# How to implement free, prior informed consent (FPIC)

# 15

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## Introduction

Negotiating FPIC is a process. It consists of informing the affected persons about planned activities and their impacts – both positive and negative – and verifying that the information provided has been understood, before explicit consent can be negotiated. If people refuse, their decision must be respected. FPIC focuses on harmonising and equalising relationships between groups of different power and means.

## The key elements of the FPIC concept

### Consent

Consent is required from people in situations where any externally initiated activity, by state agencies, private enterprises or NGOs, may impact on the lives and livelihoods of individuals and communities. This is particularly the case for activities that are likely to affect a people's ability to continue their way of living, to determine their own development or to maintain access to the natural resources necessary for their economic livelihood and cultural traditions.

In most situations, the concept of consent differs between affected peoples and those proposing change. In Central Africa, for example, the notion often implies an ongoing negotiated relationship based on trust generated by regular, long-term exchange of information and goods and services. International understandings tend to focus on a permanently binding signed contract.

A compromise between local and international understandings can be obtained by ensuring that, if people give their consent, it is in a manner that is understood as contractual by both parties.

### Free and informed

The exercise of free will is essential for any agreement to represent genuine consent. Communities must be able to accept, negotiate or reject a proposed intervention by third persons without any duress. Communities must have the possibility to refuse consent. Likewise, they must be able to withdraw their consent if the terms on

which it was negotiated are not respected. Their consent is only meaningful on these terms. Fair, non-coercive negotiations respected by all participants produce lasting and sustainable agreements.

Specific approaches and strategies that take into account socio-cultural and linguistic differences and literacy levels must be developed to fully inform people of both potential positive and negative consequences. These may include, for example, theatre techniques or site visits, rather than written documents. Before consent can be requested, it must be independently verified that the people concerned have properly understood information given.

### Prior

Consent must be negotiated before people are affected by external actions. In situations where activities have already taken place before a FPIC process has begun, consent must be sought for any further activities once a FPIC approach is applied.

Prior engagement should enhance the success of projects by defusing potential conflicts and creating partnership opportunities at the beginning. The earlier an FPIC process is implemented the more lasting and sustainable the benefits for all stakeholders will be.

## The eight key stages of a FPIC process

**1. Strengthen institutional capacities**

In order to ensure fair negotiations between parties, some institutional strengthening may be needed within the government body, private company or NGO so that it can provide appropriate support to the communities affected. This often requires creating a team with expertise in communication and in the languages, concepts and culture of all the parties involved. It may include people of confidence chosen by the affected peoples who can supervise the process of ongoing negotiation.

**2. Develop communication and information strategies**

Once the potential positive and negative impacts have been identified, a key task for the communication team is to develop appropriate communication methods to ensure the widest possible participation of the communities without discrimination against any groups (such as women). The social and cultural context, languages, literacy level, political organisation and local styles of exchanging information, learning, discussing and negotiating must all be taken into account to ensure that information is properly transmitted and that the negotiation of consent is therefore viable and durable.

**3. Create a participatory partnership and inform local communities**

In order to create a participatory partnership, it is crucial that the affected peoples decide how they wish to represent themselves. They should also be offered appropriate support to ensure the internal flow of information, and be given the opportunity to explain how they make decisions concerning consent.

Based on this participatory partnership, the methods developed by the communication team should ensure the ongoing transmission of the information necessary for informed negotiation and the full participation of affected communities in the discussions and decisions related to their consent. These enable the state, private company or NGO to provide key information to the concerned population for the duration of the project. Such information should include project activities on the lands of the affected population, potential positive and negative impacts, and potential benefits to be realised, the process of negotiating consent, and the right to refuse consent or to re-negotiate it by, for instance, demanding protection of key resources or benefit sharing.

**4. Carry out participatory mapping of land use**

In order to decide of whom consent must be requested and to determine the potential impact of the proposed activities on communities, it is vital to document the land

usage and customary rights of affected populations. Based on this, informed negotiations can begin.

Mapping land usage must be conducted using a participatory approach together with the concerned communities. It can be done by GPS, but in the case of illiterate communities a GPS unit with an iconic user interface should be used. In situations where there are overlapping usages by different communities, both communities need to be equally consulted for their consent, rather than trying to attribute exclusive rights to one or other of the communities.

Through mapping, an accurate inventory of community resources as well as the economic and cultural activities carried out can be made (e.g. fishing zones, important food trees, sacred sites, cemeteries, hunting areas etc.). The mapping can also be extended to any information that could help the success of the project and the negotiations (wildlife movements, retention of carbon in the biomass, rainfall etc.).

**5. Identify resources to be protected and negotiate compensation for any damages**

Participative resource and land inventory mapping enable focused discussion with the communities concerning which measures can be put in place to protect their resources and activities. It also facilitates and informs discussions over compensation to be paid for intended or unintended damages caused by the activities of third parties.

**6. Agree benefit-sharing**

The uses that third parties make of the land and resources belonging to local peoples often generate benefits or wealth for the third parties while reducing the value of the area to the affected people or limiting their access to key resources. Affected peoples are entitled to a share of the benefits produced. Dams, for example, will create benefits alongside negative impacts for dozens of years. Therefore the benefits must be shared with the affected communities for at least as long as they are produced.

Such benefit-sharing is negotiated and may take different forms depending on the context. It may mean delivering goods, money or services to local villages, associations or families. The choice depends on the wishes of the affected population, but must take into account the degree of inequality, clientelism and the management capacity of the groups concerned.

**7. Record and formalise the process of obtaining consent**

The steps and procedures for obtaining consent must be recorded in various forms, satisfying the understanding of consent for both parties involved (this may be a document for the company, organisation or administration and exchange of goods and services and holding appropriate ceremonies or celebrations for local communities).

**8. Maintain the relationship on which the consent is based**

Consent is a process relying on all parties being satisfied with their relationship. It is important to maintain the quality of this relationship throughout the negotiations and beyond. Once agreed upon, the obligations of each party must be respected so that good relations can be maintained.

If agreements are not honoured then affected groups have the right to withdraw their consent and activities should cease until either reparations are made and consent is given again, or the rupture is formalised and cessation of activities made permanent.

## Advantages of FPIC

There are numerous advantages to applying FPIC for both the environment and the people involved. It enables the transformation of the management of land and resources in the project area to become more environmentally and socially responsible, and therefore sustainable because it is based on cooperation and equality. Important advantages are:

- The participation of local communities in managing their land and resources through fully recognising their rights.
- The establishment of ways for communi-

ties to control the use of resources on which their livelihoods depend.
• The protection of their resources and way of life.
• The redistribution and sharing of benefits derived from the exploitation of their resources.
• The facilitation of their own aspirations for their development.
• The prevention of conflicts between the local communities and other resource users.
• A general reduction of conflicts, and the development of partnerships between local communities and those using their land or resources.
• The increase in efficiency and sustainability of companies and government institutions thanks to these partnerships.

## Challenges of FPIC

The implementation of FPIC requires efforts in terms of investment (time, resources and training) and poses certain challenges:
• Negotiations can last a long time if literacy levels are not taken into account, or if social inequality and corruption are high.
• The resolution of conflicts and the establishment of good relations are not guaranteed in the short term. The opening of a dialogue between different cultures in a context marked by great inequalities may temporarily lead to increased tensions.
• Highly skilled negotiators are required to overcome the damaging potential of cross-cultural misunderstanding.
• Powerful local persons could manipulate and benefit from information transmitted to them at the expense of other residents, and damage the process in general.
• The participation of communities in the management of natural resources through FPIC does not automatically generate more sustainable management practices without specific agreements and control mechanisms.
• The amount, manner and administration of compensation and benefits must be negotiated with great care because, depending on the context, they may increase claims towards the state, company or organisation, stir jealousies between and within communities, and foster corruption.
• Ensuring the participation of the majority of the population may require careful strategies. Methods and special means must be established to facilitate and measure the participation of all directly and indirectly affected people, in particular marginalised groups such as women.
• State support for the right to say 'no' to proposed developments is difficult to assure.

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