

Free, prior and informed consent in REDD+

A handbook for grassroots facilitators

Questions and answers



Free, prior and informed consent in REDD+: *A handbook for grassroots facilitators*
Questions and answers

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Purpose of this publication

This publication has been developed to provide support to local trainers and facilitators who are engaged in delivering REDD+ and climate change training and capacity development and therefore already have a basic understanding of these subjects.

This question and answer booklet is based on the principle that indigenous peoples and other local communities have the right to self-determination and to give or withhold their free, prior and informed consent (FPIC) to externally proposed projects, which may affect their livelihoods, access to land resources, and socio-cultural values and norms. In particular context of REDD+, the 10 questions and answers discussed in this booklet are designed in response to the growing need to contribute to the social and environmental safeguards of REDD+.

The questions in this booklet are frequently asked by participants during training and capacity development at the local level. The 10 questions and answers listed in this booklet help explain:

- the basic concept, origin and importance of FPIC;
- the fundamental principles of FPIC;
- the status of FPIC in the natural resource management sector in general, and the forestry sector in particular;
- international and national law or legal frameworks that support the use of FPIC;
- the current status of FPIC implementation in REDD+; and
- key challenges of implementing FPIC on the ground, and the roles of indigenous people and local communities in the process.

Relevant examples are provided throughout this booklet to help explain the answers. The examples are also drawn from other sectors and regions, since REDD+ implementation and processes that respect the right to FPIC are still limited in the Asia-Pacific region.

Ten key questions



Q1 What is the concept of 'free, prior and informed consent' (FPIC) and why is it important?

Q2 What does the word 'free' mean in the FPIC process?

Q3 What does the word 'prior' mean in the FPIC process?

Q4 What does the word 'informed' mean in the FPIC process?

Q5 What does the word 'consent' mean in the FPIC process?



Q6 What are the different sectors of natural resource management where FPIC may be applicable?

Q7 Why is FPIC important in the forest management sector and what is its current status?

Q8 What international and national law or legal framework requires the use of FPIC and what is the current status of implementation of FPIC in REDD+?

Q9 What are or could be key challenges in putting FPIC into practice in REDD+, and which agency will ensure that FPIC in REDD+ is followed at the national level?

Q10 What is the role of local people in applying FPIC in the REDD+ context?



Q1

What is the concept of 'free, prior and informed consent' (FPIC) and why is it important?

Free, prior and informed consent (FPIC) can be summarized as the recognition of the right to self-determination. When development or infrastructure projects are planned and implemented, FPIC provides a locally and culturally specific process to guarantee the rights of local people¹. The FPIC process is based on the fact that local people have the right to negotiate the conditions for any proposed project that will directly impact their lifestyle or livelihood, including their right to use the land and its resources². In other words, local people can accept or reject a proposed external development or infrastructure project; and they can define the conditions and negotiate the terms to accept or reject the proposed project³. However, it is often the case that local people lack the political power to voice their opinions and make themselves heard; FPIC provides opportunities and mechanisms to respect their fundamental rights to voice their opinion about a proposed project.

The concept of FPIC is not new. It originates from large-scale development projects that have significant impacts on land use and a high risk of conflicts between the implementers of such a project and the affected communities. Development projects in the extracting industries, such as mining⁴, oil and gas⁵ are examples of such situations.

Historically, the pattern of disempowering local people by excluding them from decision-making processes that impact their lives and livelihood, especially those concerning contested land ownership, made FPIC a necessity. The primary focus of FPIC was on indigenous people, but with the growing discourse on how to respect

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1. Local people are those who reside in and around the forests and whose livelihoods heavily depend on forest products and services. Local people include indigenous communities, ethnic minorities, migrants and smallholder farmers in rural areas.
 2. Edwards, K, Triraganon, R, Silori, C, & Stephenson, J 2012, *Putting Free, Prior, and Informed Consent into Practice in REDD+ Initiatives: A Training Manual*, RECOFTC, IGES and Norad, Bangkok, Thailand.
 3. Ibid.
 4. Mahanty, S & McDermott, CL 2012, 'Free, Prior and Informed Consent in Mining and Forest Certification: Lessons for REDD+'. Presented at "Beyond Carbon", *Justice and Equity in REDD+* workshop, University of Oxford. Available from: <www.eci.ox.ac.uk/redd/downloads/ppt/1-3-mcdermott.pdf>. [7 January 2014].
 5. Voss, M, & Greenspan, E 2012, *Community Consent Index: Oil, Gas and Mining Company Public Positions on Free, Prior, and Informed Consent*, Oxfam America Research Backgrounder series, Available from: <www.oxfamamerica.org/files/community-consent-index.pdf>. [7 January 2014].



the rights of other local communities, particularly those dependent on land and forest resources, FPIC is gaining importance in the forestry sector as well. Therefore, the right to FPIC (theoretically) applies to any project that affects the lives and livelihoods of local people. In the absence of a legitimate FPIC process, resentment against development projects are common; it is aggravated when the project has a negative impact on the livelihood and well-being of the affected communities or has potential to degenerate the cultural and social fabric of the community or proposed project site. There are several examples from across the globe of projects that were suspended or cancelled due to the lack of consultations with affected communities and subsequent protests by affected farmers, local communities and indigenous peoples. As a result, implementers may face a variety of repercussions, such as further costs due to delays. Local people may also suffer various kinds of losses, including their sources of livelihood and daily subsistence, and threats to places of cultural and spiritual importance as they continue to fight for their rights (see Box 1).

Box 1: Risks of failing to secure consent

Xayaburi Dam on the Mekong river: The proposal to construct the Xayaburi Dam on the Mekong river drew lots of criticism and opposition from civil society organizations and local communities. Since the beginning of 2011, the Rivers Coalition in Cambodia (RCC), led by the NGO Forum of Cambodia has been demanding the cancellation of the construction of Xayaburi Dam. The RCC has taken this position due to potential negative impacts on the livelihoods of Cambodians, especially those depending on fisheries along the Mekong river. In addition, the dam is likely to increase flooding of forests and agricultural land, in addition to negatively impacting the ecological productivity of wetlands (it would block the flow of silt that is necessary to maintain soil fertility downstream, to sustain the Mekong Delta). It is also claimed that the dam's Environmental Impact Assessment (EIA) process was flawed. The Environmental Impact Assessment report only considers impacts within the impoundment area and 10 km downstream of the project. According to the Strategic Environmental Assessment (SEA) report of the Mekong River Commission (MRC), significant transboundary ecosystem and socio-economic impacts are expected to occur in Cambodia.



Moreover, it is claimed that the costs and benefits of the Xayaburi Dam project to Mekong countries are extremely unequal. It is purported that Lao PDR and Thailand will gain the most benefits from building the dam, while socio-economic costs will be disproportionately borne by downstream countries, namely Cambodia and Vietnam.

Source: STIMSON 2013, *NGO Forum's Campaign Against Xayaburi*. Available from: <<http://www.stimson.org/summaries/ngo-forums-campaign-against-xayaburi/>>. [28 December 2013].

Newmont's Yanacocha mine: Newmont's plan to expand Yanacocha mine into Mount Quilish in Peru is one of the best known examples of what can happen when communities are not consulted about a project. Community protests cost Newmont an estimated US\$1.69 billion due to project delays, forcing the company to agree to never mine Mount Quilish for gold worth an estimated US\$ 2.23 billion. The experience provoked changes within Newmont, which is currently participating in one of the most extensive stakeholder engagement processes ever undertaken at its Akyem mine in Ghana.

Source: Anderson P 2011, *Free, Prior and Informed Consent: Principles and Approaches for Policy and Project Development*, RECOFTC – The Center for People and Forests, Bangkok. (original source: Lehr, A & G Smith 2010, *Implementing a Corporate Free, Prior and Informed Consent Policy*, Foley Hoag LLP, Boston and Washington DC. Available from: <www.foleyhoag.com>. [12 November 2013].

Esquel Gold Project: In Argentina, an open-pit mining project – the Esquel Gold Project – was proposed close to Esquel town. From the beginning, the implementing company did not enter into dialogue with the inhabitants of the town to understand their concerns. The company also failed to inform the town's residents about the potential risks and benefits of its venture. Then, in March 2003, the inhabitants had the chance to vote on whether or not they endorsed the project. The population overwhelmingly rejected the project. Hence the mine was never completed, the voice of the inhabitants was heard and therefore all investments prior to this were wasted.

Source: World Resource Institute 2007, *Development Without Conflict: The Business Case for Community Consent*. Available from: <www.wri.org/publication/development-without-conflict>. [19 October 2013].

Thus, FPIC is a process that is advantageous for all stakeholders involved in the proposed project, especially if it is carried out before investments are made on such projects (see Box 2).

Box 2: Benefits of securing the consent of local people for a development project

In the Philippines, a development project for extracting natural gas off the coast of Palawan Island received considerable support from the local population due to substantial efforts to properly inform the affected communities and seek their consent. According to the World Resources Institute, the project developers organized (1) community outreach and interviews with key opinion leaders and decision-makers; (2) information dissemination, education and communication activities; (3) perception surveys and participatory workshops to introduce the project and validate initial survey results; and (4) participatory involvement in the formulation of environmental management plans.

Based on the feedback from the local population, the developers significantly adjusted their plans and continued the dialogue with them during the construction phase. This led to the acceptance and successful implementation of the project.

Source: World Resources Institute 2007, *Development Without Conflict: The Business Case for Community Consent*. Available from: <www.wri.org/publication/development-without-conflict>. [19 October 2013].

Typically, FPIC is an ongoing, iterative and multi-layered process, rather than something that requires a one-time approval⁶. This means that the project proponent and local communities need to agree to the various activities at different stages of the project's implementation until its conclusion. If an agreement was reached in the initial steps of a project, then the consent of the local people should be sought before starting to plan and implement the subsequent steps of the proposed project. Reaching a consensus to begin the project is not sufficient for the project to go forward until its completion.

6. Sosa, I 2011, *License to Operate: Indigenous relations and free, prior and informed consent in the mining industry*. Available from: <http://www.sustainalytics.com/sites/default/files/indigenousepeople_fpic_final.pdf>. [19 October 2013].

कायम जलजन तथा भागदरमाका वनको भूमिका

Water and Forest Conservation

Water is essential for life and health.

Forests are the source of water and protect it from pollution.

Planting trees helps in water conservation.

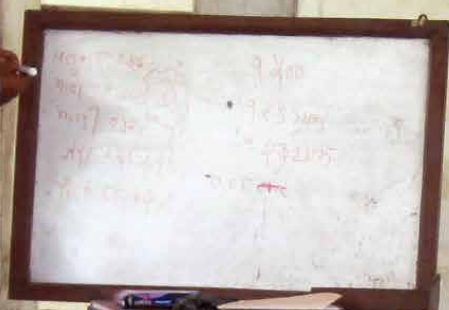
Protecting forests helps in maintaining the water cycle.

Water and Forest Conservation

Water and Forest Conservation

Water and Forest Conservation

Water and Forest Conservation



Q2

What does the word 'free' mean in the FPIC process?

'Free' in FPIC means that the decisions made in the FPIC process should be free from coercion, i.e., free from any pressure, force, manipulation or intimidation by any party (from any individual, company, organization or government⁷). A free decision is dependent on the choice of the individuals involved as well as the circumstances in question. For example, in order to facilitate a 'free' decision, the minimum that must be done is to ensure that local meetings are at a time suitable for both men and women, and the decision-making venue is accessible to everyone, without putting women in any danger, and enabling maximum participation in the decision-making process.

FPIC needs to include all stakeholders that are likely to be affected by the decision (see Box 3). It is crucial to involve representatives of vulnerable groups along with other stakeholders, including representatives from local government and grassroots organizations. Local youth, elders, women, men, community members with formal education, others with traditional knowledge, customary and formal land owners and representatives of various ethnicities should be present⁸. Such diverse participation ensures that the perspectives and interests of all these stakeholders are captured in the discussions and thus the consent is agreeable to each group. Only the full inclusion of all stakeholders and their engagement in the discussion will ensure true consent.

7. Edwards, K, Triraganon, R, Silori, C, & Stephenson, J 2012, *Putting Free, Prior, and Informed Consent into Practice in REDD+ Initiatives: A Training Manual*, RECOFTC, IGES and Norad, Bangkok, Thailand.

8. Mahanty, S & McDermott, CL 2012, 'Free, Prior and Informed Consent in Mining and Forest Certification: Lessons for REDD+'. Presented at "Beyond Carbon", *Justice and Equity in REDD+* workshop, University of Oxford. Available from: <www.eci.ox.ac.uk/redd/downloads/ppt/1-3-mcdermott.pdf>. [7 January 2014].

Box 3: Stakeholders that are normally involved in a FPIC process



Source: Source: Adapted from Hill, C, Lillywhite, S & Simon, M 2010, *Guide to Free, Prior and Informed Consent*, Oxfam Australia. Available from: <http://www.culturalsurvival.org/sites/default/files/guidetofreepriorinformedconsent_0.pdf>. [12 January 2014].

Getting everyone on a common platform for dialogue is important. It is critical to consider that power and hierarchy structures can also influence or affect stakeholders during discussions and other decision-making processes (see Box 4). One way to reduce the impact of social hierarchies or power dynamics is to first work with different groups separately, such as with women, men, ethnic minorities and other vulnerable people, and then present the results to everyone before making final decisions.



Box 4: An example of power and hierarchy in the decision-making process

In a case study by Poudyal, et al. (2013) on factors affecting internal group governance of a community forestry user group (CFUG) in Nepal, the authors used 11 parameters to assess the effectiveness of internal governance of the CFUG. With specific reference to power and hierarchy structures, one of the parameters – on power relations, dispute resolution and equity – was found to have direct or indirect effects on the governance and resource management of two CFUGs studied by the authors. Within the scope of the parameter of internal group governance, the authors found that caste, class, education, political affiliation and social leadership were identified as important factors that affect power dynamics and have the potential to weaken or strengthen governance practice at the CFUG level. These factors ultimately determine the strength of an individual's position within a CFUG in the decision-making process.

In addition, while the Executive Committee (EC) and sub-committees exercised formal power in carrying out CFUGs' activities, political parties influenced CFUGs indirectly during the EC elections. Based on interactions with members of the CFUGs, it was revealed that in one of the CFUGs, members did not have any serious disputes among themselves in terms of forest governance; while in the other CFUG, most of the members still believed that community forestry was controlled by the EC, which sometimes created conflicts within the group.

Source: Poudyal, BH, Paudel, G & Luintel, H 2013, 'Enhancing REDD+ outcomes through improved governance of community forest user groups', *Journal of Forest and Livelihoods*, vol. 11, no. 2.



Also, the developers or project implementers should commit in writing that they will not implement the various steps of a project without the consent of the stakeholders at all mutually discussed points in a project's timeline. In cases where consent is not reached, it should be mutually discussed when consent can be sought again⁹.

Local people likely to be affected by the project have the right to include a lawyer, mediator, legal advisor or similar, if needed, in the decision-making process. The costs of hiring such external support must be covered by the developers or project implementers. Most importantly, independent checks will confirm whether the consent-seeking process was free from any kind of influence.

9. Anderson, P 2011, *Free, Prior and Informed Consent: Principles and Approaches for Policy and Project Development*. RECOFTC and GIZ, Bangkok, Thailand.

Q3

What does the word 'prior' mean in the FPIC process?

'Prior' in FPIC refers to a situation in which consent has been sought sufficiently in advance of any project authorization and before any resources, such as finances, equipment or labour, are allocated to the project.

'Prior' also refers to the need to take into consideration the time required for every agreement that is sought. Local people need sufficient time to consider information and to undergo the agreed-upon decision-making process. Allowing enough time for local people to analyze and seek additional information is crucial¹⁰. An agreement on the timeline of the decision-making process and milestones is another essential aspect of this step.

The amount of time required to prepare for consent depends on the nature and scale of the proposed project, the predicted impacts on the livelihoods of local people, the level of risk, and the decision-making process selected by local people. These are some of the factors¹¹ that need to be considered.

An important reason to provide sufficient time is to ensure that all inputs and suggestions from the local people are incorporated into the plans. Such an approach will be mutually beneficial to the project proponent as well as to local communities. For the project proponent, this process will enhance the chances of obtaining consent from local people. For local people, this is an opportunity to strongly advocate for their concerns and issues and ensure they are addressed. In some cases, they may only give their agreement under certain conditions.

10. Edwards, K, Triraganon, R, Silori, C, & Stephenson, J 2012, *Putting Free, Prior, and Informed Consent into Practice in REDD+ Initiatives: A Training Manual*, RECOFTC, IGES and Norad, Bangkok, Thailand.

11. Ibid

Q4

What does the word 'informed' mean in the FPIC process?

'Informed' in the context of FPIC means that local people are given complete, correct and clear information in their preferred language(s). Relevant information can include the scope, objectives, duration, human and financial resources involved in the proposed project, the land area to be affected and the FPIC process to be followed.

Everyone who is involved in the decision-making process should understand the various aspects of the proposed project. Ideally, local people should be aware of the social, economic and environmental impacts of the proposed project, and benefits of and challenges to all the different sub-groups of the community, before a decision can be made. Impacts on land ownership, natural resources and livelihoods, including possible mitigation/ compensation measures, are among the most important factors to be considered during the information sharing process.

Additionally, the information provided to local people needs to be unbiased, which means the information must be neutral, clear and complete, and the information-sharing process ideally should be facilitated by a third party (see Box 5). The developers or project implementers must disclose all their interests in the beginning and in a transparent way; as new information is generated it should be shared with the local communities in a timely manner. This also means that information sharing has to follow an iterative process, allowing the project proponent and local communities to negotiate in order to reach a consensus.

Generally, face-to-face gatherings in the local language¹² are required to share information as well as to ensure that the information is understood and any questions related to the proposed project are clarified immediately. The information should be conveyed through culturally appropriate means and participatory tools, such as role playing or other interactive methods, should be used to support the process of information sharing. Allowing enough time for discussions among community members and project proponents further helps clarifying questions, concerns and issues from both sides (see Box 6).

12. Hill, C, Lillywhite, S & Simon, M 2010, *Guide to Free, Prior and Informed Consent*, Oxfam Australia. Available from: <http://www.culturalsurvival.org/sites/default/files/guidetofreepriorinformedconsent_0.pdf>. [19 October 2013].



Box 5: The role of local facilitators - Experiences gathered by UN-REDD

The UN-REDD Programme in Indonesia and Vietnam used FPIC processes in the past few years while conducting REDD+ readiness activities. These experiences highlighted the importance of local facilitators in the FPIC process, and the necessity of assessing the competence of local facilitators and developing their capacity.

Local facilitators can build bridges between local stakeholders and the government and/or project developers. Their understanding of the local and national perspectives, technical knowledge and cultural understanding is crucial to a successful FPIC process.

UN-REDD states that 'local facilitators are essential for effective awareness-raising and discussion', which is a crucial part of engaging local communities and indigenous peoples; facilitators provide support by building trust among all parties. These observations are corroborated by the experience of the Grassroots Capacity Building for REDD+ project, implemented by RECOFTC in five countries – Indonesia, Lao PDR, Myanmar, Nepal and Vietnam – where a cadre of local level facilitators brought together by the project have played an effective role in training and awareness-raising on climate change and REDD+ among grassroots stakeholders in the five project countries.

Sources: 1) UN-REDD Programme 2013, *Guidelines on Free, Prior and Informed Consent*. Available from: <www.un-redd.org/Launch_of_FPIC_Guidelines/tabid/105976/Default.aspx>. [12 November 2013]; 2) RECOFTC 2012, *Grassroots capacity building for REDD+ in Asia Pacific 2013: Annual Progress Report*, RECOFTC – The Center for People and Forests, Bangkok, Thailand.



Box 6: Experience from the Grassroots Capacity Building for REDD+ in Asia project

Experience from the Grassroots Capacity Building for REDD+ in Asia project, being implemented by RECOFTC in Indonesia, Lao PDR, Myanmar, Nepal and Vietnam, found that illustrations and other culturally appropriate tools proved useful to explain various aspects of the project, including its concept, scope, role of different stakeholders and likely impacts, especially among people with different educational backgrounds and various native languages. The project used posters, flyers and simple booklets to explain the concept of REDD+ and climate change in the languages of the project countries, and organized puppet shows in Lao PDR and Indonesia and street plays, drama and radio programs in Nepal. Between 2009 and 2013, the project reached more than 35,000 grassroots stakeholders to raise their awareness on climate change and REDD+ in the project countries.

Source: RECOFTC 2012, *Grassroots capacity building for REDD+ in Asia Pacific 2013: Annual Progress Report*, RECOFTC – The Center for People and Forests, Bangkok, Thailand.

Besides sharing the complete information about a proposed project, the project proponent and the facilitators responsible for conducting FPIC should share the following key elements of FPIC with the local people:

- the local people have the right to FPIC process;
- seeking consent for a project should follow an iterative process;
- the local people have the right to identify the issues that need to be addressed through the FPIC process;
- time and venue of FPIC gatherings should be mutually agreed between the local people and project proponent;
- the FPIC process and consent-seeking mechanism should be transparent;
- a grievance mechanism is an integral part of FPIC and it should be in place before the process begins;
- local people have the right to seek advice from independent legal, technical and social experts;
- alternatives to the proposed project should be discussed, along with their potential impacts, mitigation measures, compensation package; and monitoring must be integrated into the project plan.

Q5

What does the word 'consent' mean in the FPIC process?

The local people have the right to accept or reject a proposed project. They have the right to enter into agreements for a proposed project or reject it at any of the various stages of a project, according to their chosen decision-making process. In other words, they can give or withhold their *consent*.

First, it is necessary to understand how and in which form the consent can be given or rejected by the local people. Local people may have a preferred decision making process that they would like to follow; however, if this is not the case then a procedure can be developed. In all cases, the preferred decision-making institutions of local people need to be identified.

The full participation of local people, especially those who will be affected by the proposed project, is required to attain the consent and support of the local people. However, the form of consent and who gives it may vary depending on the project activity's stage and different sub-groups of local communities impacted by the different stages of project implementation¹³. The form of consent may include written consent to satisfy the need for the documentation, but in view of cultural diversity, and in many cases low level of education particularly in rural settings, written consent may not be the most appropriate form of consent. In such a situation the project proponent needs to identify the community's preferred procedures and methods for obtaining consent. Adjustments to the form of consent should be made based on the periodic review of the locally-chosen decision-making institutions and processes, thus enabling greater participation and effectiveness for future decision making processes.

In order to have an officially acceptable proof that consent was given or rejected it may be helpful to have some documentation in hand. For example, if the written form is not accepted or understood by all involved, then an agreement on another culturally suitable documentation method, such as video or photo documentation of the process, should be sought.

13. Anderson, P 2011, *Free, Prior and Informed Consent: Principles and Approaches for Policy and Project Development*, RECOFTC & GIZ, Bangkok, Thailand.



All parties need to give their consent or discussions need to be continued to find a workable solution for all parties. In case no consent is reached, and time and financial resources are limited, then the project needs to be shut down or adjusted to restart FPIC within a defined timeframe¹⁴.

14. Anderson, P 2011, *Free, Prior and Informed Consent: Principles and Approaches for Policy and Project Development*, RECOFTC & GIZ, Bangkok, Thailand.

Q6

What are the different sectors of natural resource management where FPIC may be applicable?

As already mentioned in the answer to Question 1, FPIC originates from the resource extracting sectors, such as the mining, oil and gas industries. Some of these sectors have included FPIC or an adjusted form of it in their regulations and have realized its importance¹⁵ based on their experience. Principally, FPIC is relevant to all those projects that can affect local people's right to land and its use, their territories, resources, livelihoods, and/or the project has the potential of environmental/ecological impacts. Thus, any project that is initiated by external parties, which involves natural resources, requires the adoption of the FPIC process. Any projects in the forestry sector falls under this category; other examples include the building of dams for hydro-power or other water-related projects; construction of roads or railroads; leasing concessions for industrial plantations; setting up aquaculture farms; cutting through inhabited or land areas in use, including agriculture, horticulture and forests.

The impact of a project can be direct or indirect. An example of direct impact is when a dam project can potentially flood the houses of local people living in and around the project area. An example of indirect impact is when a forest area on a hill is cut down for a road construction, and due to heavy rains a land slide occurs and affects the residents in the area.

15. Voss, M, & Greenspan, E 2012, *Community Consent Index: Oil, Gas and Mining Company Public Positions on Free, Prior, and Informed Consent*, Oxfam America Research Backgrounder series, Available from: <www.oxfamamerica.org/files/community-consent-index.pdf>. [7 January 2014].

Q7

Why is FPIC important in the forest management sector and what is its current status?

FPIC is required for implementing projects without negatively affecting any group of local people. In addition to the general development projects spanning many different types of land, there is increasing interest in forest-land for the development of new plantations, logging of timber or for protecting and maintaining long-term high quality forests. One such project called 'Reducing Emissions from Deforestation and forest Degradation (REDD+)'¹⁶ aims to reduce carbon dioxide emissions from forests by controlling deforestation and forest degradation and sustainably managing the forests.

Many local communities and indigenous peoples depend on forest resources for collecting firewood, food, fodder, for cattle grazing, collecting medicinal plants, or for religious purposes. Hence, any project that may impact these traditional uses need to be approved by the local people. All these activities are often conducted under customary law¹⁷. The right to FPIC is most crucial¹⁸ when the statutory law¹⁹ and regulatory use of forests is weak or lacking. Therefore, FPIC needs to be applied to ensure a fair development process for all stakeholders.

In recent years there has been an increase in the recognition of the rights of local people and especially indigenous peoples to self-determination²⁰. With REDD+ this recent acceptance of the right to ancestral or customary lands has been strengthened in the forestry sector, such as the UN-REDD Programme Guidelines on FPIC. Currently, FPIC is implemented in coordination with REDD+ projects, plantations and other initiatives in the forestry sector²¹.

16. For more information, see leaflet called *Climate Change, Forests and You for explanations about REDD+*, published by RECOFTC. Available from: <http://www.recoftc.org/site/uploads/content/pdf/REDDGrassroots-Q&A_eng_FINAL_226.pdf>. [18 December 2013].

17. A customary law is a traditional common rule or practice that has become an integral part of the accepted and expected conduct in a community, profession, or trade.

18. Colchester, M 2010, *Free, Prior and Informed Consent - Making FPIC work for forests and peoples*, The Forest Dialogue. Available from: <http://tfd.yale.edu/sites/default/files/tfd_fpic_researchpaper_colchester_lo-res.pdf>. [19 December 2013].

19. A law or group of laws passed by a legislature or other official governing bodies.

20. Anderson, P 2011, *Free, Prior and Informed Consent: Principles and Approaches for Policy and Project Development*, RECOFTC & GIZ, Bangkok, Thailand.

21. Colchester, M & Ferrari, MF 2007, *Making FPIC - Free, Prior and Informed Consent - Work: Challenges and Prospects for Indigenous People*, FPIC Working Paper, Forest Peoples Programme. Available from: <<http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/fpicsynthesisjun07eng.pdf>>. [19 December 2013].



Q8

What international and national law or legal framework requires the use of FPIC and what is the current status of implementation of FPIC in REDD+?

The most complete description of FPIC is from the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (see Box 7)²². From the five focal countries of the Grassroots Capacity Building for REDD+ in Asia project²³ – Indonesia, Lao PDR, Myanmar, Nepal, and Vietnam – all except Lao PDR, have signed the declaration. Although UNDRIP was adopted by 147 countries in 2007, it is not legally binding. The description in UNDRIP focuses solely on the right to FPIC for indigenous peoples. However, FPIC also provides a good guideline for other local communities, since some of them adhere to customary laws, and are dependent on natural resources for their livelihoods, beliefs and culture²⁴.

Another UN Declaration – the ‘Right to Development’ – states that “everyone has the right to development”²⁵; this declaration came into force on 4 December 1986, in its 97th plenary meeting. The declaration is relevant to FPIC because in order for development to be long-lasting and beneficial for everyone, local people need to be able to control their development aims. Community participation in the projects that affect them should be in line with the FPIC process²⁶.

There are several other international conventions and standards with components of FPIC which have been signed by many countries. For example, the Article 6 of the Convention concerning Indigenous and Tribal Peoples in Independent Countries

22. Edwards, K, Triraganon, R, Silori, C, & Stephenson, J 2012, *Putting Free, Prior, and Informed Consent into Practice in REDD+ Initiatives: A Training Manual*, RECOFTC, IGES and Norad, Bangkok, Thailand.

23. Grassroots Capacity Building for for REDD+ in Asia project is being implemented by RECOFTC with support from Norwegian Agency for Development Cooperation (NORAD) since 2009. The key focus of the project is to build the capacity of grassroots stakeholders for REDD+, including local communities dependent on forest lands for their livelihoods, local government officials, non-government organizations, civil society organizations, local journalists, youths, and community based organizations, so that they are in a position to actively contribute to future REDD+ program and potentially benefit from it.

24. Conservation International 2013, *Free, Prior, Informed Consent in Context*. Available from: <www.conservation.org/about/centers_Programmes/itpp/pages/free-prior-informed-consent-case-studies.aspx>. [12 December 2013].

25. United Nations 1986, *Declaration on Right to Development*. Available from: <<http://www.un.org/documents/ga/res/41/a41r128.htm>>. [12 November 2013].

26. Edwards, K, Triraganon, R, Silori, C, & Stephenson, J 2012, *Putting Free, Prior, and Informed Consent into Practice in REDD+ Initiatives: A Training Manual*, RECOFTC, IGES and Norad, Bangkok, Thailand.

(ILO No. 169) (1989) expressly provides that indigenous peoples must be consulted “whenever consideration is being given to legislative or administrative measures which may affect them directly” and that such consultations “shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures²⁷”.

The Convention on Biological Diversity (1992) also expressly affirms the principle of FPIC. 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.

In the context of REDD+, the last couple of Conferences of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC), have given significant attention to FPIC. During the COP, towards the end of 2010, a strong emphasis was given to the additional social and environmental requirements of REDD+ based on the UNDRIP Declaration. Recently, the UN-REDD Programme developed the *Guidelines on Free, Prior and Informed Consent*²⁸, to effectively move forward with stakeholder consultation processes with relevant rights-holders, and consistent with their duties and obligations under the international law to obtain consent in its partner countries as and when appropriate.

However, since REDD+ is still in the early stage of development, the discussions related to FPIC in REDD+ have only commenced in recent years in pilot sites and a few fully REDD+ projects. ‘No harm’ from REDD+ to local people under any circumstances is the central focus of the current initiatives on FPIC in REDD+.

27. International Labour Organization 1989, *Indigenous and Tribal Peoples Convention - C169*, (No. 169). Available from: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169#A6>. [7 January 2014].

28. UN-REDD Programme 2013, *Guidelines on Free, Prior and Informed Consent*. Available from: <www.un-redd.org/Launch_of_FPIC_Guidelines/tabid/105976/Default.aspx>. [12 November 2013].



Box 7: The right to FPIC

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states in Article 32(2) that: “States (countries) should consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain FREE, PRIOR and INFORMED CONSENT prior to approval of any project affecting their land or territories”

Source: United Nations 2008, *United Nations Declaration on the Rights of Indigenous Peoples*. Available from: http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf. [7 January 2014].

International Labour Organization Convention No. 169 states in Article 7.1 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 “to exercise control, to the extent possible, over their own economic, social and cultural development”. Article 16 states that “relocation shall take place only with their free and informed consent”

Source: International Labour Organization 1989, *Indigenous and Tribal Peoples Convention - C169, (No. 169)*. Available from: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169#A6>. [7 January 2014].



At the national level, few countries have passed a law on FPIC, such as the Philippines in 1997 and Peru in 2010. In the context of Asia-Pacific, the case of the Philippines is important. The Philippines enacted the Indigenous Peoples Rights Act (IPRA)²⁹ in 1997. This Act recognizes indigenous people's rights to self determination and provides mechanism for the protection of indigenous ancestral domains and all resources therein. The IPRA adopted the concept of FPIC as a means to protect indigenous rights and interests and give them a voice in matters that affect them. The IPRA requires FPIC prior to the extraction of resources from indigenous ancestral domains and lands. There are a number of other national frameworks and structures in the region, which reflect FPIC's key values and principles; for example, the process called 'Community Land Titling Reform' in Thailand; 'Protected Area Law' in Cambodia³⁰ ; 'Local Self Governance Act' in Nepal³¹; and 'Environmental Impact Assessment'³² also in Thailand. Most recently, the Constitutional Court ruling in Indonesia is another example of restoring indigenous peoples' rights to their customary forest land. The Court ruling also recognized the right of self determination for indigenous communities (see box 8).

29. Republic of the Philippines 1997, *The Indigenous Peoples' Rights Act of 1997, Republic Act (No. 8371)*. Available from: <<http://www.gov.ph/1997/10/29/republic-act-no-8371/>>. [7 January 2014].

30. Council for Development of Cambodia n.d., *Law on Nature Protection Areas (Protected Area Law, No. 080104)*. Available from: <http://www.cambodiainvestment.gov.kh/law-on-nature-protection-area-protected-areas-law_080104_080104.html>. [7 January 2014].

31. Nepal Law Commission 1999, *Local Self Governance Law 2055*. Available from: <[http://www.lawcommission.gov.np/en/prevaling-laws/Prevailing-Laws/Statutes---Acts/English/Local-Self-governance-Act-2055-\(1999\)/](http://www.lawcommission.gov.np/en/prevaling-laws/Prevailing-Laws/Statutes---Acts/English/Local-Self-governance-Act-2055-(1999)/)>. [7 January 2014].

32. Edwards, K, Triraganon, R, Silori, C, & Stephenson, J 2012, *Putting Free, Prior, and Informed Consent into Practice in REDD+ Initiatives: A Training Manual*, RECOFTC, IGES and Norad, Bangkok, Thailand.



Box 8: Constitutional Court restores indigenous peoples' rights to their customary forests in Indonesia

Indonesian Constitutional Court delivered a historic judgment in May 2013 for Indonesia's indigenous peoples, ruling that the customary forests of indigenous peoples should not be classed as falling in 'State Forest Areas', paving the way for a wider recognition of indigenous peoples' rights in the country.

Invoking the Article 25 of United Nations Declaration on Rights of Indigenous Peoples (UNDRIP) in regards to right to land the court ruling recognizes "the right to self determination, right to land, space, and natural resources, right to cultural identity and intellectual property, right of free, prior, and informed consent and right to the determination of model and type of construction suitable for them.

The judgment was made in response to a petition filed with the court against the way the 1999 Forestry Act treats indigenous peoples' customary forests' as providing only weak use-rights within State Forest Areas. The judgment now opens the way for a major reallocation of forests back to the indigenous peoples who have long occupied them and looked after them. The Government's own statistics revealed last year that there are some 32,000 villages whose lands overlap areas classed as 'State Forest Areas'.

Source: Decision Number 35/PUU-X/2012 for the sake of justice under the one almighty God 2013. *The Constitutional Court of the Republic of Indonesia*. Available from: <http://www.aman.or.id/wp-content/plugins/downloads-manager/upload/Constitutional_Court_Ruling_16_May_2013.pdf>. [January 12, 2014].

Q9

What are or could be key challenges in putting FPIC into practice in REDD+, and which agency will ensure that FPIC in REDD+ is followed at the national level?

FPIC should be initiated by the project developers and must be evaluated by an independent third party. However, there is no guarantee that FPIC will always be followed in an exemplary way. For example, in Indonesia an independent party verifying FPIC was found to be unduly moderate in assessing compliance to FPIC³³. Similarly in case of the Philippines, there have been examples of weaknesses in implementing FPIC owing to misinterpretation and manipulation of the FPIC process (See Box 9).

Experiences are still being gathered and shared to distill lessons learned, and improve the procedure. However, it is important to consider that every situation is different, and therefore FPIC needs to be adapted to the context every time, as observed in the experience from Vietnam by UN-REDD Programme (see Box 10). Therefore, the details of how, when, where, and with whom the FPIC process is adopted, are crucial as stated in the previous questions.

As seen in the examples given in Box 9 and 10, there are several challenges when it comes to putting FPIC into practice at local level with regards to REDD+. The most important ones are as follows:

- The local community needs to provide substantial time to participate in FPIC, for which they are adequately compensated.
- It is preferable that the same community members participate consistently in decision making and consent process. In this manner, continuity can be ensured and participants can remain informed about all relevant aspects of the project and FPIC.
- All mutually agreed deadlines must be kept by all parties.
- Given that the FPIC process can be complicated it is imperative that the agreements are binding at local, regional and national levels.
- Customary and legal land ownership needs to be considered and respected in the FPIC process; this requires a lot of time.

33. Edwards, K, Triraganon, R, Silori, C, & Stephenson, J 2012, *Putting Free, Prior, and Informed Consent into Practice in REDD+ Initiatives: A Training Manual*, RECOFTC, IGES and Norad, Bangkok, Thailand.



- The capacity of all stakeholders should be enhanced in order for them to engage effectively in the FPIC process, especially since the proposed project is most likely new to the local communities and indigenous communities.
- Enough time needs to be allowed, especially for comprehensive information gathering, proper representation of all sub groups of local community and indigenous peoples, and for building trust among all parties involved in the process.
- It is challenging to convey the entire project's information in the local language to the local communities and indigenous peoples, in a culturally appropriate way. Thus, it is most efficient to hire local facilitators jointly, together with the project proponent and the local community members. Before the facilitators visit the communities and indigenous peoples for the first time, they need to be fully informed about the project and their capacity should be enhanced to best convey the information to the community.
- If no one speaks the language of the local communities and indigenous people then a qualified translator must be appointed.
- A grievance mechanism must be in place for submitting complaints and avoiding "bigger" conflicts.
- The information provided should be non-biased and complete.
- A completely independent verification process should be in place.
- With respect to REDD+, there is no uniform application of the term 'consent' among donors and supporters of REDD+. This adds to the challenge of implementing FPIC on the ground.
- In order to avoid manipulation by the project proponents FPIC needs to be conducted in good faith by not indulging in forceful acts for obtaining consent, such as coercion, bribery, threatening, or putting political and social pressures.



Box 9: Example of challenges related to FPIC implementation

In the Philippines, weaknesses in FPIC processes by mining companies have been linked to inadequate systems and implementation failures. For example, systemic weaknesses have included the following:

- Prior to 2012, FPIC was required only once – at the commencement of a project;
- No procedure is in place for impugning consent once given or for suspending a project which has not complied with the rules for securing FPIC.
- Only consent from indigenous peoples is required, even if the project can affect non-indigenous populations.
- No monitoring mechanisms are in place to identify violations committed during the FPIC process and implementation of the Memorandum of Agreement (MoA) between the mining company and the indigenous peoples.
- Signing of MoA outside the communities can contribute to mistrust by communities of their leaders and designated signatories.

Implementation issues have also affected FPIC processes, for example:

- failure of companies to conduct prior consultations with communities on site;
- failure to respect indigenous peoples' customary process in arriving at decisions or their FPIC protocols or manifestos;
- misrepresentation of the local situation through the media, and control of information flow;
- use of gifts for bribery and coercion;
- failure of the government to intervene to ensure FPIC prior to project initiation;
- information provided solely by the project proponent, with government providing inadequate guidance on information content and limited public dissemination of information;
- limited grievance mechanisms and insufficient information, education, and communication on the FPIC process and the project itself, to inform decision-making.

Source: Oxfam America 2013, *Free, Prior and Informed Consent in the Philippines*, Briefing Paper. Available from: <<http://www.oxfamamerica.org/files/fpic-in-the-philippines-september-2013.pdf>>. [7 January 2014].



The national agency under which an FPIC law or regulation is released is also responsible for ensuring that FPIC is followed. The checks should be initiated by the relevant national agency, but it is best if an independent consultant is engaged in monitoring the implementation of FPIC. In the particular case of REDD+, the national agency responsible for REDD+ is also responsible for initiating the FPIC implementation check. National non-governmental organizations working on FPIC or the National Commission of Indigenous Peoples (NCIP) (e.g. in the Philippines) can also provide neutral checks. An individual or a group who have not been involved in the FPIC process are best suited to conduct a neutral check. Currently, there are two organizations which have experience in validating the consent process in REDD+. These are the 'Verified Carbon Standard and the Climate, Community and Biodiversity Alliance (CCBA).'

There are no legal penalties if the FPIC has only been followed incompletely, in a biased way or in some other way and not according to the guidelines³⁴. FPIC is also about minimizing the risks for the proposed project to be implemented. As stated earlier conducting a complete and fair FPIC process is advantageous for the project proponents and the local communities, including the indigenous peoples.

34. Motoc, A & theTebtebba Foundation 2005, *Legal Commentary on the Concept of Free, Prior and Informed Consent*, Legal Working Paper Submitted to 21st Session of Commission on Human Rights. Available from: <www2.ohchr.org/english/issues/indigenous/docs/wgip23/WP1.doc >. [5 January 2014].



Box 10: FPIC experience from Vietnam

The UN-REDD Programme in Vietnam was the first to implement FPIC in two districts of Lam Dong Province in 2010. An eight step process was developed: (1) preparation, i.e. developing communications materials; (2) consultation with local officials; (3) recruitment of local facilitators; (4) training of local facilitators; (5) conducting local awareness raising; (6) attending village gatherings; (7) recording the decisions, (8) facilitators reporting to the UN-REDD Vietnam Programme; and (9) verification and evaluation.

Three major observations were reported during the verification process:

- a) further need to communicate the risks and costs of the proposed REDD+ programme;
- b) not enough time for village internal discussions, as the village gatherings were only scheduled for two hours, which did not allow time for in-depth discussions; and
- c) independent grievance and review mechanism was not in place for local people.

Through these findings the FPIC process was reviewed and improved to be implemented in other provinces of Vietnam as well as other countries.

Sources: UN-REDD Programme 2010, *Applying Free Prior and Informed Consent in Vietnam*. Available from: <www.unredd.net/index.php?option=com_docman&task=cat_view&gid=849&Itemid=53>. [12 November 2013]. 2) RECOFTC 2010, *Evaluation and Verification of the Free, Prior and Informed Consent Process under the UN-REDD Programme in Lam Dong Province, Vietnam*. Available from: <www.unredd.net/index.php?option=com_docman&task=cat_view&gid=849&Itemid=53>. [12 November 2013].





Q10

What is the role of local people in applying FPIC in the REDD+ context?

Local people hold the right to give or withhold their consent at different points in time. Ideally they are the ones who make the final decision. In order to reach a decision of rejection or consent, the following points need to be considered:

- Local people need to organize themselves and agree on the consent-seeking process, institutions and representatives.
- Local people have the right to demand for compensation, for the time that they spend to attend FPIC related gatherings.
- The process would be smoother if all stakeholders keep an open-mind and are willing to learn about all perspectives of the new project as well as spend enough time discussing the proposed project and/or alternatives.
- Such a process can be facilitated by the local facilitators, who have the skill to simplify the key elements of the proposed project in a manner that can be easily understood by the local villagers. This can be done by using simple tools such as pictures, role plays, puppet shows, song etc. to share the information about the proposed project.
- Local level facilitators also have an important role to encourage all stakeholders, including women, to share their views and thus contribute by actively participating in FPIC process. Some of the basic approaches that can be used to help local communities to share their views more constructively include explicitly referring to different issues and concerns of the local communities, facilitating smaller group discussions among diverse socio-economic groups within the village and synthesizing the discussions in order to present it back to the local communities.
- All concerned stakeholders, including women, ethnic minorities, and other marginalized groups and their representatives' opinions must be respected with the intent of learning from each other.
- It is also helpful to encourage local people to build trust with other stakeholders, who are likely to get engaged in the proposed project at different stages, and with whom they may not have any prior experience of sharing their opinion regarding the proposed project.
- Decision making institutions and a grievance mechanism must be in place and functioning.
- Local people can decide if they would like to hire a third party or legal advisor.



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