



# **GUIDELINES FOR APPLYING FREE, PRIOR AND INFORMED CONSENT**

A MANUAL FOR CONSERVATION INTERNATIONAL

CONSERVATION  
INTERNATIONAL





**Mission:** Building upon a strong foundation of science, partnership and field demonstration, CI empowers societies to responsibly and sustainably care for nature, our global biodiversity, for the well-being of humanity.

**Vision:** We imagine a healthy, prosperous world in which societies are forever committed to caring for and valuing nature, for the long-term benefit of people and all life on Earth.

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These guidelines draw on case studies prepared by Conservation International's (CI) Indigenous Advisory Group (IAG) and CI's Conservation Stewards Program (CSP), including the following authors:

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CI welcomes feedback on how to improve this living document. Please send comments to [socialpolicypractice@conservation.org](mailto:socialpolicypractice@conservation.org).







Consent is the manifestation of a clear and convincing pact, in accordance with the decision-making structures of the indigenous peoples, which includes traditional processes for deliberation. These agreements must rely on the full participation of authorized leaders, representatives or institutions responsible for making decisions, who have been elected by the same indigenous peoples.<sup>1</sup>

*-Ramiro Batzin, Executive Director of Sotz'il and member of Conservation International's Indigenous Advisory Group*

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<sup>1</sup> Ramiro Batzin, *Applying Free, Prior and Informed Consent in the Implementation of REDD+ on Indigenous Lands and Territories in Guatemala*, (Arlington, VA: Conservation International, 2013), 8, accessed October 4, 2013, [http://www.conservation.org/about/centers\\_programs/itpp/Documents/FPIC-Documents/CI\\_FPIC-Case-Study\\_Guatemala.pdf](http://www.conservation.org/about/centers_programs/itpp/Documents/FPIC-Documents/CI_FPIC-Case-Study_Guatemala.pdf).

## NOTES TO THE READER

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First and foremost, the authors hope that these guidelines will be a useful, living document to Conservation International (CI) staff. To best apply these guidelines, it is important to read them in their entirety first, before delving into the individual steps. As each section builds on the previous one, a more complete understanding of free, prior and informed consent will emerge after reading the document in full.

Secondly, these guidelines were created as a companion tool to CI's *Indigenous Peoples and CI Policy* and developed in collaboration with the CI Indigenous Advisory Group (IAG). Therefore, and at the recommendation of the IAG, they refer specifically to indigenous peoples throughout. However, CI fully recognizes that these guidelines hold lessons for working with communities that do not define themselves as indigenous, and respects full and effective participation for all communities in its endeavors.

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## ACRONYMS

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CBD: Convention on Biological Diversity

CI: Conservation International

CSP: Conservation Stewards Program

FPIC: Free, Prior and Informed Consent

IAG: Indigenous Advisory Group

ILO 169: International Labour Organization Convention 169

RBA: Rights-based Approach

REDD+: Reducing Emissions from Deforestation and Forest Degradation, plus the role of Conservation, Sustainable Management of Forests and Enhancement of Forest Carbon Stocks

TK: Traditional Knowledge

UNFCCC: United Nations Framework Convention on Climate Change

UNDRIP: United Nations Declaration on the Rights of Indigenous Peoples



## KEY TERMS

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**Community:** A group of people bound together by geography, interests, and/or culture. Within the “Steps” portion of these guidelines, community refers specifically to indigenous communities that may be impacted by any decision that CI is seeking their input on, recognizing that the community may or may not be homogenous in their beliefs, desires, and needs, among other things.

**Customary Rights:** De facto rights established through a long tradition of customary practice; these rights are widely exercised and accepted, though not necessarily written into legislation.

**Free, Prior and Informed Consent:** A framework for ensuring that the rights of indigenous peoples are guaranteed in any decision that may affect their lands, territories or livelihoods. Composed of four separate components:

- **Free**—Without coercion, intimidation, manipulation, threat or bribery.
- **Prior**—indicates that consent has been sought sufficiently in advance, before any project activities have been authorized or commenced, and that the time requirements of the indigenous community’s consultation/consensus processes have been respected.
- **Informed**—Information is provided in a language and form that are easily understood by the community, covering the nature, scope, purpose, duration and locality of the project or activity as well as information about areas that will be affected; economic, social, cultural and environmental impacts, all involved actors, and the procedures that the project or activity may entail.
- **Consent**—The right of indigenous peoples to give or withhold their consent to any decision that will impact their lands, territories, resources, and livelihoods.<sup>2</sup>

**Full and Effective Participation:** Full and effective participation has several main components, and is based upon transparent, good faith interactions, so that everyone in the community is empowered to join fully in the decision-making process. It includes providing information in a language and manner the community understands and in a timeframe compatible with the community’s cultural norms.

**Gender:** The economic, social, political, and cultural attributes and opportunities associated with being women or men. Gender-defined roles, for example fuelwood harvesting for women, can provide an opportunity to engage women in forest conservation and reforestation since they have firsthand knowledge of the amount of available fuelwood.

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<sup>2</sup> United Nations Permanent Forum on Indigenous Issues (UNPFII), *Report of the International Workshop on Methodologies Regarding Free Prior and Informed Consent*, Document E/C.19/2005/3, endorsed by the UNPFII at its Fourth Session.

**Human Rights:** Rights inherent to all human beings without discrimination, whatever nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. Human rights are universal, inalienable, indivisible, interrelated and interdependent. Examples of universal human rights include, but are not limited to, right to life, right to equality before the law, right to development, and right to self-determination.<sup>3</sup> Universal human rights are often legally guaranteed by treaties, customary international law, general principles and other international legal frameworks.

**Indigenous Peoples:** Although there are many words that reflect what is meant by indigenous, national definitions vary from country to country, and may not fully coincide with self-identification of indigenous peoples, which is the only fundamental criterion recognized at the international level. For the purpose of our work, CI identifies indigenous peoples in specific geographic areas by the presence, in varying degrees, of:

- Close attachment to ancestral and traditional or customary territories and the natural resources in them;
- Customary social and political institutions;
- Economic systems oriented to subsistence production;
- An indigenous language, often different from the predominant language; and
- Self-identification and identification by others as members of a distinct cultural group.<sup>4</sup>

**Individual vs. Collective rights:** Most human rights treaties reflect an individualistic concept of rights and rights-holders; for example, the right to education or the right to life is the right of every individual. For many indigenous peoples their identity as an individual is inseparably connected to the community to which that individual belongs. For them, collective rights, such as the right to self-determination or the right to collective lands, are therefore essential, and require protection.<sup>5</sup>

**Rights-based Approach:** An approach to conservation that promotes and integrates human rights into conservation policy and practice by emphasizing the positive connections between conservation and the rights of people to secure their livelihoods, enjoy healthy and productive environments, and live with dignity.

**Sacred Site:** A natural historic, religious or traditional place with cultural significance.

**Self-determination:** In this context, it is the right of indigenous peoples to determine their own development path. It is one of the basic rights upon which FPIC is founded.

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<sup>3</sup> “United Nations Human Rights,” United Nations Office of the High Commissioner for Human Rights, accessed September 13, 2013, <http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx>.

<sup>4</sup> Conservation International, *Rights-based Approach: Indigenous Peoples and CI Policy* (Arlington, VA: Conservation International, 2012), 1-2.

<sup>5</sup> “Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation,” United Nations Office of the High Commissioner on Human Rights, accessed October 4, 2013, <http://www.ohchr.org/Documents/Publications/FAQen.pdf>.

**Traditional Knowledge:** Knowledge, innovations and practices that are developed, sustained and passed on from generation to generation within a community or particular population within a community. Traditional knowledge (TK) is frequently collective owned and can be found in a wide variety of contexts, including agriculture, ecology, medicine, and biodiversity.<sup>6</sup>

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<sup>6</sup> “Traditional Knowledge and the Convention on Biological Diversity,” Convention on Biological Diversity, accessed October 4, 2013, <http://www.cbd.int/traditional/intro.shtml>.





## INTRODUCTION

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**T**he journey Conservation International (CI) has taken toward creating these guidelines to implement Free, Prior and Informed Consent (FPIC) follows in the footsteps of the development of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The Declaration was developed in direct response to the need for an internationally recognized human rights instrument that respects indigenous peoples right to self-determination, with FPIC as a means of ensuring this right. In 1987, just two years after efforts to draft UNDRIP began, CI emerged as a newly founded organization working in partnership with communities to protect terrestrial and marine ecosystems, foster good governance, and build a future in which people live in harmony with nature.<sup>7</sup> Consistent with the UN Declaration, CI was founded on the understanding that successful conservation requires respect for human rights and the full and effective participation of indigenous peoples and local communities whose livelihoods depend upon natural resources.

To further its commitment to incorporating the input of indigenous peoples into its programs and policies, CI invited six indigenous experts from around the world to form an Indigenous Advisory Group (IAG) in 2009. **The IAG's purpose is threefold: To strengthen existing collaborations between indigenous peoples and NGOs on REDD+<sup>8</sup>; to bring direct advice and feedback from indigenous experts into the strategies of CI; and to promote understanding of the needs, priorities and concerns of indigenous peoples related to REDD+ and other forest-related activities.**

In 2010, as part of this ongoing collaboration, CI and the IAG embarked on a process to create guidelines that ensure respect for Free, Prior, and Informed Consent (FPIC) in all CI strategies and programs. Even though CI's institutional policies, including the recently updated *Indigenous Peoples and CI Policy*, uphold respect for indigenous peoples' rights and processes that respect FPIC, the organization recognized that policies alone are insufficient for creating lasting change. The first step in this process to create institutional guidelines was the development of nine case studies examining how elements of FPIC were or were not being incorporated into different projects around the world. Six of the case studies were created by IAG members, while three were based on the experiences of CI's Conservation Stewards Program.<sup>9</sup>

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<sup>7</sup> Work on UNDRIP began in 1985; please see link for more details: [http://untreaty.un.org/cod/avl/ha/ga\\_61-295/ga\\_61-295.html](http://untreaty.un.org/cod/avl/ha/ga_61-295/ga_61-295.html).

<sup>8</sup> REDD+ refers to Reducing Emissions from Deforestation and Forest Degradation, plus the role of conservation, sustainable management of forests and enhancement of forest carbon stocks.

<sup>9</sup> The Conservation Stewards Program (CSP) uses conservation agreements to offer concrete incentives for stewardship of biodiversity and natural resources. These agreements deliver social benefits prioritized by local resource users in return for demonstrated commitment to maintaining biodiversity and ecosystem services.

These guidelines are based on the completed FPIC case studies and provide a complementary tool to CI's institutional policies, including the recently updated *Indigenous Peoples and CI Policy*. They provide introductory and background information on FPIC, as well as actual steps for ensuring FPIC. Each component of these guidelines, from start to finish, is designed to assist CI staff in implementing a fair and effective FPIC process.

CI recognizes that its work is conducted within the context of different countries with their own laws, and sovereign rights, as well as commitments under international laws they have signed and ratified. At the same time, countries are called to respect universal human rights norms and laws that they may or may not have endorsed. UNDRIP is one of these international instruments. Though not binding, it is a universally recognized declaration, and CI's own policies and FPIC guidelines are consistent with its language and intent. CI will follow these institutional guidelines to ensure processes that respect FPIC in all of its work, and will encourage the application of these guidelines by all its partners, recognizing that not all countries have implemented UNDRIP.

FPIC gives indigenous peoples the freedom to determine their own development path. This freedom, when recognized, supports CI's mission of empowering societies to responsibly and sustainably care for nature. By following these guidelines, CI respects indigenous peoples' right to FPIC as well as UNDRIP. CI also recognizes the strong cultural and spiritual ties many indigenous peoples have to their lands and territories and how these ties can strengthen global conservation efforts. CI shares the goal of strengthening conservation efforts with indigenous peoples around the world, and hopes that these guidelines will make the journey a little easier.



Indigenous Advisory Group members are experts on climate change and indigenous rights from around the world who provide strategic guidance on these issues to CI. Their names, indigenous communities, and countries of origin are as follows: Ramiro Batzin, Maya Kaqchikel from Guatemala; Paulo Celso de Oliveira, Pankararu from Brazil; David James, Arawak from Guyana; Kanyinke Sena, Ogiek from Kenya; Mina Setra, Dayak from Indonesia, and Rogeliano Solis, Guna from Panama.

## BACKGROUND

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**F**ree, prior, and informed consent (FPIC) has been evolving and gaining momentum for several decades. In essence, it is a framework for ensuring that the rights of indigenous peoples are guaranteed in any decision that may affect their lands, territories or livelihoods. It ensures that they have the right to give or withhold their consent to these activities without fear of reprisal or coercion, in a timeframe suited to their own culture, and with the resources to make informed decisions. Community is a critical component of FPIC, as FPIC is a collective process, rather than an individual decision.

**It is important to understand that FPIC is not simply a decision-making process or a veto mechanism for the community, but a tool to ensure that outside people and organizations engage indigenous communities in a culturally appropriate way, so that their development priorities, needs and desires can be met. A true FPIC process includes not only consultation but also the space for a community to give or withhold their consent to a project. Some existing policies and guidelines, whether from governments, the private sector, development banks or others, are limited to consultation, as opposed to consultation and full consent. Conservation International, however, recognizes consent for indigenous peoples.**

As stated in CI's *Indigenous Peoples and CI Policy*, "The national context and the rights conferred with the term indigenous vary significantly among countries. Indigenous peoples often are ethnically different from the dominant national culture, and frequently their traditional territories, whether terrestrial or marine, are not recognized by national governments. While indigenous peoples have similar characteristics with other disadvantaged or marginalized rural population groups, . . . many of the causes of their poverty differ greatly from other marginalized sectors, and are often related to their limited access to or loss of traditional lands and resources, disintegration of their traditional economies, and from discrimination and marginalization that result from their unique language, culture and social organization."<sup>10</sup>

Although there are many words that reflect what is meant by indigenous, national definitions vary from country to country, and may not fully coincide with self-identification of indigenous peoples, which is the only fundamental criterion recognized at the international level. For the purpose of its work, CI identifies indigenous peoples in specific geographic areas by the presence, in varying degrees, of the following five qualities:

- Close attachment to ancestral and traditional or customary territories and the natural resources in them;
- Customary social and political institutions;

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<sup>10</sup> Conservation International, *Rights-based Approach: Indigenous Peoples and CI Policy*, p 1.

- Economic systems oriented to subsistence production;
- An indigenous language, often different from the predominant language; and
- Self-identification and identification by others as members of a distinct cultural group.

Over the years, FPIC has been included in several important international conventions and instruments and is recognized as a legal norm with obligations for States.<sup>11</sup> These conventions and instruments, which focus primarily on indigenous peoples, recognize the direct connections between FPIC and its underlying rights, such as the rights to self-determination and property. Given these direct links to legal rights, FPIC itself is sometimes referred to as a right, sometimes a principle, or sometimes as both a right and a principle.<sup>12</sup> This connection between FPIC and the protection of rights is evident in the international conventions and instruments highlighted below.

The International Labour Organization (ILO) developed the first international convention concerning indigenous peoples in 1957. However, this convention was heavily criticized for its focus on integrating indigenous peoples into the larger society. As a result, it was revised through the adoption of Convention 169 in 1989.<sup>13</sup> Convention 169 requires governments to consult with indigenous peoples about legislation that may directly affect them, to ensure that their participation and right to decide is upheld in regards to any project that affects them, and to ensure that necessary relocation occurs only with their free and informed consent.<sup>14</sup>

## Basic Timeline of Free, Prior and Informed Consent



<sup>11</sup> *Guidelines on Free, Prior and Informed Consent*, UN-REDD Programme, accessed September, 20, 2013, [http://www.unredd.net/index.php?option=com\\_docman&task=doc\\_download&gid=8717&Itemid=53](http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8717&Itemid=53).

<sup>12</sup> *Guidelines on Free, Prior and Informed Consent*.

<sup>13</sup> Birgitte Feiring, *Indigenous & Tribal People's Rights in Practice—A Guide to ILO Convention No. 169* (International Labour Standards Department, 2009), accessed September 20, 2013, [http://www.ilo.org/indigenous/Resources/Guidelinesandmanuals/WCMS\\_106474/lang-en/index.htm](http://www.ilo.org/indigenous/Resources/Guidelinesandmanuals/WCMS_106474/lang-en/index.htm).

<sup>14</sup> "Indigenous and Tribal Peoples Convention 1989 (No. 169)," International Labour Organization, accessed September 20, 2013, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_100897.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100897.pdf).



The 1992 United Nations Convention on Biological Diversity (CBD) reinforces indigenous and local community rights in regards to biological resources, benefit-sharing and the protection of cultural knowledge. Subject to its national legislation and as far as possible and appropriate, State parties must obtain the “approval and involvement” of persons with traditional knowledge, innovations and practices when this knowledge is used outside of the indigenous or local community.<sup>15</sup> This convention is supplemented by the 2002 Bonn Guidelines, which emphasize indigenous and local community rights and provide guidance on implementing certain provisions of the CBD.<sup>16</sup> The CBD is also supplemented by the Akwe: Kon Guidelines, a set of voluntary guidelines for conducting cultural, environmental and social impact assessment procedures on indigenous and local community lands, sacred sites, and waters.<sup>17</sup> Finally, the CBD’s Nagoya Protocol on Access and Benefit-sharing requires countries to take measures to ensure the prior, informed consent of indigenous and local communities.<sup>18</sup>

The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) explicitly recognizes FPIC in multiple articles and serves as a foundation for many FPIC guidelines, criteria, and standards implemented by other organizations, including these guidelines developed by CI.

As the examples above demonstrate, some international conventions and instruments explicitly uphold FPIC for indigenous peoples. Even when not legally binding, rendering enforcement difficult, many legal cases have nevertheless been built upon, and won because of, these conventions and instruments. Recognition of the right to FPIC is ever evolving, and some countries have adopted these conventions into their own national laws, both voluntarily and via court rulings. Still others, however, have not yet recognized FPIC at all.

Although FPIC is recognized primarily for indigenous peoples in international laws and conventions, local communities often face some of the same problems of access to land and lack of input into their own development path. **Conservation International recognizes that all projects should involve the full and effective participation of everyone involved, whether they are indigenous or not.**

Although these guidelines have been created to assist CI staff in incorporating FPIC into project planning, design, implementation and monitoring, every resource and voice that advocates for FPIC brings the conversation one step closer to universal acceptance.

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15 “Article 8(j),” Convention on Biological Diversity, accessed September 27, 2013, <http://www.cbd.int/doc/legal/cbd-en.pdf>.

16 Secretariat of the Convention on Biological Diversity, *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization* (Montreal: Secretariat of the Convention on Biological Diversity, 2002), accessed September 20, 2013, <http://www.cbd.int/doc/publications/cbd-bonn-gdls-en.pdf>.

17 Secretariat of the Convention on Biological Diversity, *Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities* (Montreal, Secretariat of the Convention on Biological Diversity, CBD Guidelines Series, 2004), accessed September 20, 2013, <http://www.cbd.int/traditional/guidelines.shtml>.

18 Secretariat of the Convention on Biological Diversity, *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*, (Montreal: Secretariat of the Convention on Biological Diversity, 2011) accessed September 20, 2013, <http://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf>.

## BENEFITS OF GUIDELINES

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Conservation International developed these institutional FPIC guidelines to support its *Indigenous Peoples and CI Policy* and its overarching Rights-based Approach (RBA) to conservation. These guidelines can improve both conservation and human well-being outcomes in CI's work with indigenous peoples, while also protecting the rights of these communities.

CI recognizes that FPIC is a fundamental building block for successful projects and community partnerships. These guidelines create a standard of practice for all of CI's work with indigenous peoples across different countries, programs and projects. Because CI's work and community partners are varied and diverse, these guidelines are created to be flexible and can be adjusted and adapted for particular countries, community structures and specific projects.

A key benefit of these guidelines is that they ensure that CI is transparent. By using these guidelines, CI clearly states its approach to working with indigenous peoples and demonstrates to various groups—including indigenous partners, governments, other stakeholders and the wider conservation community—that it is committed to indigenous peoples and their rights. Although designed for use by CI, these guidelines are available for other actors to use. They offer a standard, yet flexible, approach to FPIC built on diverse experiences related to the creation of protected areas, REDD+, national consultation policies, and conservation agreements. These guidelines, or any other effective FPIC process, increase the success of conservation efforts worldwide.

Most importantly, CI's use of these FPIC guidelines directly benefits not only CI, but also indigenous peoples, since they benefit the most when their voices drive the conversation. These guidelines are based on indigenous perspectives, built on examples of FPIC from Conservation International's Indigenous Advisory Group and complemented with lessons from CI programs. The recommended steps provide for the full and effective participation of indigenous peoples in project development, implementation and monitoring, while simultaneously protecting indigenous rights and increasing the probability of project success for everyone involved.

# HOW TO USE THESE GUIDELINES

These guidelines are designed to balance the needs for broad principles, prescriptive standards, and a flexible approach for ensuring FPIC with indigenous peoples. They are presented in a document of moderate length to be user-friendly and encourage maximum use.

The guidelines consist of nine steps grouped into three stages that outline the elements required to achieve an effective FPIC process. The stages and steps are as follows:

## GATHER INFORMATION

- Understand the current local context
- Understand legal and customary rights
- Identify and respect traditional decision-making structures

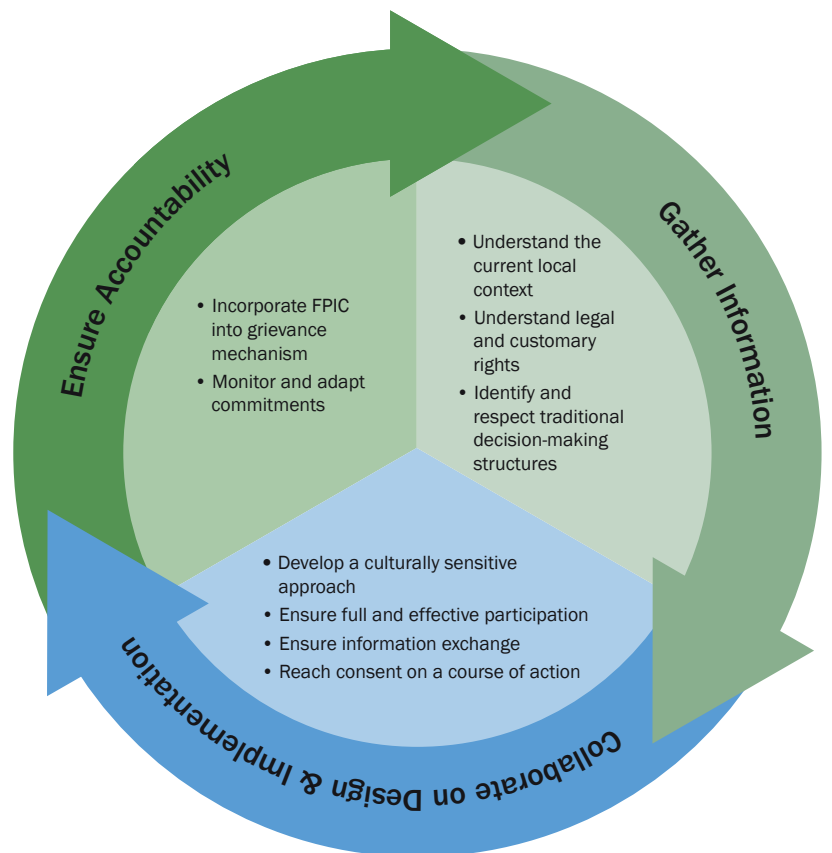
## COLLABORATE ON DESIGN AND IMPLEMENTATION

- Develop a culturally sensitive approach
- Ensure full and effective participation
- Ensure information exchange
- Reach consent on course of action

## ENSURE ACCOUNTABILITY

- Incorporate FPIC into grievance mechanism
- Monitor and adapt commitments

Each step contains recommended actions that demonstrate how the step may be achieved. These actions are illustrative but not necessarily



exhaustive. **While the recommended actions guide the user in how to approach the step, the user may also need to identify additional or different steps or actions relevant to a particular context or place.**

The guidelines should be applied with the participation of communities and key stakeholders to ensure that the process is built on collaboration and to ensure that they are willing to work with CI toward creating an acceptable FPIC process, using these guidelines as a tool. Governments, partners, and all other stakeholders should also be aware of these guidelines and how they will be applied to achieve the goal of respecting FPIC.

**FPIC and these guidelines should be considered throughout the life of a project, from start to finish.** Conservation International recommends that the user read this document in full, from the introductory and background materials to the actual steps, before beginning to formulate a project. Understanding the legal origin and evolution of FPIC over the years, for instance, lends insight into planning a participatory process today. The references provided at the end of this document offer further reading about FPIC and specific issues.

Once the material in this document has been completely reviewed, CI recommends that the user focus on the section entitled **Steps to Creating a Successful FPIC Process** and begin outlining initial actions to undertake an FPIC process with the impacted community. Finally, as a successful FPIC process requires a considerable investment of time, finances and other resources, it is essential that these pieces are planned well in advance of initiating discussions with a community.

**For projects that are already underway, however, these steps should be considered as soon as possible throughout the remaining project stages.** Under such circumstances, what follows may be a variation on a true FPIC process, but it is still important and relevant for ensuring the community's full and effective participation, addressing issues, and avoiding conflicts.

Reviewing this document, developing a thorough understanding of the guidelines, and applying them consistently and collaboratively will provide a strong foundation for a successful FPIC process. The discussions and planning that the guidelines inspire and facilitate with each unique community will build a lasting framework for respecting indigenous rights.



# STEPS TO CREATING A SUCCESSFUL FPIC PROCESS

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The following FPIC “steps” are the most fundamental part of these guidelines, providing clear direction to CI staff involved in a project. While presented in a certain sequence below, these steps often happen concurrently, so the existing order should be adapted as required. Potential overlap between the steps also exists and should be taken into consideration. For instance, understanding a community’s legal and customary rights is a single step, but these rights also need to be considered when addressing the local context and traditional decision-making structures. The user should keep these overlaps in mind and assess when and how to apply the steps to meet to the needs of the particular project. Of the nine steps, there is not a single one that can be designated as the step in which FPIC happens. **In practice, *all* of the steps form an important part of the FPIC process and must be considered both individually and as a whole.**

As the context of each project is unique, users may need to interpret these steps and generate key questions and additional or alternative actions in order to fulfill the spirit of each step.

## GATHER INFORMATION

By the end of this stage, the user will

- Identify the external actors who influence the community
- Know the proper channels for seeking community decisions
- Know how the community relies on natural resources, especially those that may be impacted by the project
- Know whether or not a community’s legal and customary rights align
- Determine any capacity-building needs regarding rights and decision-making structures, or any other topic identified

## Understand the Current Local Context

**Description:** Just as cultural elements will influence an FPIC process, so, too, will the general local context affect a community at any given time. To understand the current context of a community, the user should consider all factors that may play a role, including past or current conflicts, gender relations, perceptions and opinions of relevant matters or conservation-related issues, land use and natural resource management, financial resources, and elements specifically mentioned in other steps. To ensure a community-driven process, it is also important to identify the many different actors and their various viewpoints that may play a role in an FPIC process, supporting or influencing the

community in any way—positive or negative. These may include governments, international or local NGOs, private sector companies, other communities, etc.

Note that some aspects of the current context are addressed in detail in other steps, such as *Understand Legal and Customary Rights*.

#### **Actions:**

- Conduct an analysis and mapping exercise together with the community and partners to determine which communities are directly or indirectly impacted by the proposed project.
- Identify any other stakeholders involved; determine their roles in the proposed project area, and clarify any decision rights they may or may not have.
- Establish a baseline understanding of the community's cultural and spiritual beliefs about sacred sites, forests, and natural resources, while ensuring the protection of this information in accordance with community desires and protocols.
- Identify livelihood concerns and basic human needs that may impact the ability or willingness of a community to engage in a project, clarifying what the likely tradeoffs might be. Keep in mind that these may be different for different groups within the community, such as men, women, youth, or elders.
- Determine the financial or other resources available to the community, including project and non-project funds, which may positively or negatively influence the community's use of natural resources.
- Conduct a gender analysis of men's and women's roles that will impact implementation of the project.
- Understand the needs and concerns of women, recognizing that they have unique knowledge and priorities, and that they are often left out of decision-making processes. Separate meetings for men and women may be necessary.
- Identify past, current, and potential conflicts that exist both within the community and with external actors.
- Identify the community's perceptions and opinions about the project, external actors, nature, and all other relevant matters.

### **Understand Legal and Customary Rights**

**Description:** Both legal and customary rights play an important role in determining interactions with the community and individuals involved. It is important to understand if and how the national law incorporates or enforces the many indigenous rights guaranteed at the international level. The unique legal context of each country must be considered to understand the implications for FPIC and for adhering to these guidelines. For a conservation organization, laws surrounding autonomy, land tenure and resource ownership are particularly relevant and sensitive issues.

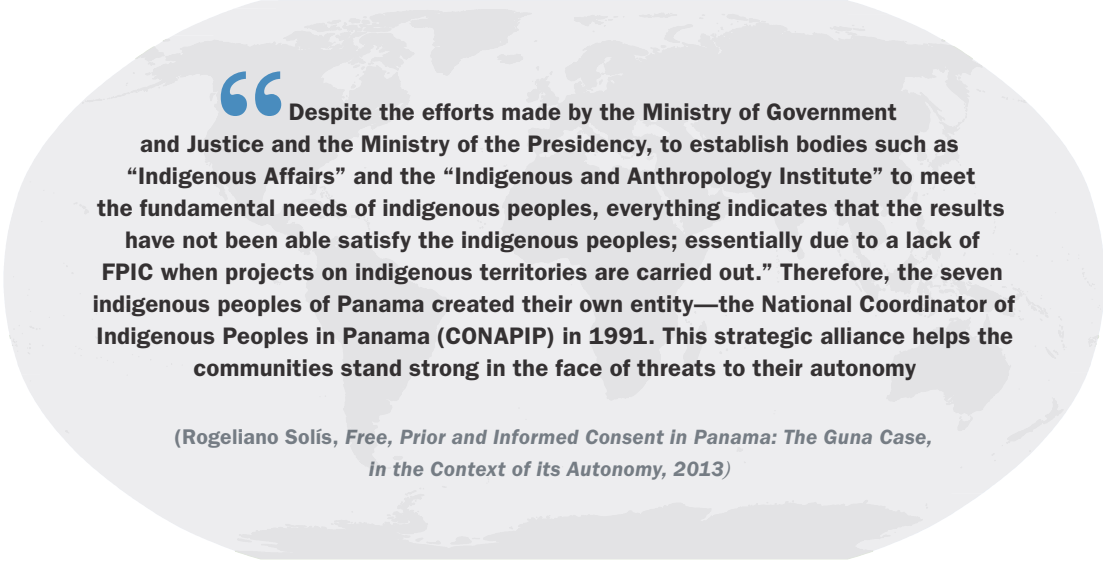
At the same time, it is vital to understand the customary rights of those you are working with, particularly any customary land management practices or other traditional management structures.

Customary rights, though not necessarily recognized by the government, are based upon well-established land ownership and use patterns that have existed for generations.

**Actions:**

- Identify the rights indigenous peoples have under national law, which may include such rights as:
  - Land tenure rights
  - Rights to consultation and FPIC
  - Resource rights
    - Carbon rights
    - Sub-soil rights
- Identify if customary land management systems, practices, rules, and rights exist.
- Determine if other traditional management structures exist.
- Identify any potential conflicts between customary and legal rights. This may include instances where countries do not recognize the right to consent. If conflicts exist, identify a multi-stakeholder group to work on mutually agreeable resolutions. Dialogue is key.
- Identify natural resources that may be impacted by this project and the legal and customary laws that govern these resources.
- Assess whether all community members understand their legal and customary rights, especially those who may otherwise be marginalized. If lacking knowledge about their rights, community capacity in this area must be built.
- Ensure that other relevant stakeholders, such as governments and private sector actors, also understand the legal and customary rights of the community. If lacking, capacity in this area must be built.

What are legal and customary rights? Legal rights are those rights written into international, national or regional law, often based on Western concepts and norms. Customary rights are de facto rights that have been established through a long tradition of customary practice. Although not necessarily written into legislation, customary rights are widely practiced and accepted. In general, legal and customary rights often coexist, especially in former colonial countries or countries with recognized cultural or religious minorities or indigenous peoples. This system of dual recognition is called legal pluralism. In other instances, legal and customary rights may conflict.



“Despite the efforts made by the Ministry of Government and Justice and the Ministry of the Presidency, to establish bodies such as “Indigenous Affairs” and the “Indigenous and Anthropology Institute” to meet the fundamental needs of indigenous peoples, everything indicates that the results have not been able to satisfy the indigenous peoples; essentially due to a lack of FPIC when projects on indigenous territories are carried out.” Therefore, the seven indigenous peoples of Panama created their own entity—the National Coordinator of Indigenous Peoples in Panama (CONAPIP) in 1991. This strategic alliance helps the communities stand strong in the face of threats to their autonomy

(Rogeliano Solís, *Free, Prior and Informed Consent in Panama: The Guna Case, in the Context of its Autonomy*, 2013)

## Identify and Respect Traditional Decision-making Structures

**Description:** The FPIC process depends on seeking consent from the community in a manner that follows its own customs and traditions. The community may have decision-making processes that mirror the spirit of FPIC, even if its people are unfamiliar with the specific term. Understanding how communities make decisions is an important part of FPIC because it strengthens partner interactions and helps adapt the FPIC process to a specific community. A community’s decision-making structure may actually extend beyond the community itself because of links to indigenous federations, regional bodies, or associations, so CI staff should also consider these connections in this step.

It is important to recognize that traditional decision-making structures or processes may or may not be formally recognized by the government, but if they do exist, CI recognizes and respects them. As demonstrated in several of the case studies, decision-making structures

In many cases, traditional decision-making structures do not adequately allow for women’s involvement, often resulting in outcomes that place additional burdens on them. Ensuring that women participate in decision making is fundamental to the long term sustainability of conservation projects, since women represent over 50 percent of the world’s environmental stewards and in many cases use natural resources more frequently than men. Whenever possible, it is advisable to discuss this issue with the community, and devise culturally appropriate solutions that give women a voice while still respecting traditional norms.

may coexist at both the governmental and community level, both held to be equally valid and useful for different situations.

**Actions:**

- Identify the community-selected representative(s) or “point people” for this process.
- Inform the community about CI’s decision-making structure for the project at hand, as well as the structure of any other relevant stakeholder’s decision-making process.
- Map the community decision-making structures together with community, paying close attention to how women and men, as well as other groups within the community, participate in decision making.
- Agree upon a process to strengthen the decision-making structure if the community identifies this as a need and seeks CI support to do so.
- Support a process to create a mutually respected decision-making structure in cases where two or more communities claim rights over a project site.
- If FPIC is not familiar to the community, engage in a dialogue to identify existing decision-making structures that support the principles underlying FPIC.



## COLLABORATE ON DESIGN AND IMPLEMENTATION

By the end of this stage, the user will

- Integrate cultural norms into the FPIC process
- Determine if there are capacity-building needs surrounding women’s participation and human rights relevant to the proposed project
- Establish a process to ensure that all groups, including vulnerable populations, are able to participate in the dialogue and decision-making process

- Determine how and in what form information should be shared and if outside assistance or advice has been requested, provide funding for it
- Reach consent with the community on whether, and if so, how, to proceed with the project

## Develop a Culturally Sensitive Approach

**Description:** Understanding and being sensitive to a community’s culture is essential to an FPIC process. Cultural beliefs and norms inform a community’s customs and context, from its traditional governance system and decision-making processes to its history, folk practices and relationship with nature. Similarly, cultural elements will influence how a community designs a FPIC process. Partners and other actors involved in the process should respect these elements in a community.

The FPIC process should also take into account that not all communities will be culturally homogeneous. It is also important to recognize that cultural practices sometimes exclude certain populations, such as women, people with disabilities or youth. When designing FPIC processes under these circumstances, it may be necessary to educate communities about fundamental human rights and the benefits gained from encouraging the full participation of all members of society.

### Actions:

- Identify which cultural norms will govern the proposed project, and how they can be integrated into the design for a better end project.
- Identify how the community views nature and makes decisions regarding it.
- Identify which cultural norms, if any, inform the community’s FPIC process.
- If communities are not culturally homogenous, a single process integrating the needs and norms of all groups should be developed.
- Create a timeline that is culturally appropriate together with the community.

What are fundamental human rights? They “refer to norms that help to protect all people from severe political, legal, social, or other abuses. They are based on the understanding that all people are, by virtue of being human, inherently entitled to minimum standards of freedom and dignity”.<sup>20</sup> These rights include, but are not limited to, life, freedom to practice culture, freedom from discrimination, access to justice, an adequate standard of living, and the right to participate in decision-making.

20 Jessica Campese, “Rights-based Approaches to Conservation: An overview of concepts and questions,” in *Rights-based Approaches: Exploring issues and opportunities for conservation*, ed. J. Campese et al. (Bogor, Indonesia: CIFOR and IUCN, 2009), 2.

## Ensure Full and Effective Participation

**Description:** Full and effective participation is a vital component of the FPIC process, as it addresses both who is involved and to what extent they are engaged in the process. Robust participation ensures a community-driven process that allows a community to determine its own development path and dedicate resources in accordance with its own decision-making structures.

This step addresses the need to ensure that all groups, if not all members, of a community are represented in the process. It is important to recognize that vulnerable groups, including women, people with disabilities, youth and elders, do not always have the same voice or authority within the community as other members, so there is a need to ensure a consultation process takes these people into account.

### Actions:

- Agree upon a code of conduct among all involved, outlining a valid consultation process.
- Ensure a process that respects local timeframes and accounts for geographic limitations to participation.
- Ensure that all sectors of the community participate in discussions about the project in accordance with community structures and norms, either directly or through their legitimate representatives.
- Use culturally appropriate techniques and materials to engage members of the community.
- Ensure that all relevant stakeholders participate according to their roles and decision rights, as identified in the stakeholder mapping exercise.
- Where some parts of society (i.e. women, youth) are not traditionally allowed a voice in decision making, identify ways with community leaders to obtain their input, considering informal channels (i.e., casual discussions or a women's meeting) when formal channels such as a community-wide meeting are not appropriate. Demonstrating to decision makers the importance of all community opinions, whether gathered formally or informally, may be required. If no alternatives are identified, initiate an ongoing dialogue and information exchange on the value of participatory practices. Facilitate training and capacity building to support the marginalized group's ability to participate, as necessary.
- Ensure proper funding to cover all stages of pre-planning and FPIC implementation.

Ensuring women's participation is a vital component of project success. Strategies to ensure women's participation might include

- Addressing meeting invitations specifically to women
- Holding meetings with women only, including a facilitator and translator if they are necessary
- Providing child care during meetings
- Holding meetings at a time of the day or year when women are most free to participate

Kanyinke Sena's case study, *Operationalizing Free, Prior and Informed Consent within REDD+ Projects in Kenya*, raises many considerations for the full and effective participation of women. Reflecting on his engagement with the community and a site visit, Mr. Sena noted two obstacles that arose:

- The interpreter was a man, inhibiting women to speak up
- The site visit was on a market day, when many women were unavailable to participate

As a result, Mr. Sena shared the following observations on engaging women:

- Women-only meetings give women more freedom to discuss the project
- Women's attendance at meetings does not necessarily equate to their participation in the meeting

These insights and others in Mr. Sena's case study provide valuable lessons for ensuring that women participate fully and effectively in FPIC processes.

## Ensure Information Exchange

**Description:** A large part of information sharing is ensuring that it is presented in an understandable manner. This means in a language the community can understand and in a culturally appropriate timeframe and manner. Information sharing can also help build capacity within the community and among all relevant stakeholders, including the government. If the government itself is not a main partner, they are still the framework under which all projects fall.

Communities are a key source of important information, and their contributions are crucial to the success of any project planning process. In addition to sharing information, this step also addresses what is done with the information received from the community, government, or other stakeholders. It is important to recognize and incorporate traditional knowledge, respect indigenous peoples' intellectual property rights, and ensure the protection of sensitive information gathered during a FPIC process. For instance, if a community provides CI with traditional knowledge on agricultural practices for the organization's use, CI must follow the community's guidance for using the information, citing the community, and sharing the benefits.

### Actions:

- Identify the community's preferred method of receiving and sharing information.
  - Clarify the preferred language of the community.
  - Clarify the level of literacy in the community, assessing whether it is the same for all segments of the population.



- Clarify whether the community prefers oral or written information transfer, or other means that they identify.
- Identify community expectations related to the proposed project.
- Conduct a capacity needs assessment for all involved in and affected by the proposed project or initiative.
  - Assess the community’s familiarity with the concept of FPIC.
  - Identify the community’s needs relevant to an FPIC process.
  - Identify the capacity needs for the community and all other stakeholders relevant to the proposed project or initiative.
  - Once capacity needs have been assessed, take necessary steps to meet them.
- Identify existing information-sharing structures for both communities and partners and ensure that they are complementary.
- Determine the most appropriate way to manage sensitive information with the community, ensuring respect for internationally recognized standards and rights.
- Provide third party support, including access to legal advice such as a legal consultant of the community’s choosing, to ensure that the positive and negative implications of the proposed project are shared and understood.
- Together with the community, define how the FPIC process will be documented, keeping in mind that a formal written document may not be appropriate for the community’s language and needs.

“Since the beginning of this study, it was clearly noticed that the Gunas interviewed were unaware of the concept of Free, Prior and Informed Consent in the terms by which it is currently known. At first they claimed they had never heard of it and then they pointed out that the concept was from the wagas [people who are] (not Gunas). However, when the concept was translated into their language, they automatically said with pride: “that is what our authorities in the local congress and the Guna General Congress are for”. They added that the Gunas are willing to fight when the wagas want to impose a project in their communities, on which they have not been consulted.”

(Rogeliano Solís, *Free, Prior and Informed Consent in Panama: The Guna Case, in the Context of its Autonomy*, 2013)

## Reach Consent on Course of Action

**Description:** It is important to understand that agreement in this context indicates consent within the community on whether and how they would like to proceed with a proposed project. It is not agreement to the proposed project itself, as it allows for both a way forward with the project and also an agreement that the project will not move forward at all. Recognition that indigenous peoples have the right to determine their own development path is critical in either instance. A community may decide that a proposal meets their development needs, or it may decide that it does not. In either case, it is their choice to make.

This step can be seen as an end to the FPIC process if the community decides not to move forward with any activities. If the community does choose to move forward, it becomes the potential beginning of the project planning phase and a continuation of the FPIC process.

### Actions:

- Understand what constitutes consent within the community, including both the process as well as the actual indicators that consent has been achieved (e.g. show of hands, ballots, decision among elders, etc.).
- Document the decision that was made regarding the project, so that all parties have a record.
  - Choose documentation methods that are relevant and useful to all parties. It may be necessary to document the decision in more than one way, for example in both a written document and a recording of the representative speaking the decision.
- If the project will be moving forward, work in partnership with the community to determine the next steps, and move forward with the project planning phase.
- Conduct periodic review of the agreement with the community throughout the lifecycle of CI's engagement. The frequency of review should be determined with the community and modified as needed with the agreement of the parties once the project or program is underway.

**One CI case study focusing on a conservation agreement (CA) in China examines a conservation project based on mutually agreed terms between the Lizhiba community, the Baishuijiang National Nature Reserve (BNNR) and CI. One of the final steps in their consent process included conducting “a community conference attended by representatives from each hamlet. In this conference, the representatives from the various hamlets in Lizhiba expressed disagreement with the terms that the Lizhiba leaders had developed with the BNNR. To resolve this difference, confidential votes were held to settle on the benefit package, such that the new terms of the agreement reflected the desires of the majority.”**

*(Tian Feng, The Application of Free, Prior and Informed Consent Principles in Conservation Agreements: Case Study of the Lizhiba Community in Southwest China)*

## ENSURE ACCOUNTABILITY

By the end of this stage, the user will

- Create a grievance mechanism that incorporates how violations of FPIC will be addressed
- Agree with the community how the project will be monitored to determine when the FPIC process will need to be re-negotiated

### Incorporate FPIC into Grievance Mechanism

Grievance mechanisms are an important component of a project or activity, providing a needed channel for resolving conflicts and concerns that may arise between the parties involved—in this case, specifically any violations of a community’s right to FPIC. Assuming that the community decides to proceed with a project or activity, the project’s grievance mechanism must include a component related to violations of the right to FPIC. For instance, if information is not provided in a language understood by the community, the community needs a way to address the issue. Since FPIC is an ongoing cycle that continues throughout the life of CI’s engagement with a community, it must be incorporated into the project components themselves.

Defined timeframes should accompany each step of a grievance mechanism to ensure that issues are addressed according to a schedule that suits the community. The overall process relies on accessible channels, trusted processes and clear steps that the community and other parties understand how to use. The grievance mechanism should allow for access to a third party mediator when the parties cannot resolve the conflict themselves.

#### Actions:

- Identify traditional methods that the community uses to resolve conflicts.
- Create a culturally appropriate timeline together with the community for addressing unresolved issues.
- Determine together with the community the steps needed to resolve a conflict with an outside entity.
- Identify together with the community a suitable third party who could mediate if needed.

### Monitor and Adapt Commitments

Monitoring a FPIC process is just as important as developing it in the first place. Because both projects and FPIC processes are dynamic—requiring adjustments as circumstances, opinions or outcomes change over time—periodic evaluations from the indigenous communities and other stakeholders ensure that FPIC is respected throughout the life of the project and not merely at one point in time.

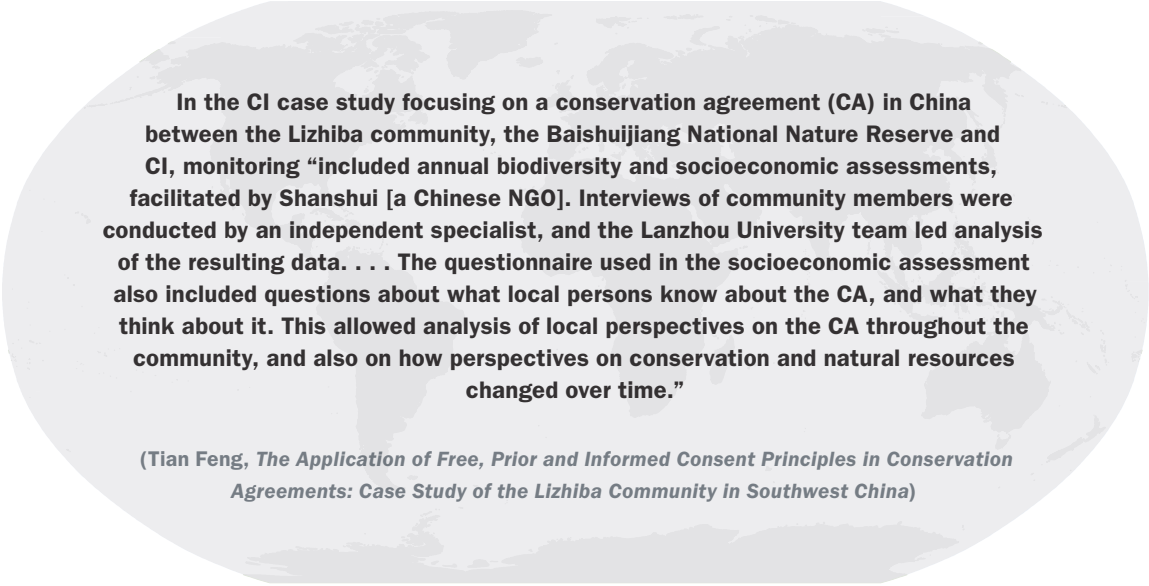
These FPIC guidelines themselves could provide a solid foundation on which to build a monitoring protocol together with the participating community.

Periodic feedback from monitoring provides communities and project proponents with the necessary information to evaluate and adapt commitments at defined points. Such modifications are a natural part of an FPIC process, and the ability to adapt both the process and the project should be considered in the planning phase.

**Actions:**

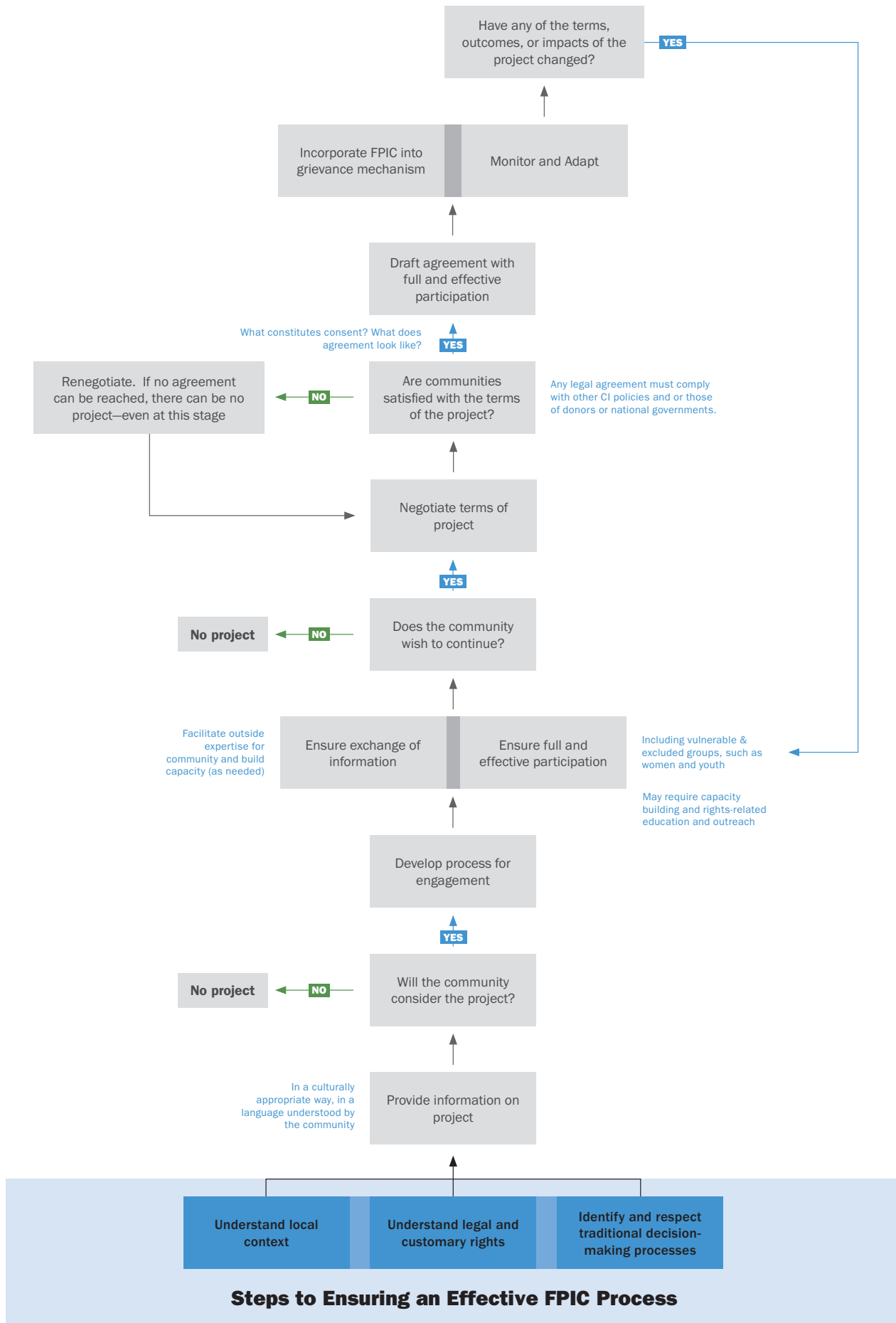
Together with the community

- Identify who will lead the evaluation.
- Determine how often the project will be assessed.
- Develop a process to address unforeseen changes in the project.
- Review the monitoring protocol to ensure its validity at an agreed upon time.



**In the CI case study focusing on a conservation agreement (CA) in China between the Lizhiba community, the Baishuijiang National Nature Reserve and CI, monitoring “included annual biodiversity and socioeconomic assessments, facilitated by Shanshui [a Chinese NGO]. Interviews of community members were conducted by an independent specialist, and the Lanzhou University team led analysis of the resulting data. . . . The questionnaire used in the socioeconomic assessment also included questions about what local persons know about the CA, and what they think about it. This allowed analysis of local perspectives on the CA throughout the community, and also on how perspectives on conservation and natural resources changed over time.”**

*(Tian Feng, *The Application of Free, Prior and Informed Consent Principles in Conservation Agreements: Case Study of the Lizhiba Community in Southwest China*)*





## CONCLUSION

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**T**hese guidelines are built upon respect for indigenous peoples' right to determine their own development path. They arise from the understanding that respect for these rights and recognition of indigenous peoples' traditional knowledge of natural resource management can achieve lasting human well-being and conservation successes. These positive impacts extend beyond an individual community to the wider global community. CI has worked in partnership with indigenous peoples since its founding more than 25 years ago, understanding that the principles behind FPIC are the foundation for mutually beneficial collaborations.

These guidelines are the next step in the journey to improve CI's practice further and demonstrate its commitment to indigenous peoples' rights. They were developed with advice and feedback from indigenous peoples and CI staff from around the world. Based on case studies that served as a window into the diverse ways in which a FPIC process can take shape, these guidelines are specific enough to offer practical advice, yet general enough so that users can mold them to their own circumstances and needs. This is a living document that CI hopes will be frequently used and ever evolving as new international laws are developed and rights are substantiated.

### Additional FPIC Resources

Asia Indigenous Peoples Pact: Rights in Action: Free, Prior and Informed Consent (FPIC) for Indigenous Peoples (Video), <http://vimeo.com/66708050>

Asia Indigenous Peoples Pact and International Work Group for Indigenous Affairs: Training manual on Free, Prior and Informed Consent (FPIC) in REDD+ for indigenous peoples, [http://www.iwgia.org/publications/search-pubs?publication\\_id=593](http://www.iwgia.org/publications/search-pubs?publication_id=593)

Cultural Survival and Rainforest Foundation: Turning Rights into Reality: Issues to Consider in Implementing the Right to Free, Prior and Informed Consent, <http://www.culturalsurvival.org/consent>

Forest Stewardship Council: Guidelines for the implementation of the right to free, prior and informed consent (FPIC), <https://ic.fsc.org/download.fsc-fpic-guidelines-version-1.a-1243.pdf>

Forest Peoples Programme (Resources Page), <http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic>

Oxfam: Guide to Free Prior and Informed Consent., <http://resources.oxfam.org.au/pages/view.php?ref=528&k=>

RECOFTC: Putting Free, Prior, and Informed Consent into Practice in REDD+ Initiatives, <http://www.recoftc.org/site/resources/Putting-Free-Prior-and-Informed-Consent-into-Practice-in-REDD-Initiatives.php>

UN-REDD Programme: UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC) (Working Final version), [http://www.un-redd.org/Launch\\_of\\_FPIC\\_Guidlines/tabid/105976/Default.aspx](http://www.un-redd.org/Launch_of_FPIC_Guidlines/tabid/105976/Default.aspx)



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## **OUR VISION**

We imagine a healthy, prosperous world in which societies are forever committed to caring for and valuing nature, our global biodiversity, for the long-term benefit of people and all life on Earth.

## **OUR MISSION**

Building upon a strong foundation of science, partnership and field demonstration, CI empowers societies to responsibly and sustainably care for nature, our global biodiversity, for the well-being of humanity.

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