

Appendix 3:

Elements of a common understanding of free, prior and informed consent¹

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1. What

- **Free** should imply no coercion, intimidation or manipulation.
- **Prior** should imply that consent has been sought sufficiently in advance of any authorization or commencement of activities and that respect is shown for time requirements of indigenous consultation/consensus processes.
- **Informed** should imply that information is provided that covers (at least) the following aspects:
 - the nature, size, pace, reversibility and scope of any proposed project or activity
 - the reason(s) for or purpose(s) of the project and / or activity
 - the duration of the above
 - the locality of areas that will be affected
 - a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit-sharing in a context that respects the precautionary principle
 - personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others)
 - procedures that the project may entail.
- **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

1 Extract from United Nations Permanent Forum on Indigenous Issues, *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples (New York, 17–19 January 2005)*, UN Doc E/C.19/2005/3 (2005), paras 46–49. At <http://www.un.org/esa/socdev/unpfii/en/workshopFPIC.html> (viewed 19 November 2010).

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

- 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 free, prior and informed consent processes, indigenous peoples, United Nations organizations 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 free, prior and informed consent as described above, inter alia, mechanisms of oversight and redress, including the creation of national ones.
- As a core principle of free, prior and informed consent, all sides in 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.
- Free, prior and informed consent could be strengthened by establishing procedures to challenge and to independently review these processes.
- Determination that the elements of free, prior and informed consent have not been respected may lead to the revocation of consent given.

It is recommended that all actors concerned, including private enterprise, pay due attention to these elements.