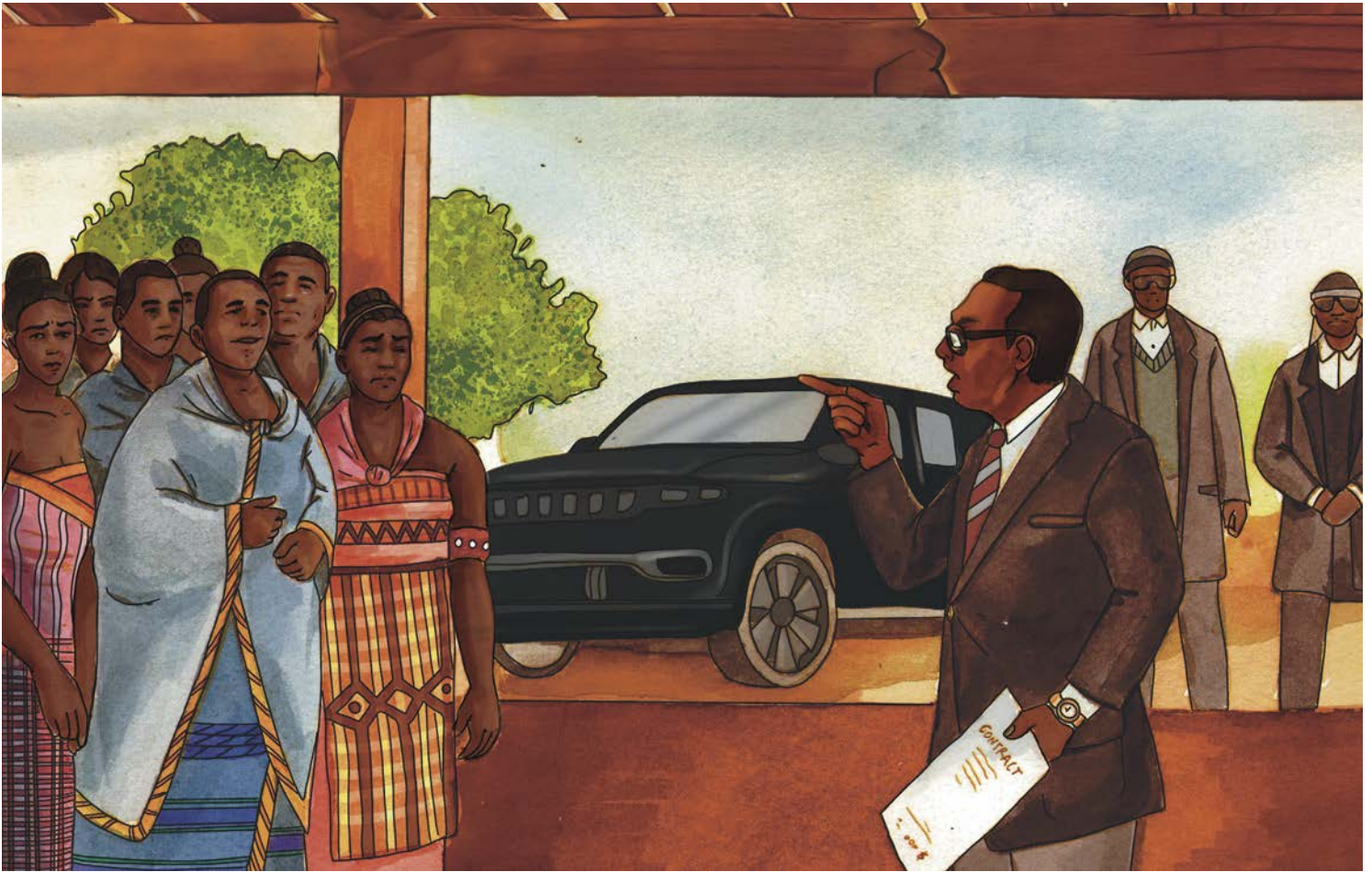
- Investors and/or government officials may carry out “a consultation” as an opportunity to **merely inform a community that an investment or development project will be happening**. Investors may arrive for the first time accompanied by government officials who tell the community that “they are being consulted” and demand an immediate “yes.” In such situations, project developers do not allow time for an Indigenous community to discuss the potential project internally, seek independent advice, gather information, and *then* make a decision, privately and according to self-determined practices.
- **Investors and government officials may pressure or coerce an Indigenous community into giving consent.** Community members who request more information, demand written contacts, or ask for environmental or social impact assessments may face State-sanctioned persecution. In such situations, communities may feel coerced, pressured, or intimidated, or that they have no choice but to accept a project that has already been approved by their government. In the worst cases, communities that choose to withhold their consent to a proposed project may face coercion through the **use or threat of violence, criminalization, and false arrests** by either the government or the investor and its agents.
- **Governments and/or investors may pressure communities to say yes to projects that they do not fully understand.** Sometimes, investors or government officials **do not disclose information** unless a community demands it. Investors or government officials may not tell community members about the full scope of project activities; the project’s expected annual profits; the potential impacts on local waters, air, forests, soils, sacred areas, and community and ecosystem health; and other key matters. Even when such information is provided, it may not be communicated in a language or format that communities can understand. Investors and government officials may also force community members to sign agreements before they have an opportunity to ask questions, challenge the project, request that elements of the projects be changed to do less damage to their community or local ecosystem, or reject the project.
- Government officials or investors may **seek only the consent of some members of the community** or may act corruptly by **bribing leaders** to sign consent forms. They may take **community leaders that oppose the investment out of power** and replace them with individuals more “amenable” to outside interests.
- Government officials or investors may also **try to establish their own community decision-making processes** that do not involve traditional decision-making bodies or legitimate community representatives.
- Project developers may also try to **foster mistrust and conflict both within communities** and between affected communities, so that the communities are weakened by internal disagreement.

Without strong government oversight and political will, project developers routinely carry out so-called “consultations” that render FPIC meaningless. Such “consultations” may be used by the company and/or the government to give the impression to external interests, such as international standards certification bodies or financial backers, that FPIC principles have been complied with and community members have genuinely consented to the project.





Without strong government oversight and political will, project developers routinely carry out so-called “consultations” that render FPIC meaningless.



Sham FPIC consultation in which investors are intimidating leaders and community members.

LEGAL PRECEDENT AND PRACTICE RECOGNIZING INDIGENOUS PEOPLES' FPIC PROTOCOLS



At the international level:

The Nagoya Protocol to the Convention on Biodiversity (CBD) on Access and Benefit Sharing refers to the role of community protocols and the need for awareness raising in relation to them;

The International Union for the Conservation of Nature (IUCN) has supported the development of bio-cultural protocols;

- Between 2015 and 2017, the Office of the United Nations High Commissioner for Human Rights in Colombia provided extensive technical assistance to four Indigenous Peoples in the development of protocols.
- In 2018, the United Nations' Expert Mechanism on the Rights of Indigenous Peoples identified respect for FPIC protocols as central to the conduct of good faith consultations.

At the national level:

- In 2016, the Argentinian National Ombudsman issued a resolution recognizing the FPIC protocol of 33 communities of the Kollo and Atacama people of the Salinas Grandes y Laguna de Guayatayoc and calling on all government ministries and agencies to recognize and respect their protocol.
- In 2006, the Superior Court of Ontario, Canada recognized the Kitchenuhmaykoosib Inninuwug (KI) protocol.
- In 2011, the United Nations Development Programme collaborated with the Federation for Self-Determination of Indigenous Peoples in Paraguay in the development of a national FPIC protocol, which was then formally recognized by a presidential decree in December 2018; and
- In 2016, the Constitutional Court of Colombia ruled that the Embera Chamí's FPIC protocol must be respected.
- In a 2018 ruling, the Federal Court in Brazil required that any future consultations with the Juruna People respect their FPIC protocol.

Source: A Whitmore & H Tugendhat (2019) (eds), *Free Prior Informed Consent Protocols as Instruments of Autonomy: Laying Foundations for Rights based Engagement (Infoe, ENIP)* at pp. 19-21. Available at: <https://enip.eu/FPIC/FPIC.pdf>

When FPIC engagements are led by Indigenous Peoples according to the terms set out in their own self-defined protocols, FPIC safeguards Indigenous Peoples' rights.



PREPARING IN ADVANCE: BEFORE ENGAGEMENT BEGINS

02



Community mapping its lands and cataloging local biodiversity.

It is best to *proactively prepare* for potential future FPIC consultations. This section of the guide describes what your community can do to prepare in advance for an FPIC engagement. Taking the time to understand your legal rights, draft your own FPIC protocol, make a plan for how you will address conflicting community opinions throughout an FPIC engagement, and define your own vision for your community's future will help your community be stronger and more prepared if investors arrive seeking your resources.

If your community has not yet written your own FPIC protocol but is approached by investors and/or government officials seeking resources, you may want to follow the steps outlined in this section as soon as an investor and/or government

officials arrive in your community. You can request that the first FPIC consultation meeting take place far enough in the future to allow your community to have the time necessary to prepare, get organized, and be ready.

WHEN AN INVESTOR FIRST ARRIVES, IMMEDIATELY SEEK LEGAL AND TECHNICAL SUPPORT

When an investor first approaches your community, immediately work to learn as much as you can about the proposed project and to understand the project's potential impacts on your lives and local ecosystems. If possible, seek support from legal and technical professionals who can help with this research. You may be able to find an organization that can provide this support for free, or at a very low cost.

DO NOT SIGN OR AGREE TO ANYTHING

Do not sign anything with the project developers until the end of a formal FPIC process. If an investor asks your community to agree to something or gives you a draft agreement to sign, you can tell the investor that you will not sign anything before your community has made its decision. Be aware that government officials and investors acting in bad faith may misuse any documents you have signed as false proof that you have consented to FPIC .

WRITE DOWN AND/OR MAKE AUDIO AND VIDEO RECORDINGS OF EVERY INTERACTION WITH THE PROJECT DEVELOPERS

Keep a record of every interaction with the project developers, including phone calls, **if it is feasible and safe to do so**. It is best to keep copies of any letters, emails, or text messages that you send to or receive from the investor or the government. Keeping notes and documents can be especially helpful if:

1. Confusion or conflicts arise about what your community and the project developers agreed upon;
2. You do not give consent and face retaliation for your decision;
3. You do give consent and the investor or the government breaks the contract you have negotiated;
4. The project desecrates sacred sites, pollutes your environment, abuses your human rights, or otherwise harms your community; and/or
5. The project restricts community access to forest, lands, waters, and other resources that your community depends upon for your livelihoods, among other negative impacts.

In any of these instances, if you decide to take the investors to court, recording every conversation and keeping all papers will provide evidence to back up your case.





PREPARE YOURSELVES INTERNALLY

1. Articulate your community's priorities

It may be helpful to talk as a community and come to agreement about certain foundational aspects of how your community will respond to potential future projects or investments that will initiate an FPIC engagement. Some factors you might consider discussing include:

- What is your community's vision of a flourishing future? This vision may be placed at the center of all discussions and negotiations with investors and government officials seeking resources. (*See Appendix D* for an activity to help guide your community to clarify a unified future vision.)
- Are you willing to allow an investor to use your lands? It is likely that community members will be divided about this question, with some community members eager for the jobs and opportunities that may come with investment, and others strongly opposed to investment. It may be helpful to discuss and debate this question so that everyone can understand the range of community opinions in advance of an FPIC engagement.
- If you are open to investment, what are your community's "non-negotiables?" These could include, for example, geographic areas that are off-limits to outsiders (such as sacred natural sites, burial areas, archaeological or historical sites, areas where endangered plants are harvested, key watershed areas, arable lands, etc.). Non-negotiables might also include prohibiting certain technologies or extractive practices.
- What kinds of projects might benefit your community with minimal harm, and what kinds of projects would you reject outright on the grounds that they will cause significant harm?

2. Strengthen community unity, make space for divergent opinions, and ensure that good conflict resolution systems are in place

Community cohesion—the sense of togetherness and shared values between members of a community—is essential for inclusive, peaceful, and effective participatory decision-making around issues of land and resource use and management. Without community unity, it will be much more challenging for your community to navigate FPIC discussions, decide whether or not to give your consent, and negotiate any resulting contracts if you do consent.

Strengthening your community's unity will also help to prevent manipulation by investors and government officials who act in bad faith to increase disagreement and disunity within an Indigenous community, take advantage of divisions within a community, or who try to "divide and conquer" a community to make sure that they get the community's consent. Communities that are clear about their governance and have fostered internal unity are more resilient in face of such divide-and-conquer tactics. Your community may want to brainstorm strategies that will help you remain united during interactions and negotiations with potential investors.

It may be useful to **make a plan for how you will address conflicting opinions and manage conflict throughout FPIC discussions**. Community members may have different opinions about how best to respond to the proposed project, and internal conflict may result. Your community may already have an effective traditional system to address conflict; if not, you might want to develop a conflict resolution plan to manage disagreements among community members.

You may also want to **design a communication plan that ensures that project information is shared with the whole community in efficient, transparent ways**. It is important to make sure that the decision-making process is not subverted by community elites, politicians, or by only one "subgroup" within a very large community. If your community does not already have traditional information-sharing practices, it may be helpful to create a plan for how you will make sure that all community members actively take part in important FPIC meetings and decisions.

INVOLVE THE WHOLE COMMUNITY

Transparent, collective decision-making processes that ensure equal participation of all community members based on your own traditional systems of organization will help your community make better decisions about FPIC protocols. For example, some people may know the location of certain medicines and foods that others do not know about, while some may know about certain hunting or fishing spots that others are not aware of. Similarly, spiritual leaders may need to mark the boundaries of secret sacred areas. **Without everyone's participation, your community might end up consenting to an investment project that harms a particular subsection of the community.** While your community likely has its own traditional ways of ensuring that everyone is involved in important decisions, it is a good idea to think about systems that you can put in place to make sure that everyone has a voice in FPIC considerations.

You may also want to think about how you might **cooperate and coordinate with neighboring groups and communities.** Often, several communities, both Indigenous and non-Indigenous, are affected by one project. Project developers may try to negotiate separately with different groups as another way of dividing and conquering. Collaborating and sharing information can lead to improved outcomes for all affected groups.



3. Define the boundaries of your land and mark which areas are reserved for community use

Your community may want to make sure that the boundaries of your territory are clear. You may also want to look at a map of your lands and mark which areas are reserved for community use, including, but not limited to: important water points that are necessary to your community's present and future water security; farmable lands, rich forests, or grazing areas that are critical to your food security; sacred natural sites and burial grounds that are central to your spiritual relationship to your land; and residential and market areas. If your community is open to potentially granting consent to an investment project, demarcate what land you are willing to lease to an investor and what land must remain under your community's control.

Every Indigenous community has its own ways of making decisions and its own traditional and cultural structure. Your community's FPIC engagement can be driven by your pre-existing, traditional structures - and all decisions can be made according to established practices.

4. Understand your legal rights to your lands and ecosystems under national laws

It is important to know what your formal rights to your land are within the national legal framework of the country where your land or territory is located, as those rights will likely impact how the government approaches FPIC. Work with a lawyer, paralegal, or advocate to find out your legal rights. Look especially at your country's **environmental law, forest law, water law, subsoil resources law, contract law, investment law, and compulsory acquisition law** (sometimes called "eminent domain"). [See Appendix E](#) for groups that can help connect you to national and international organizations that support these services.

It is also helpful to understand government processes for approving investment projects, including any required public hearings; the types of permits and licenses that an investor must receive from the government; and other conditions that governments often place on investment projects. Understanding these processes may help you to influence government project approval processes, and/or to demand and verify proof that the potential investor has followed government protocols and has a legal right to operate.

Also, some countries have laws and policies regulating the foreign investment of companies registered nationally. If the project is being developed by a foreign investor, you may want to look into the laws that corporations in that country must follow. Those laws may be useful to eliminate harm and force good behavior by foreign investors.



Community members learning about their legal rights to FPIC.

5. Learn how investors and government officials understand the monetary value of your lands and resources

You may want to **research urban and rural land markets in the country your land or territory is located within** to see how much land sells and rents for on the market. If the proposed project involves extracting resources from your lands, you may also want to understand national and global markets for these resources. (For example, if it is a logging project, you may want to research global timber markets.)

It may also be helpful to **understand the monetary value of your lands and resources to yourselves, so that you can communicate this clearly to investors and government officials**. Common lands like grazing areas, forests, and wetlands provide enormous value to Indigenous communities. However, for community members accustomed to gathering household

necessities like firewood, medicinal plants, and wild fruits and vegetables from these common areas for free, their monetary value may be hard to calculate. *If your community does not understand this monetary value, you may agree to lease your lands to investors for much less than the value you are currently getting from them.* While certain resources are impossible to put a value on (such as sacred sites, burial grounds, etc.) other resources like firewood for cooking may be more easily valued. **See Appendix C** for how to calculate the value of resources you are gathering from your common lands. Communities who have completed this exercise usually find that **they are gathering resources from their common lands that have a value of more than \$1 million USD every year**. Once you have calculated the monetary value that you are getting from your lands and resources, you can use that value in discussions and negotiations with investors and government officials.

VOICE YOUR OWN FPIC PROTOCOL

As described in **Part 1**, Indigenous Peoples are increasingly writing their own FPIC protocols, so that if/when an investor arrives seeking land and resources, they have clearly set out in writing their desired FPIC process and can exercise greater control over the FPIC engagement. While having your own FPIC protocol is not required, it is a good idea to write an FPIC protocol that sets out how your community wants to be consulted and ensures you are able to meaningfully exercise your rights. The following list reflects analysis of the FPIC protocols already drafted by Indigenous Peoples, as well as other good practices. Your FPIC protocol might include:

1. An introduction that provides background about your community and why you have decided to develop your protocol

This section might set out:

- Your history as an Indigenous People;
- Your unique ties to your lands and territories historically, culturally, spiritually, and in terms of livelihoods;
- Your worldviews, values, spiritual beliefs, and cosmology;
- Your relationships to your land and resources;
- A description of your traditional way of organizing and decision-making (and the importance of collective decision-making in your culture, if applicable);
- Your community's future vision for a fully flourishing, thriving community;
- A description of how your traditional livelihoods are interwoven with your lands and ecosystems;
- A comprehensive description of your land or territory and any formal titles or deeds to that land; and
- Any other relevant information that describes the rationale behind your protocol.

2. What kinds of projects you will NOT accept

You can include in your protocol certain pre-identified activities that you will not give consent to. For example, you might refuse to entertain large-scale hydroelectric projects that will destroy local watersheds, dry up local aquifers, and impact your water security.

- It is best to describe why you are rejecting these activities, explaining your decision with evidence of how such projects will pose a threat to your community's continued survival, food and water security, or spiritual practices.
- If you include a list of prohibited activities in your protocol, you can clearly state that while you do not reject consultation, you have already made a decision on the project, and that your decision to withhold consent has already been taken and is formally documented. (This position is consistent with the legal argument that consultation is a right, not an obligation, of Indigenous Peoples.)
- You might also affirmatively proclaim that relocation and settlement is unacceptable and that any project that requires your relocation will automatically result in your withholding of consent.

3. Preconditions for meaningful consultation

Your protocol might set out certain tenets that must form the foundation of an FPIC engagement, including:

- That all parties involved in the process recognize your lands, territories, and resources as understood by your community, even if not formally titled;
- That the State and all government officials must acknowledge, respect, and protect your legal rights under international and national laws;
- That the State and all government officials must acknowledge your traditional governance, including all structures and institutions and your Indigenous legal framework; and
- That the State and all government officials must give Indigenous knowledge the same weight as non-Indigenous knowledge throughout the engagement.



4. A code of conduct aligned with your cultural etiquette

Your protocol can set out how people will be expected to treat one another and speak to one another during engagements.

5. Practices that will render any FPIC process, and thus any “consent,” null and void

Your protocol might list the full range of practices that will automatically void an FPIC engagement, including:

- The use of violence, threats, harassment, or intimidation;
- Arrest, persecution, the presence of armed groups during consultations, and the use of State force;
- Bribery, offers of gifts and rewards to leaders and individual community members, and other efforts to corruptly influence outcomes;
- Purposefully creating internal divisions within the community or between communities;
- Failure to provide critical information about the project knowingly, in bad faith;
- Falsification of signatures or proof of consent and other bad faith actions you might anticipate investors and government officials taking; and
- Refusal to recognize your right to withhold consent (if you do not consent).

6. Timing FPIC discussions before State decision-making

Because many governments initiate an FPIC process *after* government officials have issued permits and licenses or signed investor-State contracts, your protocol might clearly state that FPIC discussions must take place:

- Before the government grants any licenses or permits;
- Before the exploration phase of a project starts;
- Before an investor-state contract has been signed;
- Before the planning and implementation phase of a project;
- Before an impact assessment is done; and
- Before any new stage of a project or any major new development of an existing project that your community has already consented to.

7. The timeline for, and stages of, an FPIC engagement

Your FPIC protocol can require that the process take account of your community's internal decision-making processes and be composed of **multiple meetings over an extended period**, so that your community has time to fully consider the project and decide your response. Your FPIC protocol might also prescriptively set out the various steps of how your required engagement standards for FPIC will proceed.

8. The logistics of all meetings throughout FPIC engagements

Your protocol might require that various logistics take place in a specific way, including:

- **Meeting location: All meetings will be held in your territory.** It is best if the location of the negotiations is easily accessible to all community members and negotiations take place in a space in which you feel comfortable. If possible, it is helpful to meet outside or in an open space to allow for the participation of all community members.
- **Meeting language: All meetings will be held in your own language, with translation for non-speakers (rather than translation for your community).** Your community must be able to understand and communicate freely throughout all FPIC discussions. You can require that meetings are held in your community's language with interpreters on hand to interpret for the investors and government officials.
- **Who may be involved in the meetings:** Your community may want to establish that you have the freedom to invite third parties like journalists, lawyers, technical experts, and other advocates to the meetings, and to have a say in which company representatives you are dealing with, as well as how many government officials may take part.
- **What funding will cover all stages of an FPIC engagement:** An FPIC process requires many meetings, translation services, and printing of documents, all of which cost money. In many contexts, the investor is required to cover all costs; your protocol can require this. Your community may want to mandate in your protocol the institution of systems that ensure that costs are covered in a way that does not influence or manipulate the FPIC engagement process.

- **Meeting coordination and planning:** who will lead these processes, as well as who will lead the meetings.
- **Documenting and recording:** Ideally both will be handled by trusted, neutral observers and by community members.
- Any other details that your community feels are important.

9. What information you will require to ensure you are informed, and how you want to receive that information

Your protocol can require information in both oral and written forms, translated accurately into your Indigenous language. See below for more information about what information you can require.

10. The process of deciding whether to give or withhold consent—and procedures to ensure that a majority of community members are involved

Your FPIC protocol might include details about how your community will make the decision to grant or withhold consent, including strategies to ensure that a majority of community members are involved in that decision.

Indigenous Peoples consent must be sought before project activities begin, in the project’s design phase: before the government any permits and/or licenses, before the exploration phase of a project starts, and before an investor-state contract has been signed.

Your protocol may:

- Require that you make the decisions according to your traditional decision-making processes;
- Require that the community as a whole makes the decision, rather than individual leaders making this decision on their own;
- Require that all FPIC discussions are inclusive and participatory, and that women, youth, men, Elders, and practitioners of various livelihoods, all participate in the final decision-making process; and
- Create oversight strategies to make sure that everyone’s opinion has been taken into consideration.

11. How the investor or government must act when the project will affect multiple Indigenous Peoples

Your protocol may want to set out how FPIC discussions should proceed when different groups will be affected. For example, if the project will affect a vast landscape like a mountain range or a watershed, various Indigenous Peoples may be impacted. Similarly, a dam might impact many different groups who all share the same river. Your protocol could:

- Claim your right to organize as a group;
- Forbid the investor from pursuing “divide and conquer” strategies between groups;
- Set out how you will cooperate and make decisions as a group;
- Set out strategies for addressing divisions between or within communities or Peoples; and
- Any other issues relevant to inter-community coordination.

This list of what to include in an FPIC protocol is only a suggestion. Your community can include whatever you see best according to your culture, preferences, interests, and goals.

WHAT IS “PRE-CONSULTATION?” IS IT A REAL CONCEPT IN INTERNATIONAL LAW?

There is no such thing as “pre-consultation.” Some investors and governments use the term “pre-consultation” as a way of describing the conversations about how an FPIC engagement will proceed. This concept does not exist in international law.

Defining and deciding how an FPIC process will proceed is the *first* step of an FPIC engagement. It is not a separate process. Your protocol can clearly state that “pre-consultation” does not exist, and that your community’s established FPIC protocol *includes* determining the logistics of the process itself.





CONSIDER LEGAL AND TECHNICAL SUPPORT

When your community is approached by a potential investor or government official seeking land, it is best to get legal and technical help as soon as possible. FPIC engagements can involve complicated legal and technical information and are often characterized by severe imbalances of power; the government and investors often have much more information and power than communities. You have the right to get independent legal and technical advice to help you understand the proposed project at the same level as everyone involved in the project.

Your community might ask lawyers, paralegals, or legal advocates to provide:

- Education and training about your legal rights under national and international laws;
- Advice on complex legal issues;
- Legal advice during interactions with the investor; and
- Legal power and authority during negotiations.

Most importantly, if you choose to give your consent, lawyers, paralegals, and advocates can review drafts of any resulting agreement to make sure that it fully protects your community and will actually lead to future prosperity and thriving. They can also ensure that the agreement is properly documented in a formal contract that is enforceable in a court of law.

Your community might ask technical experts to help you to:

- Access and understand project documents, including business plans, environmental studies, and impact assessments;
- Understand the project's potential economic, environmental, and social impacts;
- Determine the likely risks and benefits of the proposed project;



Community members meeting with their own lawyer, presenting their desired outcomes, and seeking legal advice.

- Understand the market value of your land, the expected annual profits the investor will gain from the venture, the overall net worth of the company, and other financial information necessary to negotiating a fair community-investor agreement; and
- Negotiate with investors from a place of knowledge and technical empowerment.

Lawyers and experts are expensive, and payment for these professionals' time may be a challenge for some Indigenous communities. **If your community cannot afford to hire your own lawyers and experts, there are NGOs and international organizations in every country that may be able to provide free legal and technical support.**

Alternatively, **your community can ask the government or the investor to provide legal assistance or pay for your community to receive legal and technical help.** However: If the government or the company agrees to pay for a lawyer or expert to help your community, **proceed with extreme caution as this may create a conflict of interest.** The lawyer may not have your best interests in mind, as their goal will be to compromise with the company. If you decide to go this route, your community should make sure that you have the right to choose and hire your own lawyers and experts; you are deciding the goals that the lawyer or expert is helping you to achieve; the lawyer is not actually advising you in the company or government's interests; and that all the money needed to pay for the lawyer or expert's services is provided *in advance*, so that the funds don't run out before you have received all the legal help you need.

LEARN ABOUT THE PROJECT'S INVESTMENT CHAIN AND ITS PRESSURE POINTS

As soon as you learn that an investment project may affect your community, start research to understand who is backing the project financially. Find out which corporations, banks, and private investors are involved. Large projects usually involve a mix of private and government interests, including businesses, financial investors, and government officials acting either as representatives of the State or on their own behalf as co-investors. Global corporations often create national subsidiaries with a different name to do their work in a given nation. There may be as many as four or five levels of subsidiary companies. As a result, it may be hard to find information about the project developers. You may find that the project involves many different companies in a complicated investment chain regulated by laws in many different legal jurisdictions. A variety of funders may also be financing the project, including multilateral investment banks and international aid agencies. It is helpful to understand the entire investment chain, including where parent companies, subsidiary companies, and investors are legally incorporated, and what laws apply in each of those countries.

The project planners and developers may include:

- Your government, or a government actor acting on their own behalf as a front for the investment (who is often being paid to do so);

- The government of another country;
- An international company;
- A national subsidiary company;
- A local government authority, such as a national ministry or department;
- A bank or international financial institution (such as the World Bank, the Asian Development Bank, the African Development Bank, or the International Finance Corporation); and/or
- International investors and national financial backers.

Once you know who is developing the project, you can identify who should be seeking your consent and determine where you can apply pressure to make sure that a proper FPIC process is followed. Knowing the complete investment chain can help you identify the most effective pressure points to target along that chain, if necessary. Somewhere among the investment chain will be an institution, company, or individual who has a reputation to protect and who will not want to be publicly exposed as having violated Indigenous Peoples' rights. If it is difficult to find information about the project, you might seek assistance from local and international NGOs or the media (including international newspapers and industry magazines) who may have information about the planned project.



THE NEGOTIATION PROCESS

03



Community leaders and members demanding information, so that they can be fully informed.

If your community has not yet written your own FPIC protocol but are approached by investors and/or government officials seeking resources, you may want to follow the steps outlined in this section as soon as an investor and/or government officials arrive in your community. You can request that the first FPIC consultation meeting take place far enough in the future to allow your community to have the time necessary to prepare, get organized, and be ready.

NEGOTIATING IS NOT CONSENT

As an Indigenous community, you have the right to negotiate with the project developers. Talking with or negotiating with investors and government officials does NOT mean you consent to the project. You are simply claiming your right to obtain information about the project and to negotiate towards a potential consent. You have the right to negotiate for weeks and then ultimately decide to withhold consent.

Engagement around FPIC should take care to ensure that Indigenous Peoples have **no cause to fear the use of force**. In many projects, companies cooperate with the police and military to “keep the peace and order” around their operations. This can be an intimidation tactic, with the implicit threat that people who oppose a project may be arrested or personally harmed. To ensure that consent is given freely, unwanted **security forces should not be present at meetings or on Indigenous lands during the negotiation and decision-making process**. Any FPIC engagement where Indigenous Peoples feel intimidated does not meet the requirement of Free, Prior and Informed Consent.



Once your community and the investors and/or government officials seeking land and resources for a potential investment or infrastructure project begin a formal FPIC engagement, your community may want to take certain steps, including:

1. Choosing who will represent your community in all FPIC discussions and negotiations;
2. Communicating your required and desired FPIC protocol to the investors and government officials you will be meeting with and agreeing on how the process will proceed;
3. Documenting the process (to create evidence that you might need later);

4. Making sure you are fully informed;
5. Negotiating changes to the proposed project necessary to avoid risk and harm;
6. Negotiating what benefits and positive impacts the government or investor must provide if you consent; and
7. Making a decision to either give or withhold your consent.

Each of these steps are described in more detail on the following pages.

Talking with or negotiating with investors and government officials does NOT mean you consent to the project. You have the right to negotiate for weeks and then ultimately decide to withhold consent.



CHOOSE WHO WILL REPRESENT YOUR COMMUNITY IN ALL FPIC DISCUSSIONS AND NEGOTIATIONS AND PREPARE THEM FOR THIS ROLE

While your community may have traditional leaders or respected Elders who are best placed to speak on your community's behalf, it may be helpful to select a special "FPIC team" that consists of leaders, respected Elders, women, youth, and community members with special skills or knowledge necessary to your community's self-determined FPIC engagement. It may be useful for your negotiating team to include people who can:

- Firmly hold the community's best interests at the center of all negotiations, even in the face of investor pressure and/or intimidation;
- Communicate clearly and listen carefully (not only to what is being said, but to what is not being said);
- Harmonize a range of community opinions, interests, and concerns into a clear strategy;
- Understand technical reports and legal documents;
- Confidently ask for clarification when something is unclear;
- Take notes and videos that capture what has been discussed and decided in all meetings;

- Regularly update your community on the course of negotiations and seek additional feedback;
- Ensure that the full community and the negotiation team are in agreement; and
- Create a plan to manage conflict within the community.

When deciding who will represent your community, you might discuss the following questions:

- What skills and qualities should our representatives have?
- What roles and responsibilities will each member of the negotiation team have?
- What decisions can the negotiation team make independently? What decisions require the consent and agreement of the whole community?
- How often, and in what format, should the negotiation team update the community, feed information back to the community, and seek our input?



It may be helpful to select a special "FPIC team" that consists of leaders, respected Elders, women, youth, and community members with special skills or knowledge necessary to your community's self-determined FPIC process.



AGREE ON HOW THE PROCESS WILL PROCEED

IF YOUR COMMUNITY ALREADY HAS AN FPIC PROTOCOL THAT YOU DRAFTED IN ADVANCE

You can simply hand this document to the investors and government officials and request that they follow your chosen process. However, **the consultation or engagement laws of the country where your land or territory is located may require much less of the company than what your community's FPIC protocol sets out.** This may make it less likely that the investor or government will fully comply with your protocol. In all cases, you will likely face some pushback—and thus may be drawn into negotiations about the process itself. You can insist upon your required process or compromise on some aspects, so long as the integrity of your FPIC protocol remains.

IF YOU DO NOT HAVE A PRE-DRAFTED FPIC PROTOCOL

Be ready to articulate exactly how you would like the process to go. [See Part 2](#) for details about what you can ask for.

IF THE INVESTOR AND/OR GOVERNMENT REFUSES TO FOLLOW YOUR FPIC PROTOCOL

If the investor and/or government refuses to follow your FPIC protocol, deny your procedural preferences, or try to control the FPIC process, there are actions you can take to make sure that the investor and/or government follow established, agreed upon FPIC procedures and international standards. You can:

- **Identify national laws regarding FPIC engagement with Indigenous Peoples and insist that those laws are complied with.** Make sure that the investors and all government officials know what national laws say about FPIC and insist that the legally required FPIC process is followed.

- **For investment projects, identify the industry's FPIC standards and require that those standards are met.** Various industry-specific oversight bodies have established FPIC requirements. If the investor refuses to comply with the industry's FPIC standards, you can file a complaint with the oversight body directly. (For example, if it is a palm oil project, you can require that the investor follow the procedures set out by the Roundtable on Sustainable Palm Oil, and file a complaint with that body if the investor fails to do so.)
- **For government infrastructure projects, identify the funders' FPIC standards and mandate that the government follows those standards.** Government infrastructure projects are often funded wholly or in part by international development banks, each of whom have their own FPIC requirements. For example, if the project is funded by a multilateral bank and the government does not comply with the funding institution's FPIC standards, you can file a grievance with the bank.
- If the project is being carried out without any international funding and is within an industry that has no oversight body, **identify anyone else along the project's investment chain you can pressure to ensure that your FPIC protocol is followed.** Your community may want to collaborate with national and international media and civil society for help pressuring the actors and institutions you have identified.

If required processes are not respected, there are various actions you can take to challenge the violation. ([See Part 4](#) for information about how to file grievances and make complaints.)



DOCUMENT THE PROCESS IN REAL TIME

If it is safe to do so, it is best to video- or audio-record all meetings and interactions, taking photos and notes as possible. You may want to upload this documentation to the public domain to create a public record of the FPIC engagement. You may also consider inviting journalists to cover the process if it is safe for them to do so. Take care to create evidence in a way that will strengthen your position, but be aware that this documentation might incite the investor or government officials to begin a campaign of intimidation, violence, or coercion. If this

happens, documenting evidence of any threats or intimidation will be especially necessary—though this may put community members in even greater danger.

Work with advocates and lawyers to **find ways of safeguarding your evidence and documentation**: there are ways to wipe mobile phones clean in seconds, as well as online sites to safely and securely store your videos and photos.)



Indigenous youth recording a meeting with potential investors.

MAKE SURE YOU ARE FULLY INFORMED

Make sure you are aware of and fully understand all potential negative impacts and outcomes of the proposed project. It is important not to rely only on information the investors and government officials give you. Project developers may try to make the project seem attractive in order to get your consent. Information from other sources will ensure you fully understand the project and its potential risks and benefits.

The positive effects of an investment may include improved infrastructure (roads, water supply, electrical supply, cell towers, schools, hospitals), jobs for community members, annual rent paid to your community, links to markets and services, and other benefits your community might negotiate for.

However, it is just as often that:

- Air, soils, and waters are polluted, and animals and plants may be endangered;
- You may lose access to forests, water bodies, grazing lands, fishing areas, and rights of way necessary to your livelihoods, survival, and well being;
- You may be pressured or forced to move off your lands;
- Roads may bring pollution or endanger children because of heavy trucks going back and forth all day;
- Electricity and water may be brought to the investment but not shared into the community;
- The promise of jobs may go unfulfilled, the company may only hire menial laborers from the community, jobs may be temporary, or workers may go unpaid for months;
- Company workers may bring violence, alcohol, drugs, and prostitution into your community, rape local women and children, gather local resources unsustainably, claim lands for their own use, and otherwise create health and safety risks for communities, among other negative outcomes.

To make an informed decision about whether to grant or withhold FPIC, it is critical to get a complete picture of the project and its likely impacts. There are a variety of sources of information that your community may want to review. These include:

1. A complete Environmental and Social Impact Assessment;
2. All other project documents ([See page 34](#));
3. The experiences and advice of other communities who live with a similar kind of project (mining, logging, agribusiness, tourism, wind farm, etc.);

4. The experiences and advice of other communities who live with other projects with the same investor in other regions or countries; and
5. The full investment chain of companies, funders, institutions, and banks who are behind the project.

Your community may want to visit other communities to see firsthand what living with a similar project looks and feels like. You may also want to research if there have been any lawsuits filed against the potential investor, and the outcomes of those lawsuits.

ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS



(ESIAs) predict the environmental and social consequences of a future project. Many countries have laws requiring that potential investors undertake impact assessments. Impact assessments are carried out by technical experts and: 1) assess the likely impacts of a proposed project and 2) offer recommendations for how to avoid or reduce any negative impacts on the local environment (including air, water, and soil quality), and on the health and overall well-being of the community.

ESIAs might not be completed until after negotiations have started. Your community can request that these documents are made available as soon as possible and postpone giving or withholding consent and signing any agreements until you have seen and understood them.

Work with a lawyer, paralegal, or advocate to find out what your country's requirements are concerning impact assessments. You may want to require that:

- Your community take part in selecting the team who will do the ESIA;
- The ESIA team include professionals who have experience working with Indigenous Peoples and will include Indigenous Peoples' concerns in their reports;
- Measures to minimize or mitigate risks are incorporated into the project design; and
- The ESIA is accompanied by a monitoring and evaluation plan, to identify and address evolving risks.



WHAT DOCUMENTS TO REQUEST TO MAKE SURE YOU ARE FULLY INFORMED:

Your community may want to ask the government and/or the investor for the following types of documents and information:

- 1. The investor's business plan:** Investors are often required to submit a business plan to the government before beginning an investment project. The business plan will provide information about how the investor plans to develop the land, including a detailed work plan and timeline. The business plan may also have information about the investor's expected annual profits and expected profits over time.
- 2. The feasibility study:** National laws often require investors to carry out "feasibility studies" that investigate whether the proposed project is practical and likely to make a profit.
- 3. Any permits, licenses, and investor-State contracts:** Investors often have to obtain specific permits or licenses from the government to carry out their activities. In some cases, the investor must also negotiate a contract with the government before it may carry out its project. Such permits, licenses, and contracts require the investor to do (or not do) certain things on or near the community land. If there is already a signed investor-State contract, it may limit or increase your bargaining power with the investor.
>> Communities should not take the investor's word that they have the government's permission to carry out the project and should demand to see copies of the necessary licenses or permits. If the investor refuses, the community should get this information from the relevant government agencies.
- 4. An Environmental and Social Impact Assessment and any environmental scoping reports that have been done:** Environmental scoping reports are often carried out in the early stages of project planning before a full Environmental and Social Impact Assessment is conducted. A scoping report will give a briefer assessment of the proposed project's environmental risks, as well as recommendations on how to avoid or reduce potential negative impacts.
- 5. The investor's reputation, track record, or performance on other projects:** Communities may want to request information about the investor's other projects, including documents showing how those projects have performed over time. This information can help make clear how the company usually operates, including whether it respects human rights and follows environmental laws.

To ensure that you can understand the documents you receive, you can request that:

- These documents are translated accurately by an impartial/neutral translator into your Indigenous language and made available in written and oral form (for example, a video or audio recording that community members can repeatedly watch or listen to);
- You are given all the time you need, within reason, to review the documents and understand them;
- Copies of relevant documents are left with you. If this is not possible, you can take photos of each page of the documents with a smartphone and then print each page for further review;

- You have an opportunity to ask project developers questions about the documents; and
- The technical and legal professionals working for you are present at all meetings when information is shared and can ask questions and demand additional information on your behalf.

If the government or investor refuses to give you all or some of these documents, work with your lawyers, paralegals, or advocates to find out if the country your land or territory is located within has passed a Freedom of Information Act (FOIA) that allows citizens to request information from the government (called a "FOIA request"). Filing a FOIA request will force the government to give you the documents.

NEGOTIATE CHANGES TO THE PROPOSED PROJECT NECESSARY TO AVOID RISKS AND HARM

Once you have received and understood all the information about the project, the investor, and the laws protecting your rights, it is helpful to work with lawyers, technical experts, and advocates to:

- Make a list of all of the project's expected risks and potential harms;
- Make a list of what parts of the project you would like to be changed to reduce those risks; and
- Make a list of how your community would suggest changing the project to reduce risk. (Don't wait for the investor or government to propose the changes—identify your own.)

It may be helpful to share these lists with the investor and government officials in advance so they can be prepared to discuss each risk/harm in depth.

Then, in a meeting with the project developers, discuss each risk and potential harm, ask all of your questions, and push the project developers for concrete, specific answers. Negotiate how the project can be changed to reduce risk. The Environmental and

Social Impact Assessment will have made recommendations about this, so you can use the ESIA as a baseline, requiring the harm-reduction changes the report recommends, as well as any other changes you feel are necessary to protect your community from harm. Continue negotiating until you are satisfied that the project will not damage your community's environment, ecosystems, water sources, soil and air, health, access to sacred natural sites, culture, and social fabric. You can also negotiate for changes to the project that will positively impact your community; for example, the creation or siting of company infrastructure that will make life in the community better.

A community's decision to enter into negotiations does not mean that the community promises that an agreement will be reached or has given consent. Negotiation is a process, and the end result depends on whether the parties are able to reach an agreement that both sides are happy with.



Community reviewing an investor's business plan and discussing whether to grant FPIC or not.



NEGOTIATE WHAT BENEFITS THE GOVERNMENT OR INVESTOR MUST PROVIDE IF YOU CONSENT

Allowing an investor to use your lands will bring changes to your community that will be impossible to balance out with money, infrastructure, and other forms of “benefits.” However, if you decide to negotiate for benefits that the government or investor must provide to you in exchange for the use of your lands and resources, it is critical that you are explicit about what you ask for, and that you are specific about the details of how these benefits are provided. For example, when asking for the construction of a medical clinic, require that the doctors, nurses, beds, machines, and medicines necessary for the clinic to function are also provided and paid for over the entire lifetime of the project. In many instances, the state must provide certain educational and medical services; your community may need to negotiate for such benefits with both government officials and investors.

To understand the value of the benefits you can request, you might want to:

- Understand the **investors' expected annual profits**;
- Research **urban and rural land markets in the country your land or territory is located within**, and in surrounding countries, to see how much land sells and rents for on the market; and
- Do the Valuation Activity in **Appendix C** to understand the **market value of the resources you will be losing access** to if you grant the investor or government the land they are requesting.

Benefits you might ask for include:

Rental payments and profit sharing, such as:

- Repeating payments like annual rental fees with adjustments for inflation, fixed to the cost of basic goods like staple grains. For example, \$1 in today's economy may lose half its value in 20 years; fixing the payment to the cost of a staple commodity will ensure that as the currency loses value, your rental payments retain the value you originally negotiated for);
- A fixed share of the company's annual profits; and
- Shares in the company's stock, and other forms of financial payment.

BE CAREFUL!

If you negotiate for annual rental payments, your community must create systems to ensure that the money is used for the community's authentic benefit, and that your community has a way to manage and handle the funds in a transparent, equitable and fair way.



Infrastructure development or social services (*in addition to what was already planned for the investment's own functioning*), such as:

- A medical clinic and all necessary staff and equipment (doctors, nurses, machines, medicines, beds, etc.);
 - Schools and all necessary staff and supplies (teachers, desks, blackboards, books, paper, etc.);
 - Electricity generated from alternative (non-fossil fuel) sources such as electrical, wind, or solar to all buildings and homes in the community;
 - Water, such as additional wells and/or piping into homes and buildings;
 - Telecommunications infrastructure; and
 - Improved community infrastructure, such as new/better roads and bridges.
- » If you request new infrastructure, consider including in your request details such as: who will build it, the end date by when it must be built, the specific materials it must be built of, where in the community it must be located, the periodic maintenance required to keep it functioning safely and fully, and who will pay for any required staff. Also make sure to include in your negotiated agreements penalties if the investor does not complete the infrastructure project according to the agreed upon timetable.

Jobs and technical training, including:

- A fixed number of full-time and part-time jobs, and a certain number of skilled jobs (such as management positions or office employment) for Indigenous community members;
- That jobs are given to a range of Indigenous community members, including women and youth;
- That a certain percentage of the company's workforce is composed of community members (large numbers of workers who come into the community from outside may negatively impact your community);
- Technical training to ensure that Indigenous community members can fill the positions available, including management and technical positions;

- A certain number of annual scholarships to send community youth to secondary school and university, if desired by your community; and
- Preferential contracts to community members (for example, to cook lunches for workers or provide input necessary to the project's functioning, among other job-related benefits).

Be specific: Investors often promise to create many jobs for community members, but then only hire a few community residents, or hire a large number of residents and not pay them well. Communities requesting that the investor create employment may want to ask for: specific salaries for each kind of job, various benefits that might come with employment, and consequences if salaries are not paid on time. You might also consider requiring certain workplace standards, including reasonable hours, fair treatment, and penalties for worker abuse or poor working conditions.

MAKE A DECISION

Once your community has accessed all relevant information, understood all risks, and engaged in a full consultation and negotiation process with the company, you will be ready to discuss the project internally and decide whether to grant or deny your Free, Prior and Informed Consent.

Make the decision according to your traditional decision-making processes. Your community has the right to make a decision in accordance with your own traditional decision-making processes. In every aspect, your community has the right to self-determination, which includes *deciding how you will decide*. Free, Prior and Informed Consent is a *collective* right: in alignment with your traditional processes, it is best to involve all community members in the decision. As explained above, transparent, collective decision-making processes that ensure equal participation of all community members can help your community arrive at the best decision for your community.

Document your granting or withholding of consent. Once your community has made its decision, document your decision in writing and in photographs and videos, as culturally

appropriate. The written document should clearly state whether you gave or withheld consent and affirm that the decision is binding and enforceable. If you have decided to give your consent to a project, you may want to include in the document (as an appendix) the terms upon which your consent is based, and everything you have agreed with the investor and/or the government. This can then form the basis for the written contract. You may also want to include any concerns you have in case of a future grievance or dispute.

This document may then be given to the investor, your government, and all project developers and funders. It may be useful to make it available to all neighboring communities and to share it with national and international media, and any other interested parties that your community believes should get a copy.

If your community decided to give your consent, make sure your agreement is written up in a legally-binding contract with the investor, project developer, and/or government that *fully* documents everything you have agreed to. [See Part 4](#) for more information about turning your agreement into a formal contract.



THERE IS NO AUTHENTIC CONSENT IF YOUR COMMUNITY FEELS COERCED

In order for the consultation and consent to be “free,” Indigenous Peoples must not be subjected to any form of coercion during the negotiation and consultation process. This includes explicit and implicit threats of force or retaliation, as well as bribery and other forms of corruption. If your community feels coerced to consent, document your experiences (if it is safe to do so). You may be able to challenge the process in court and get your consent nullified.

YOU CAN STILL SAY NO AFTER NEGOTIATING ALL THE DETAILS

It is within your rights to fully negotiate every aspect of a potential project, including what changes must be made to the project to reduce risks and what benefits will be paid to your community, and then, at the end, decide not to grant consent.

YOU CAN REJECT PARTS OF THE PROJECT AND CONSENT TO PARTS OF THE PROJECT

Depending on the project, your community may accept some aspects or elements of the project and reject others. For example, you might accept a processing plant but refuse to grant consent to the mining or agribusiness activities that generate raw materials for the project, or vice-versa.



Community refusing to give Free, Prior Informed Consent.

FPIC AND THE LIMITS OF NATIONAL LAWS

While some countries have passed laws that require FPIC or mandate consultation processes with Indigenous Peoples, no country yet protects Indigenous Peoples' right to FPIC to the minimum standards set forth by the United Nations Declaration on the Rights of Indigenous Peoples.

If the laws and regulations of the country your land or territory is located within require Indigenous Peoples' Free, Prior and Informed Consent as a prerequisite for project approval, then your refusal to give consent may be able to fully stop a project from happening within your territory. In other countries, a *consultation process* is all that is required by law, regardless of what your community decides. Some countries require Indigenous communities' Free, Prior, Informed Consent for agribusiness, logging, and alternative energy projects to go forward, but not for mining projects (in many countries, the government holds all subsoil rights). **If you decide to withhold consent, seek legal advice to understand how much power your refusal to grant consent will have.**



Free, Prior and Informed Consent is a collective right: in alignment with your traditional processes, it is best to involve all community members in the decision. Transparent, collective decision-making processes can help your community arrive at the best decision for your community.



AFTER THE DECISION ABOUT FPIC: NEXT STEPS

04



Community challenging a sham FPIC process in court.

Once your community has decided to grant or deny your consent, there are a variety of follow-up actions you may want or need to take. If you refused to consent, you may need to take legal, public, or political action to have your decision respected. If you did grant consent, you must make sure that the terms of your agreement are **documented in a legal contract** and set out clear **monitoring processes, complaints procedures, and dispute resolution strategies**. These efforts are briefly described on the following pages.

SOME STRATEGIES MAY CREATE SERIOUS RISKS FOR COMMUNITY MEMBERS. GET LEGAL ADVICE.

Seek legal advice to ensure that you understand the potential legal, political, social, economic, and physical consequences of each strategy. For example, denying your consent and then continuing to oppose a project might place community leaders' and community members' safety in jeopardy, and may create risks of detention or criminalization.



IF YOU REFUSED: ENSURE THAT YOUR REFUSAL IS ACCEPTED

If your community withholds consent, seek legal counsel on your rights under domestic law. A lawyer can advise your community about potential legal strategies that you can pursue to assert your right to say no.

If your community does not have the right to withhold consent—for example, regarding a mining project in a country where the government holds all subsoil rights and has not adopted the Declaration or passed a national FPIC law—you can still pursue various strategies to oppose the project going forward. Your community might leverage the following strategies and processes:

1. STRATEGIC LITIGATION

Your community may want to file a case in court to: strengthen or more explicitly recognize your community's right to self-determination; formally recognize your right to withhold consent; or challenge the legality of government decisions to grant permissions to the company to carry out the project (including permits and licenses). You may be able to argue that the planned project will threaten your survival as Indigenous Peoples, among many other possible legal arguments.

2. CORPORATE DUE DILIGENCE PROCESSES

Work with a lawyer or NGO partner to learn what due diligence processes the investor must follow throughout the life of the project. You may be able to raise complaints or oppose the findings of due diligence assessments.

3. NON-JUDICIAL GRIEVANCE MECHANISMS AND COMPLAINTS PROCESSES

You might be able to use global industry standards or development bank protocols to stop the investor's planned project. Get legal advice on:

- Whether any industry or development bank standards apply to the project;
- Whether there is a grievance mechanism or complaints process attached to those standards; and
- What remedies or processes might be available to you if you file a complaint to stop the project/protect your community against harm.

There may be more than one grievance mechanism you can lodge complaints with.

4. ADVOCACY AND/OR LOBBYING CAMPAIGNS

An advocacy campaign can help to raise awareness of your community's refusal to grant consent, as well as any force, intimidation, violence, or coercion your community has faced in the course of the FPIC engagement. A successful advocacy campaign may put pressure on the investor and/or government to halt or change the project and fully address your concerns. Lobbying involves quieter outreach to trusted government officials or company officials who might champion your cause.



When planning an advocacy campaign, having a complete picture of the project's investment chain can be very useful. (See [Part 2 page 27](#) for a full list of who might be in the investment chain.) **Your community may also want to target the insurance companies that cover all risks associated with the company's operations.** This is a particularly strong strategy: if you can prove the investor has violated the insurer's policies, the evidence may cause the insurer to withdraw or modify conditions. **Without risk insurance, projects may no longer operate.**

Your community may want to work with international journalists and campaign-focused global NGOs that can share your community's perspective broadly. International media may be best placed to publicize your situation, as national journalists may be endangered or penalized for doing so. Work with seasoned campaigners to brainstorm tactics that may be most successful. Social media is especially powerful; a social media campaign will alert the public to harms and rights violations caused by a company, which then may change its behavior and remedy any violations to protect its reputation and/or the reputation of the institutions funding the project.

DEMAND A BINDING CONTRACT THAT IS ENFORCEABLE IN A COURT OF LAW

Those in power sign contracts among themselves, but often offer only "agreements" with Indigenous Peoples. Require that everything you have agreed is written up into a contract and get a lawyer to help you write and review it.



5. NONVIOLENT DIRECT ACTION

Nonviolent direct action can include protests, marches, and other kinds of peaceful action by community members. Such efforts can help to publicize your grievances and, in some circumstances, to delay or completely stop company operations. However, these actions may be considered illegal in the country your land or territory is located within, and thus may put Indigenous community members at risk of imprisonment or criminal charges and harassment or violence by security forces.

IF YOU ACCEPTED: TAKE FURTHER ACTION TO PROTECT YOUR RIGHTS

CONTRACT NEGOTIATIONS

The terms on which Indigenous Peoples give their Free, Prior and Informed Consent tend to be talked about as "an agreement," but this is weak law. An "agreement" dilutes the legal power of what you have negotiated and ensures that there is less enforcement power. Even if your community negotiated excellent terms and conditions for the project, if these terms are not captured in a contract protected by national and international contract law, it may be challenging for your community to enforce them.

If your community decides to give your consent, **it is best if the agreements and negotiations that led to consent are documented in a written contract that has been drafted and signed by all parties.** The investor and government officials may try to avoid a contract, as it is legally enforceable in court, arguing that the notes from your consultation are the "agreement." Insist on a signed contract and follow through until a contract is signed.

Seek the support and counsel of paralegals, lawyers, technical experts, and other advocates as you work with the investors and/or government officials to draft and finalize a contract. Often contracts are written in complicated legal language that is very hard to understand. Your community can require that the contract is written in basic, simple language that can be easily understood by both Indigenous community members (who must comply with the contract) and local government officials (who may be called upon to enforce the terms of the contract). A contract written in plain language has just as much enforcement power. Your community may also want to require that the contract is translated into your language.

The topic of contract negotiation is vast and deep. Work with your legal team throughout the contract drafting process. However, there are a few topics you should be very careful about:

- **Advocate that the contract has a short validity clause**, that it can be renegotiated every five years, for example. Around the world, there are many examples of investment contracts that have a 50- or 100-year duration, which means that there is no possibility of renegotiating the terms of the contract for generations. While the investor will likely desire a very long contract period, you have the right to negotiate an agreement that will last for only a few years, with the option to continue after assessment and re-negotiation of terms.
- **Carefully negotiate the company's exit strategy when the project ends.** Your community may want to require that the contract clearly states:
 - That the **land will revert to the community's governance and management** when the project ends.
 - **What efforts the company or government must make to ensure that when the project ends, your community has clean water, healthy soils, flourishing biodiversity, and is thriving and prospering** (based on your community's own terms for thriving and prospering). The contract can require that the company clean up, restore, and regenerate the land so that community members can use and access it as you did before the project started.
- Make sure that the contract clearly states that **your community reserves the right to withdraw your consent if the proposed activities change, if the government or the investor breaches the contract, or if new information emerges** that you should have had when making your decision.
- You may want to add into the contract that you must be informed if new research or data emerges indicating that the project activities will harm your community or pose a substantial risk of harm.



Community working with investors to draft a formal contract outlining the details of a negotiated agreement.



WHAT SHOULD GO IN A CONTRACT?

Contracts can cover many different topics – including any topic you and the government/investors have agreed upon – but the very basics that must be included in a community-investor contract are:

1. The parties to the contract
2. Your intention to be legally bound by the promises in the contract
3. A complete description of the project
4. The duration of the contract and potential for renewal
5. A description and demarcation of the land area provided to the project
6. Each parties' rights within and near the designated project area
7. A complete description of planned project's infrastructure
8. What the company will give your community in exchange for using your lands and resources
9. The process for any agreed impact assessments and compensation for damages
10. Agreed protections against environmental damage and harm to human health
11. Agreed protections against social and cultural damage, including rules for the conduct of company employees
12. The process for providing information– including company records– during the course of the investment
13. Assignment of rights
14. Review, renegotiation, and amendment of the contract
15. The agreed compliance monitoring process
16. Dispute resolution processes and grievance mechanisms
17. What laws will govern the contract
18. How notice will be given
19. Remedies: What happens if the company breaches the contract?
20. Reasons and procedures for contract termination
21. Unexpected events (force majeure)
22. What happens to the land and improvements after the contract ends (disposition of assets)
23. Confidentiality, entire agreement clause, and signatures.



MONITORING AND COMPLIANCE PROCESSES

It is critical that your community establish a comprehensive monitoring and compliance plan as part of your FPIC agreement and contract. This might include at least three parts:

1. Open communication and proactive regular dialogue. As Free, Prior and Informed Consent is an ongoing process, you can require that your community is regularly informed about the project's progress and given frequent opportunities to ask questions, raise concerns, and inspect project activities. You may want to adapt elements of your FPIC Protocol into a comprehensive communication plan that is enshrined in your contract. It may be helpful to explicitly set a schedule for regular meetings, as well as identify what events, problems, or issues will trigger a special meeting.

2. Your right to monitor project activities throughout the lifetime of the project, including, but not limited, to:

- Whether the company is carrying out the project according to the terms agreed upon during the FPIC negotiations;
- The project's impacts on your lands, soils, air, waters, animals, plants, and ecosystems;
- The project's impacts on your community's culture, social fabric, safety, health, and human rights;
- The behavior of company employees within your community;
- Whether the investor is paying the agreed compensation and providing all agreed infrastructure to the quality and on the timelines agreed;
- Whether the investor is expanding operations outside the agreed boundaries of the operations; and
- Any unexpected positive or negative impacts.



Community monitoring investor compliance with the agreed contract/investment terms.



By establishing a mutually agreed monitoring process, your community—and the project developers—may be able to quickly address any concerns that arise.

A monitoring plan might also include:

- Who will be doing the monitoring (ideally: trained, paid community members, supported by impartial, independent technical professionals);
- How often the monitoring will happen (you can request daily, weekly, or monthly monitoring of potential environmental pollution and other risk factors that may endanger your community);
- What you will be monitoring (soil, air, plant biodiversity, water quality, animal species, money paid into the community bank account, progress of infrastructure provision, etc.);

- How the results of all monitoring will be communicated to the company and all community members; and
- Where all monitoring data will be stored (stored securely so the data can't be lost, possibly to be made publicly available); and any other issues important to your community.

3. Investor compliance. Make sure that the contract clearly states what must happen if monitoring exposes environmental destruction, health hazards, human rights abuses, and other negative impacts. The agreement should set out what the investor and/or the government will do in response to data that indicates illegal pollution, a breach of contract, and other violations and challenges.



Community initiating a complaint procedure.

CONSENT OVER THE LIFETIME OF THE PROJECT AS IT CHANGES

FPIC is not a one-time event: it is an ongoing process that may need to be repeated throughout the lifetime of the project. Project developers and relevant government officials should consult with your community and obtain your Free, Prior and Informed Consent *before each new stage of the project, and before major changes are made to the project.* Your consent was to the original project: if the project is altered significantly, you have not consented to those changes.

In your contract, you may want to clearly state the conditions under which engagement around consent must be initiated and the agreement re-negotiated. Such conditions could include:

- **New owners or project managers.** Investment projects often change hands. The investors you negotiated with may sell the business to a new company. The new company's managers should uphold the commitments made by the previous owners and managers—but they might try not to. You may want to require that the contract explicitly says that if the company sells the project to a new owner, the new owner is bound by the existing investor-community contract.
- **Major changes to operations,** for example, new equipment, new inputs, new processing chemicals, etc.
- **Major changes to the way the project is using your lands and resources** and any other major changes you may anticipate.



COMPLAINTS PROCEDURES AND DISPUTE RESOLUTION PROCESSES

If the investor and/or government do not resolve the challenges, violations, and/or abuses identified, then your community has the right to initiate a complaints procedure and/or dispute resolution process. **Make sure that your contract includes clear complaints procedures and dispute resolution processes.**

A complaints procedure (also called a “grievance mechanism”) is the process through which affected people can raise complaints about a project—to the company, government, project financiers, or industry oversight body—and demand that a problem is resolved. If well designed and implemented, complaints procedures can be easier for Indigenous community leaders and members to use, may help resolve problems more quickly than litigation, and are generally less combative.

A good complaints procedure is best when it is: accessible, independent and impartial; fair and objective in process and outcome; transparent, accountable, and professional; effective and efficient; culturally appropriate; and includes the hiring of expert consultants when necessary.

Your contract might set out:

- How community members can lodge a grievance or complaint: who the grievance or complaint should be given or sent to and what kind of evidence is needed to support it;
- That the mechanism will be easily accessible to your community, in your local language, and operate in a culturally appropriate way;
- That the company will investigate the grievance and help community members access any information they need to provide evidence for the complaint;
- How decisions about complaints will be made and enforced. You may want to include a requirement that community representatives be included on a panel that decides the remedy for a grievance;
- Protections against retaliation for community members who raise grievances or complaints;
- That even if you use the grievance mechanism, your community still has the right to take the complaint to court; and
- Any other issues your community thinks are important.



Dispute resolution processes can be used when there is an active dispute between your community and the project developers. In your contract, you can require a conflict resolution process that:

- Aligns with your culture's dispute resolution processes and traditions;
- Takes place in your community, in your language, and according to your preferred timing and pace; and
- Is mediated by locally respected Elders and leaders, or that your community and the company choose mediators together.

You can also require that any dispute resolution process must begin with mediation or arbitration held locally in your community, and can then be appealed up into the judicial system of the country that your land or territory is located within, all the way to the national high court and regional international human rights courts.

You also may want to include in the contract how any agreements that result from a dispute resolution process will be enforced, including setting deadlines for remedying the violation or establishing new monitoring procedures. You can also include in your contract a provision that if the harm is significant and ongoing, the company must halt operations until the dispute is resolved.

If a dispute resolution process does not resolve the conflict, or the investor does not remedy the violations you have raised, there are various **multilateral or corporate grievance mechanisms that your community may be able to appeal to, including:**

- If a project receives IFC financing, communities can bring their complaints to the IFC Compliance Advisor Ombudsman.
- If a project gets funding from the World Bank or any of the regional development banks, each bank also has their own internal grievance processes.
- If the investment is part of an industry that has its own oversight procedures, such commodity-based multi stakeholder platforms (such as the Roundtable on Sustainable Palm Oil or Initiative for Responsible Mining Assurance), provide their own grievance mechanisms.
- If the investor comes from a country that is a member of the Organization for Economic Cooperation and Development (OECD), the OECD has established National Contact Points that hear and resolve grievances.
- Companies also frequently have their own internal grievance mechanisms: you may be able to bring your complaints to the company's board.

>> See the section above on "if you declined to grant consent" for other strategies that your community may pursue related to ongoing violations.

Indigenous Peoples' right to self-determination is enshrined in a number of international covenants and declarations. The right to Free, Prior and Informed Consent is a central component of how Indigenous Peoples protect and defend their right to self-determination. It is the first line of defense when investors and government officials seek to develop projects that may affect Indigenous communities, lands, territories, and resources. For this reason, Indigenous Peoples must be prepared to engage with FPIC from a fully informed, proactive stance. Indigenous Peoples must declare their rights, have their FPIC protocols ready, and be ready to lead engagement around FPIC on their terms.



APPENDICES

APPENDIX A:

DEFINITIONS/USEFUL WORDS

Annual profits: How much money a company made over the period of a year. This information may be provided in a financial statement.

Collective rights: The collective rights of Indigenous Peoples include recognition of their distinctive histories, languages, identities, and cultures, and the collective right to lands, territories, and natural resources they have traditionally occupied and used, as well as the right to their collectively held Traditional Knowledge.

Compulsory Acquisition (or eminent domain): Compulsory acquisition is the power of government to acquire private rights in land for a public purpose, without the willing consent of its owner or occupant.

Contract: When two or more parties promise to do something in exchange for a valuable benefit, this can form a contract, which is legally binding, the terms of which can be enforced in a court of law.

Community-investor contract: A contract entered into by a community and a company or investor that sets out the terms on which a company may rent/use the community's lands and resources.

Due diligence: A process or effort to collect and analyze information before making a decision or before entering into an agreement or contract with another party. It is a risk-based decision and planning exercise designed to inform a decision of whether or not to proceed with a project and, if so, how to do so in a way that minimizes the social, economic, and environmental risks.

Enforceable legal rights: Rights that are recognized by law and protected by legal systems and institutions. Most enforceable rights are established in national constitutions and national and international laws. Indigenous or customary laws may, in some contexts, also be enforceable by the State and in court. Enforceable legal rights can also be created through a contract.

Environmental and Social Impact Assessment (ESIA): A technical investigation and analysis that results in a report that predicts the environmental and social consequences that a future project might create and proposes measures to mitigate potential negative impacts. It is carried out before project implementation.

Freedom of Information Act (FOIA) request: A formal request to the government to be given access to information and documents that the government possesses.

Grievance mechanism: The process through which community members can seek remedies for complaints or grievances they have regarding a project's negative impacts or the company's conduct (including the conduct of company employees and representatives). Also called a "complaints procedure."

Human rights: Rights inherent to all human beings without discrimination, independent of nationality, sex, gender, national or ethnic origin, color, religion, language, place of residence, or any other status. Human rights are universal, inalienable, indivisible, interrelated, and interdependent. Universal human rights are often legally guaranteed by treaties, customary international law, general principles and other international legal frameworks.

Infrastructure: Physical structures and systems necessary for a country, city, village, or business to operate, such as dams, bridges, buildings, roads, communication towers, electrical systems, etc.

Investment project: A project that is undertaken with the intention of making a profit.

Lease: A contract where one party transfers the use of land and/or property to another party for a specific period of time in return for regular periodic payments.

License: Permission, generally provided by the government, to carry out a specific activity. Licenses can include hunting licenses, mining licenses, logging licenses, fishing licenses, etc.

Multilateral institutions: Multilateral institutions are formed by three or more countries that work together on issues of common interest and of global priority. These organizations can fund various projects using funds from multiple governments. A multilateral institution is typically established through a treaty, a resolution, or an agreement among the participating member states.

Negotiation: Negotiation is a formal process (that can involve a neutral third party), in which two or more people or parties come together with the goal of reaching an agreement. Each side presents what they want, and the terms of the agreement are discussed until a compromise is reached.

Party: A person or organization that enters into a contract with other persons or organizations.

Permit: Permission, generally provided by the government, to carry out a specific activity.

Profit-sharing: An arrangement where a third party (for example, a community) receives a direct share of a company's profits.

Right of way: The legal right, established by continued use or express permission, to pass along a specific route through the land or property owned by or leased to someone else.

Subsidiary: A subsidiary company is owned either completely or partially by another company. Parent companies own and control up to 51 percent of a subsidiary company's stock, which gives them control over the subsidiary company.



APPENDIX B: THE LEGAL BASIS FOR FPIC

Indigenous Peoples' right to Free, Prior and Informed Consent is rooted in international law and norms, most significantly, the United Nations Declaration of the Rights of Indigenous Peoples, which is a non-binding legal instrument. Countries that ratify the Declaration may draft and adopt a national law that enshrines its mandates within the national legal framework. Various multilateral banks and institutions have also created their own policies implementing Indigenous Peoples' right to FPIC, though often not with input from impacted Indigenous Peoples. Finally, a number of industry-specific governance bodies and oversight groups have created internal corporate policies and procedures that apply FPIC within their procedures and standards. This appendix briefly describes these laws and policies. However, because every country has different laws, **we strongly advise that you use this appendix as a starting point for your own research**, working with lawyers, paralegals, advocates, and activists.

INTERNATIONAL LAWS AND COVENANTS

Free, Prior and Informed Consent (FPIC) is a universal norm of international law as set out in the United Nations' Declaration of the Rights of Indigenous Peoples (UNDRIP), International Labour Organization (ILO) Convention 169, and the Convention on Biological Diversity (CBD).

The United Nations General Assembly adopted the Declaration in 2007, recognizing the right to self-determination and making specific mention of Free, Prior and Informed Consent (FPIC) as a prerequisite for any activity that affects Indigenous Peoples' lands, territories, and natural resources. The full text of the relevant articles is provided in the box below.

The International Labour Organization Convention 169 (ILO 169), ratified in 1989 (also known as the Indigenous and Tribal Peoples Convention), was the first international convention to recognize the sanctity of Indigenous Peoples' economic and political institutions, economic development, and the maintenance of Indigenous identities, languages, religions,



ARTICLES EXPLICITLY STATING INDIGENOUS PEOPLES' RIGHT TO FPIC IN THE UN DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLES

- **Article 10.** Indigenous Peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the **Free, Prior and Informed Consent** of the Indigenous Peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.
- **Article 11 (2).** States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous Peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their **Free, Prior and Informed Consent** or in violation of their laws, traditions, and customs.
- **Article 19.** States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their **Free, Prior and Informed Consent** before adopting and implementing legislative or administrative measures that may affect them.
- **Article 28 (1).** Indigenous Peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair, and equitable compensation, for the lands, territories, and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used, or damaged without their **Free, Prior and Informed Consent**.
- **Article 29 (2).** States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of Indigenous Peoples without their **Free, Prior and Informed Consent**.
- **Article 32 (1).** Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. (2) States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their **free and informed consent prior** to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization, or exploitation of mineral, water, or other resources.

values, and customs. ILO 169 has treaty status and is a legally binding document for the 23 countries that have ratified it.

ILO 169 acknowledges the right of Indigenous Peoples to be consulted when they will be impacted by development projects and “whenever consideration is being given to legislative or administrative measures which may affect them directly.” (Article 6(1)(a).) Article 7(1) states that “The Peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions, and spiritual well being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social, and cultural development. In addition, they shall participate in the formulation, implementation, and evaluation of plans and programmes for national and regional development which may affect them directly.” Article 16 specifically requires Indigenous Peoples’ “free and informed consent” prior to relocation.

The Convention on Biological Diversity (CBD), signed by 150 governments in 1992 at the Rio Summit and ratified by 196 countries by 2015, protects Indigenous Traditional Knowledge by allowing its use only with Indigenous Peoples’ prior approval. It also affirms explicitly the principle of FPIC. CBD Article 8(j) provides that, subject to national legislation, a party should:

1. “Respect, preserve, and maintain knowledge, innovations, and practices of Indigenous and local communities

embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity;”

2. “Promote their wider application with the approval and involvement of the holders of such knowledge, innovations, and practices;” and
3. “Encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations, and practices.”

The Programme of Work on the implementation of CBD Article 8(j) states that “access to Traditional Knowledge, innovations, and practices of Indigenous and local communities should be subject to **prior informed consent or prior informed approval** from the holders of such knowledge, innovations, and practices.” The Secretariat of the Convention on Biodiversity has also published a variety of guidelines that protect Indigenous Peoples’ rights. As part of its work programme on Article 8(j), the Parties to the Convention have developed voluntary guidelines for FPIC processes concerning Traditional Knowledge and impact assessments.

Participation at all stages of development is grounded in the first article of both the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, which state that “All Peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.”

IS INDIGENOUS PEOPLES’ RIGHT TO FREE PRIOR AND INFORMED CONSENT PROTECTED IN THE NATIONAL LAWS OF THE COUNTRY YOUR LAND OR TERRITORY IS LOCATED WITHIN?

1. Is the country a signatory of the UN Declaration on the Rights of Indigenous Peoples?

IF YES: *the country should uphold your FPIC rights.*

IF NO: *you may have significant challenges if you require or demand an FPIC process.*

2. Is there any national legislation that provides for Indigenous Peoples’ FPIC rights?

IF YES: Look in detail at the legislation to see what is required under law. What do the provisions say? Who does it apply to? What procedures does the law require?

IF NO: Is there any legislation that supports processes similar to FPIC (such as laws relating to infrastructure development or land use planning)? Might this apply to your situation?

3. Is there any case law in the country that supports Free, Prior and Informed Consent (FPIC)?

IF YES: What have the courts decided? Can it apply to your case?

IF NO: Is there any legal precedent from other countries that you may be able to use to protect your rights? Are there local community groups taking action against proposed development projects in the country?





NATIONAL LAWS AND PROTOCOLS

If the country your land or territory is located within is a signatory to the Declaration, it may have passed a national law enshrining the content of the Declaration into your national legal framework. National FPIC protocols may take the form of treaties or agreements that only apply to particular Peoples or Tribes. The box below suggests a series of questions to guide your research.

MULTILATERAL PROTOCOLS

In addition to national and international laws, a number of multilateral organizations and financial institutions, such as the World Bank, the International Finance Corporation, and the United Nations, have incorporated FPIC protocols and guidelines into their policies to ensure that their programs and development projects respect Indigenous Peoples' rights. These standards apply to governments, companies, and other entities who are engaged in the institution's development programs. **Even if the country your land or territory is located within does not have an FPIC requirement, if the investment project is funded by one of these organizations, you can require that the investors comply with these organizations' FPIC guidelines.** (See Part 4 for more information on how to do so.)

INDUSTRY-RELATED PROTOCOLS

Certain companies and industry groups or industry certification schemes have voluntarily begun to incorporate FPIC principles into their internal policies and procedures. These include the *Roundtable on Sustainable Palm Oil*, the *Forest Stewardship Council*, and many mining companies. Other industry groups, such as the Initiative for Responsible Mining Assurance (IRMA), can provide information about how companies are conducting engagement processes, and you can use this information to hold companies accountable to their policies. Several other voluntary mechanisms require companies to consult and seek consent when projects affect the rights of Indigenous Peoples, such as the International Finance Corporation's (IFC) Performance Standard 7, the Equator Principles, or the Green Climate Fund. Work with your lawyers, paralegals, and advocates to find out if the planned project is part of an industry that has oversight mechanisms, standards, and complaints procedures you can use to protect your FPIC rights. In general, however, these standards are less protective of your FPIC rights than the Declaration; industry protocols can be used to push for dialogue and negotiations that integrate Indigenous priorities.

APENDIX C:

CALCULATING THE VALUE OF RESOURCES THAT YOUR COMMUNITY GATHERS FROM YOUR LANDS AND ECOSYSTEMS

You can support your community to do a one-time exercise that will help you to roughly calculate the market cost of replacing the resources that you currently hunt, gather, or otherwise collect from your community's common lands (and which you may lose if you consent to grant your lands to an investor). This exercise creates a rough estimate of the amount of money it would take for each family in your community to buy the natural resources critical to household survival in the local market if your community leases your forests, grazing lands, or wetlands to an investor and can no longer access these areas to gather food, medicines, building materials, or other essential resources.

This valuation exercise is best done in a large community meeting, attended by men, women, Elders, youth, and people who practice a wide variety of livelihoods, including hunters, fisherfolk, and others who are intimately familiar with the community's resources. You can guide community members to follow these steps:

- First, brainstorm and "shout out" a list of all the natural resources that your community uses or gathers from your shared forests, grazing lands, wetlands, and waterways. After the full list is generated, pick 8-10 of the most used resources to calculate the value used by households.
- Estimate how much of each resource is used or gathered by one "average" family each week. Use the "unit" that the resource is sold by on the local market (bundle/bushel/bunch/basket), then calculate how many "units" of that resource a family uses per week or month.
- Estimate how much one "unit" of each natural resource costs in the local market.
- Calculate how much each family would have to spend in the local market to buy the needed amount of that natural resource each week, month, and year. If the resource is used once a month or once a year, skip the weekly calculation and fill in only the cost per month or year.
- Estimate how many families there are in the community, then multiply how much the one "average family" would spend by the total number of families in the community.
- Finally, calculate the total amount the community would have to spend to buy these basic household necessities in the market, both in the national currency and in U.S. Dollars (the currency often used by investors).

This chart shows how to facilitate the activity. The first row has been filled out as an example. The chart can be drawn onto a large piece of paper so that community members can see and follow along with the basic math. Once you have calculated the

value of what your community is gathering from the land every year, you can go into FPIC dialogue with a better awareness of the financial value of your assets, and how much rent to charge, if you do give your consent.

(Participants decide which resources to list in the left column, but facilitators should be prepared to suggest these examples or other commonly used resources if they are not suggested by participants.)

Collected from common land and water areas by one "typical family"	Basic Unit (bundle, kilo, etc.)	Units used per week	Cost per unit	Cost per week	Cost per month (x4)	Cost per year (x12)
 Firewood	One bundle	7	\$1	\$7	\$28	\$336
 Water						
 Meat from hunting						
 Fish						
 Vegetable #1						
 Vegetable #2*						
 Herbal Medicine						
 Wild Fruit #1*						
 Wild Fruit #2						
 Thatch for homes						

Total cost of foods and resources for one "typical" family:

* Add extra lines for more vegetables and wild fruits, honey, building materials, etc.
 – but make sure that the community is only calculating items gathered for household consumption.

Total cost of foods and resources for one "typical" family
 (figure taken from above)

Total # of families in the community

Total cost of resources for entire community per year
 (local currency)

X

=



APPENDIX D: VISIONING YOUR COMMUNITY'S DESIRED FUTURE

Your community may have its own traditional visioning and future planning processes. For those communities that do not, this activity may be useful. It is best to undertake this activity in a large group, allowing space for men, women, Elders, and youth to share their thoughts and ideas. The process can take as little as two to three hours, or as long as a few weeks.

Step 1: Remembering the past. Ask community members to describe what their lands, natural resources, and community relations were like 40-50 years ago, when today's Elders were children. Ask elders to share their memories with the group. Write down what people say. Some questions to motivate discussion might include:

- What did the landscape look like? What was the quality of the earth, water and air?
- What resources and materials did people gather from your common lands? How abundant were these natural resources? How long did it take to gather these resources?
- How did people live and work together within the community?
- What cultural activities, spiritual rituals, or festivals took place?
- What were your community's governance structures, and how did they function?

Your community may also make an eco-map of the past: How extensive were local forests? What plants grew? What animals had thriving populations? What herbs were readily available? What areas had abundant water?

Step 2: Reflecting on the present. Ask community members to consider what their lands, natural resources, and community relations are like today. Some questions to motivate discussion might include:

- How available or abundant are resources that people gather from the common lands?
- How do people live and work together within the community?
- What cultural activities, spiritual rituals, and festivals take place?
- How does your community make decisions about lands and natural resources today? How are decisions and rules enforced? Are leaders managing the communal land well?

Your community may also make an eco-map of the present. How biodiverse are your local ecosystems? How extensive are local forests? What plants grow? What animals have thriving populations? What herbs are readily available? What areas have abundant water?

Step 3: Envisioning the likely future. Next, ask community members what their lands and natural resources/community relations will be like 40-50 years from now, for their grandchildren, **if things continue as they are today**. Invite the participants to close their eyes to really "see" the vision in their minds. Give people some time to think about this. Do not rush this step—it is likely to have an emotional impact. Ask people to share what they saw as the likely future. Write down what people say. Some questions to motivate discussion might include:

- What will the landscape look like? What is the quality of the water, soil, and air?
- What will be the availability of natural resources?
- How will people live and work together? How will people be making their livelihood?
- Who will be practicing your traditions?

Step 4: Envisioning the desired future. Ask community members to close their eyes a second time and to dream about the world they would wish for their grandchildren to have 40 or 50 years from now. Again, allow a few minutes to think about this in silence, then ask people to share their visions. Write down everything people say on large pieces of paper. Ask the same questions listed above in the "likely future," and any others you think best.

Your community can make an eco-map of the desired future. What would your community's thriving, prosperous future look like in terms of its biodiversity, availability of water, expanse of forests, etc.?

Step 5. Link the visioning exercise with the FPIC engagement. Once you have a sense of your community's past and a good picture of how you would like your community to feel and function in the future, you can approach FPIC with a clear articulation of your community's goals, interests, and needs. This can help your community in all discussions and negotiations with project investors and government officials.

APPENDIX E:

LIST OF ORGANIZATIONS AND INTERNATIONAL BODIES INDIGENOUS PEOPLES CAN CONTACT FOR HELP

The following organizations contributed to this guide. Please feel free to reach out to them directly with any questions. For legal or technical help, we advise you to seek support from local, regional, and/or international organizations with experience working with Indigenous Peoples and FPIC engagements. While our organizations cannot provide legal counsel, they can help connect you with groups that may offer support.

Cultural Survival

www.culturalsurvival.org
Contact: culturalsurvival@cs.org

First Peoples Worldwide

www.colorado.edu/program/fpw
Contact: fpw@colorado.edu

Batani Foundation

batani.org
Contact: info@batani.org

Securing Indigenous Peoples Rights in the Green Economy (SIRGE) Coalition

www.sirgecoalition.org
Contact: <https://www.sirgecoalition.org/contact-us>

INTERNATIONAL MECHANISMS AND TREATY BODIES

United Nations Permanent Forum on Indigenous Issues (UNPFII): social.desa.un.org/issues/indigenous-peoples/unpfii

Expert Mechanism on the Rights of Indigenous Peoples (EMRIP): www.ohchr.org/en/hrc-subsiadiaries/expert-mechanism-on-indigenous-peoples

United Nations Special Rapporteur on the Rights of Indigenous Peoples: www.ohchr.org/en/special-procedures/sr-indigenous-peoples

Inter-American Commission on Human Rights (IACHR), Rapporteurship on the Rights of Indigenous Peoples
<https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/r/DPI/default.asp>

Organization of American States (OAS)
<https://www.oas.org/en/>

International Labour Organization (ILO)
<https://www.ilo.org/global/topics/indigenous-tribal/lang-en/index.htm>

Committee on the Elimination of All Forms of Racial Discrimination (CERD)

<https://www.ohchr.org/en/treaty-bodies/cerd>

Committee on the Elimination of Discrimination Against Women (CEDAW)

<https://www.ohchr.org/en/treaty-bodies/cedaw>

MULTILATERAL ORGANIZATIONS THAT HAVE THEIR OWN FPIC STANDARDS; LINKS TO FILE COMPLAINTS

As explained in the guide, if your decision-making rights have been violated, there are various **multilateral or corporate grievance mechanisms that your Indigenous community may be able to use, depending on who is funding the project or where the investor's corporation is domiciled/registered, including:**

The International Finance Corporation Compliance Advisor Ombudsman: <https://www.cao-ombudsman.org/>

The World Bank's Grievance Redress Mechanism:

<https://www.worldbank.org/en/projects-operations/products-and-services/grievance-redress-service>

The African Development Bank:

<https://www.afdb.org/en/independent-review-mechanism/management-of-complaints/how-to-file-a-complaint>

The Asian Development Bank's Accountability Mechanism:

<https://www.adb.org/who-we-are/accountability-mechanism/how-file-complaint>

The Inter-American Development Bank's Grievances Portal (In English, Spanish, and Portuguese):

<https://www.iadb.org/en/projects/grievances-portal>

The European Bank for Reconstruction and Development:

<https://www.ebrd.com/ipam>

The Roundtable on Sustainable Palm Oil Grievance Mechanism:

<https://askrspo.force.com/Complaint/s/>

The Organization for Economic Cooperation and Development National Contact Points that hear and resolve grievances:

<https://www.oecdwatch.org/how-to-file-a-complaint/>



APPENDIX F: LIST OF RECOMMENDED SOURCES

RELEVANT INTERNATIONAL LAWS:

Full text of the United Nations Declaration on the Rights of Indigenous Peoples:

https://www.un.org/development/desa/IndigenousPeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

Full text of International Labour Organization Convention 169:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C169,/Document

Full text of the Convention on Biodiversity

(See especially Article 8j):

<https://www.cbd.int/convention/text/>

GUIDES ON FPIC AND REPORTS ON FPIC PROTOCOLS:

Convention on Biological Diversity's MO'OTZ KUXTAL voluntary guidelines on FPIC:

<https://www.cbd.int/doc/publications/8j-cbd-mootz-kuxtal-en.pdf>

Food and Agriculture Organization's technical guide on FPIC:

https://www.fao.org/fileadmin/user_upload/partnerships/docs/00000_FPIC_Toolkit_Technical_Guide_FPIC-VGGT-IPs_EN.pdf

Oxfam guide to FPIC:

https://www.culturalsurvival.org/sites/default/files/guidetofreepriorinformedconsent_0.pdf

Report summarizing analysis of dozens of Indigenous Peoples' FPIC protocols: <https://enip.eu/FPIC/FPIC.pdf>

The Accountability Framework's Guide to "Requirements, best practices, and practical considerations for companies to fulfill their obligation to secure the Free, Prior and Informed Consent (FPIC) of Indigenous Peoples and Local Communities:" https://accountability-framework.org/fileadmin/uploads/afi/Documents/Operational_Guidance/OG_FPIC-2020-5.pdf

GUIDES ON NEGOTIATING WITH INVESTORS AND STATE-INVESTOR TREATIES

Set of two guides supporting communities to negotiate contracts with investors:

<https://namati.org/resources/community-investor-negotiation-guide-1-preparing-in-advance-for-potential-investors/>

<https://namati.org/resources/community-investor-negotiation-guide-2-negotiating-contracts-with-investors/>

Primer on investment treaties and how they undermine community rights: <https://ccsi.columbia.edu/content/primer-international-investment-treaties-and-investor-state-dispute-settlement>

GUIDES ON ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS

Akwé Kon: Voluntary guidelines for the conduct of cultural, environmental, and social impact assessments within Indigenous Communities:

<https://www.cbd.int/doc/publications/akwe-brochure-en.pdf> (available in many languages)

SOURCES IN PORTUGUESE - FONTES EM PORTUGUÊS

MPF - Protocolo de Consulta Prévia (State - Justice Department)

<https://www.mpf.mp.br/atuacao-tematica/ccr6/documentos-e-publicacoes/protocolos-de-consulta>

OBSERVATÓRIO DE PROTOCOLOS AUTÔNOMOS - (Academic and NGO)

<https://observatorio.direitosocioambiental.org/>

Protocolo de Consulta aos Povos e Comunidades Tradicionais (PCTs): o que é e qual sua importância? (NGO)

<https://guaicuy.org.br/protocolo-de-consulta-pcts-importancia/#:~:text=Trata%2Dse%20de%20um%20documento,sua%20hist%C3%B3ria%2C%20cultura%20e%20costumes.>

PROTOCOLOS AUTÔNOMOS DE CONSULTA E CONSENTIMENTO: UM OLHAR SOBRE O BRASIL, BELIZE, CANADÁ E COLÔMBIA <https://institutoiepe.org.br/wp-content/uploads/2022/03/2022-Livros-sobre-Protocolos-de-Consulta-RCA.pdf>

Protocolos de consulta de diferentes povos indígenas na Amazônia são instrumentos de luta pelos direitos.

Entrevista com Angela Amankawa Kaxuyana (Interview)

<https://www.ihu.unisinos.br/categorias/186-noticias-2017/570148-hidreletrica-inunda-cachoeira-sagrada-retira-urnas-indigenas-e-gera-crise-espiritual-na-amazonia>

Protocolos de Consulta (Examples):

Munduruku People - <https://cimi.org.br/wp-content/uploads/2021/12/protocolo-consulta-aldeia-takuara-munduruku.pdf>

Quilombola People of Santa Rita -

https://observatorio.direitosocioambiental.org/wp-content/uploads/2022/06/Protocolo-de-consulta-quilombola_-SANTA-RITA.pdf

SOURCES IN SPANISH

PROTOCOLOS AUTONÓMICOS DE CONSULTA PREVIA INDÍGENA EN AMÉRICA LATINA

https://www.iwgia.org/images/documentos/Protocolos_Autonmicos_de_Consulta_Previa_Indgena_en_Amrica_Latina.pdf

Perspectiva empresarial sobre la consulta previa del C169 en América Latina Lecciones aprendidas

https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---act_emp/documents/publication/wcms_820525.pdf

INCUMPLIMIENTO DE LOS PROTOCOLOS AUTÓNOMOS DE CONSULTA DURANTE EL COVID-19

<https://www.debatesindigenas.org/notas/73-incumplimiento-protocolo-consulta-brasil.html>

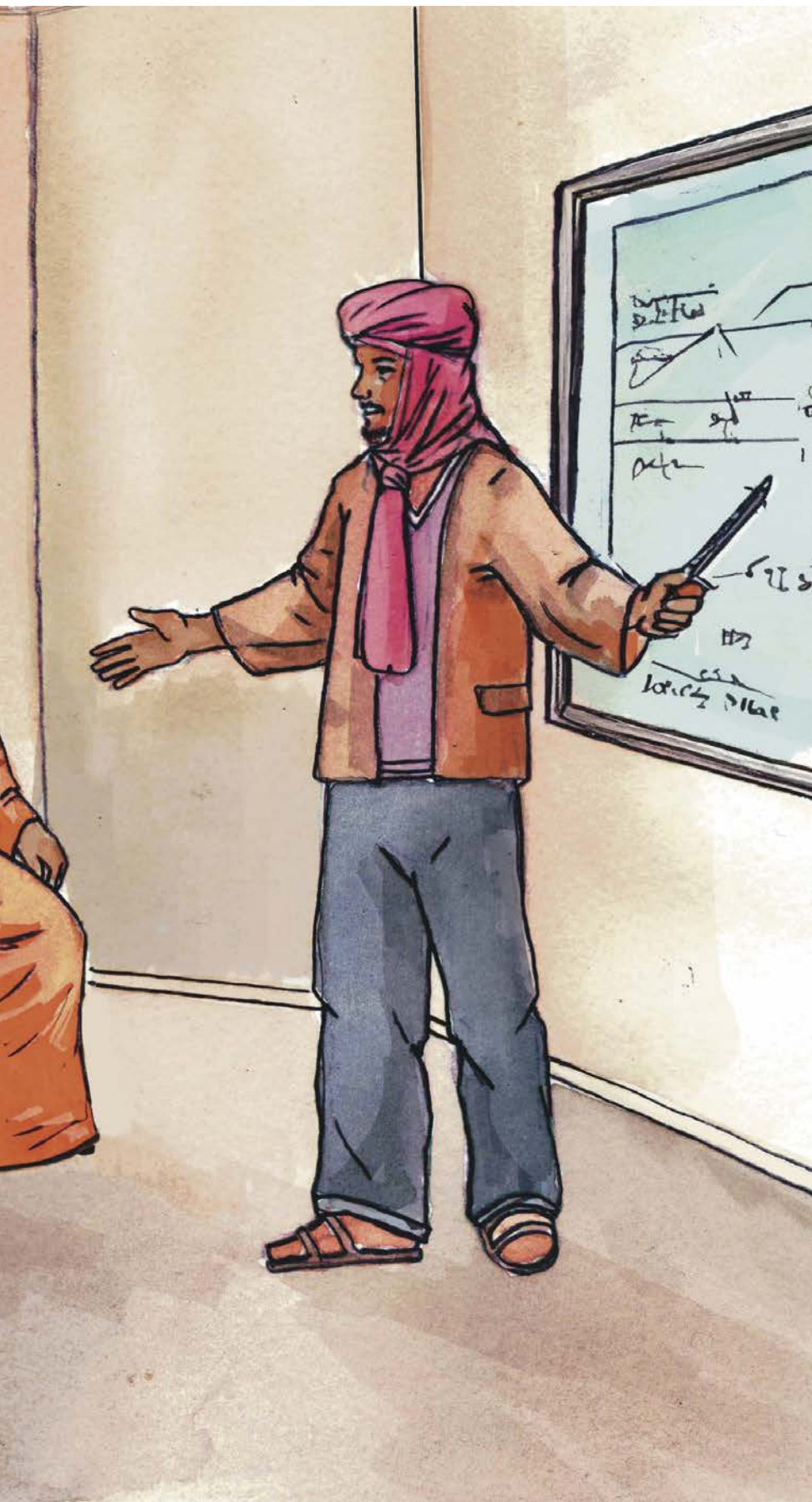
Implementación de la consulta y consentimiento previo, libre e informado Experiencias comparadas en América Latina y discusiones sobre una ley de consulta en México

https://www.dplf.org/sites/default/files/informe_sobre_consulta_y_cpli_mexico_final_web.pdf

El derecho a la consulta previa en América Latina Del reconocimiento formal a la exigibilidad de los derechos de los pueblos indígenas

https://redjusticiaambientalcolombia.files.wordpress.com/2011/08/el_otro_derecho_40_-consulta-previa.pdf





Community learning about a project's investment chain to understand pressure points for advocacy.



SECURING INDIGENOUS PEOPLES' RIGHT TO SELF-DETERMINATION

A GUIDE ON FREE, PRIOR AND INFORMED CONSENT

