



Summary of free, prior and informed consent

Obligations to ensure effective participation exist in nearly all the main human rights treaties. These obligations have been synthesised into the principle of free, prior and informed consent of indigenous peoples.

The international law basis for the principle of free, prior and informed consent is set out in a legal commentary prepared for the Working Group on Indigenous Populations. This commentary is available at: http://www.un.org/esa/socdev/unpfi/documents/FPIC_2005_Com%20on%20Human%20Rights.pdf

The key elements of free, prior and informed consent are summarised below and have been set out in a report from the UN Permanent Forum on Indigenous Issues in May 2005. This report is available at: http://www.un.org/esa/socdev/unpfi/4session/4doc_secr.htm

Key elements of free, prior and informed consent¹

1. What?

Free – should imply no coercion, intimidation or manipulation;

Prior – should imply consent has been sought sufficiently in advance of any authorisation or commencement of activities and respect time requirements of indigenous consultation/consensus processes;

Informed – should imply that information is provided that covers (at least) the following aspects:

- a. The nature, size, pace, reversibility and scope of any proposed project or activity;
- b. The reason(s) or purpose of the project and/or activity;
- c. The duration of the above;
- d. The locality of areas that will be affected;
- e. A preliminary assessment of the likely economic, social, cultural and environmental impacts, including potential risks and fair and equitable benefit sharing in a context that respects the precautionary principle;
- f. Personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others)
- g. Procedures that the project may entail.

¹ Permanent Forum on Indigenous Issues (PFII), *Key elements of the principle of free, prior and informed consent*, PFII, New York, 2005.



Consent

Consultation and participation are crucial components of a consent process. Consultation should be undertaken in good faith. The parties should establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect in good faith, and full and equitable participation. Consultation requires time and an effective system for communicating among interest holders. Indigenous peoples should be able to participate through their own freely chosen representatives and customary or other institutions. The inclusion of a gender perspective and the participation of indigenous women are essential, as well as participation of children and youth as appropriate. This process may include the option of withholding consent.

Consent to any agreement should be interpreted as indigenous peoples have reasonably understood it.

2. When?

Free, prior and informed consent (FPIC) should be sought sufficiently in advance of commencement or authorization of activities, taking into account indigenous peoples' own decision-making processes, in phases of assessment, planning, implementation, monitoring, evaluation and closure of a project.

3. Who?

Indigenous peoples should specify which representative institutions are entitled to express consent on behalf of the affected peoples or communities. In FPIC processes, indigenous peoples, UN Agencies and governments should ensure a gender balance and take into account the views of children and youth as relevant.

4. How?

Information should be accurate and in a form that is accessible and understandable, including in a language that the indigenous peoples will fully understand. The format in which information is distributed should take into account the oral traditions of indigenous peoples and their languages.

5. Procedures/Mechanisms

- Mechanisms and procedures should be established to verify FPIC as described above, including mechanisms of oversight and redress, such as the creation of national mechanisms.
- As a core principle of FPIC, all sides of a FPIC process must have equal opportunity to debate any proposed agreement/development/project. "Equal opportunity" should be understood to mean equal access to financial, human and material resources in order for communities to fully and meaningfully debate in indigenous language(s) as appropriate, or through any other agreed means on any agreement or project that will have or may have an impact, whether positive or negative, on their development as distinct peoples or an impact on their rights to their territories and/or natural resources.
- FPIC could be strengthened by establishing procedures to challenge and to independently review these processes.
- Determination that the elements of FPIC have not been respected may lead to the revocation of consent given.