

GUIDE TO FREE, PRIOR AND INFORMED CONSENT



OXFAM

First published June 2010
Re-published April 2014

Oxfam Australia
132 Leicester Street
Carlton Victoria 3053
Australia
Tel: +61 3 9289 9444
Fax: +61 3 9347 1983
www.oxfam.org.au

Authors: Christina Hill, Serena Lillywhite and Michael Simon

Contributors: Chelsea Huggett and Claire Hussin

Editor: Jane Kunstler

Designer: Kate Bensen

Illustrator: Katie Webber

Print production: Eduardo Carbonell

ACKNOWLEDGEMENTS:

Oxfam would like to acknowledge and thank the many organisations and individuals that provided advice and guidance in preparation of this publication. In particular we wish to acknowledge the advice and input from the Forest People's Program, International Rivers, World Resources Institute, Oxfam America, Catholic Agency for Overseas Development and the Asia Indigenous Peoples Pact. We also wish to acknowledge the Planet Wheeler Foundation for their funding support.

The development of the FPIC guide was supported by the Australia aid program, funded by the Australian Department of Foreign Affairs and Trade.



Australian Government
Department of Foreign Affairs and Trade



© Oxfam Australia 2014

Oxfam Australia is affiliated with the Australian Council for International Development (ACFID), by whose code of ethics we are bound; Oxfam International, by whose constitution and code of conduct we are bound; People in Aid, by whose code we are bound; and the Refugee Council of Australia.

This report is available online at www.oxfam.org.au/explore/mining/free-prior-and-informed-consent

CONTENTS

INTRODUCTION	4
HELPFUL WORDS	8
SETTING THE SCENE: WHY THIS GUIDE AND WHY NOW?	10
UNDERSTANDING FPIC: FREE, PRIOR AND INFORMED CONSENT	11
WHERE DOES FPIC COME FROM? WHO DOES IT APPLY TO?	12
PRACTICAL STEPS: HOW TO USE FPIC TO PROTECT YOUR RIGHTS	13
WHERE CAN WE GET SUPPORT AND MORE INFORMATION? WHO ELSE IS WORKING ON NATURAL RESOURCE ISSUES?	30
APPENDIX 1: COUNTRIES THAT HAVE EXPRESSED SUPPORT FOR THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP)	32
APPENDIX 2: FRAMEWORK FOR RESEARCHING LOCAL LAWS ON FPIC	33
APPENDIX 3: PROJECT CYCLE	34

INTRODUCTION

Oxfam recognises the challenges and security issues that many communities and individuals face in ensuring their rights and concerns are recognised and upheld. In using this guide, communities are advised to give careful consideration to any security risks they may face.

PURPOSE OF THE GUIDE TO FREE PRIOR AND INFORMED CONSENT

This guide is an introduction to Free, Prior and Informed Consent (FPIC). It provides basic information about the right to FPIC and how this right can help people to have a say about development projects, such as dams, mines and, logging and other large infrastructure projects, which affect them in some way.

We all have the right to decide what happens to our own lands. This principle is protected by international human rights law as ‘all peoples have the right to self-determination’ and linked to the right to self determination, ‘all peoples have the right to freely pursue their economic, social and cultural development’.

The guide is designed to assist the organisations supporting communities affected by large-scale development projects. It is a practical tool to facilitate dialogue between communities and the project developers — including companies, government and financiers.

The guide contains a practical seven step framework which aims to assist Indigenous Peoples affected by a project to collectively claim their right to FPIC. It also outlines the same principles as they apply to all project-affected communities. It includes a section as a resource to help communities understand their rights, with useful tips and information. The guide also contains some ‘red flags’ describing what can go wrong and difficulties that communities may encounter.

INTRODUCTION TO FPIC

Indigenous Peoples have fought for the recognition by their national governments, the international community and by companies of their right to give or withhold consent for project development. The right relates directly to the right for Indigenous Peoples to control their own future and the future of their people. It has been stated as the right ‘to give or withhold their free, prior and informed consent to actions that affect their lands, territories and natural resource’.

This is shortened to the right to Free, Prior and Informed Consent, or FPIC.

This right is often violated when there are large-scale development projects — like a mine, dam, highway, plantation or logging. Often Indigenous Peoples and other community members are left out of the planning and decision-making process in these projects. The outcome can be devastating. Indigenous Peoples and project-affected communities risk a permanent loss to their livelihoods and cultures. Lands can be damaged or taken without their consent. Resettlement is often forced on communities with inadequate compensation offered.

This should not happen. Indigenous Peoples are protected from this situation under International law and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Safeguards also exist for other project-affected communities. Indigenous Peoples have the right to be involved in any decision that affects their lands, resources or territories. They have the right to give or withhold their Free, Prior and Informed Consent. They have the right to reach a collective decision through processes defined and determined by themselves.

For non-indigenous project-affected communities, their full and effective participation in project negotiation and planning must be supported.

Step 1

Find out who is developing the planned project



Step 2

Request information from the project developers



Step 3

Hold discussions within your community



Step 4

Community negotiations with the project developers



Step 5

Seek independent advice



Step 7

Ongoing communications with the project developers



Step 6

Make decisions as a community



CHALLENGES

Claiming the right to Free, Prior and Informed Consent can be a challenging task. FPIC is an ongoing process and negotiations can take a number of years. Project-affected communities may have to demand their participation in negotiations, or in the case of indigenous communities, that their right to FPIC is respected. These rights are often not automatically recognised. Some governments, companies and financiers have made progress towards respecting this right — and have policies and commitments which they should apply when developing a project. But for too many developers FPIC is still something they do not respect, implement or fully understand.

Also, there may be national laws in a country which change the way that FPIC can be claimed. It is important for project-affected communities to get advice about the local laws of their country.

WHO HAS THE RIGHT TO FREE, PRIOR AND INFORMED CONSENT?

FPIC is a specific right for Indigenous Peoples as recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). See Appendix 1 on page 32 for a list of countries that support UNDRIP.

Oxfam Australia holds the view that all project-affected communities have the right to consultation and negotiation in decision-making processes that affect them. Non-indigenous, project-affected peoples have the right to consultation and negotiation in decision-making processes in ways that are consistent with the principles underlying the right to FPIC.

For the purpose of this guide, all project-affected communities are included, regardless of whether they are communities of Indigenous Peoples or non-Indigenous Peoples. This is based on the understanding that the rights of all communities cannot be considered the same as the rights of Indigenous Peoples with regard to consent. However, all project-affected communities must be able to participate in effective decision-making and negotiation and when non-indigenous communities say 'no' to a project this should be accounted for. The questions in Appendix 2 (page 33) will help you understand whether your right to FPIC is protected in the National law in your country.

HELPFUL WORDS

Benefits

Something good that arises from the project for your community. It should be negotiated between the community and the project developers or government.

Benefit sharing

A method to ensure the project benefits are shared equitably among the affected communities.

Consent

To give or deny your agreement for a project to proceed to the project developer.

Consult

When the project developers and the community share information and talk about the planned project. Consultation is different from consent.

Collective right

The right of a group of people, such as a community. It is not the right of one individual person.

Declaration

In the United Nations (UN) system, it is a statement by countries of the world. It is not legally binding. It sets out principles which governments agree to aim to work towards. It can become binding if incorporated into national laws.

Decision making process

The way in which your community chooses to decide whether to give or deny your consent for stages of the project.

Displacement

People's loss of access to their homes and lands.

Economic displacement

Loss of access to an income or livelihood resulting from a loss of access to land.

Elite capture

Ownership of negotiating benefits with the project developers by a few 'elite' or powerful individuals for their own personal gain rather than for the benefit of the entire community.

Environmental and social impact assessment

A study undertaken before the project begins to determine the impact of the proposed project. Its aim is to limit harmful impacts to people and their environment.

Impact

A result of a large-scale development project that affects a community negatively. Examples: pollution of a river, removal of forest, displacement of a village. It is a cost of the project experienced by the community, not by the developer.

Impact benefit agreement

A legal agreement between the community and project developers that records the conditions the project developer must meet.

International law

The law which governs relationships between countries. In the area of human rights it can extend to the way in which countries treat individuals and communities.

Natural resources

For the project developer it is sources of environmental matter which can be taken away for economic gain, such as timber, oil and water. For the community, it is a source of livelihood, such as water for drinking, land for agriculture and livestock.

Negotiations

Discussion of the terms of an agreement carried out in a fair process, usually between the developer and the impacted communities. There should be a balance of power. Project should not go forward until negotiations are completed.

Non-government organisation (NGO)

An organisation that is independent from the government. It is not a company. This can include faith-based organisations (such as churches) and other civil society and community-based organisations.

Project developer

The bank, company or government wanting to develop the project. Often there are several parties involved in developing a project.

Resettlement

Being moved to a new place to live and make a livelihood to make way for a large development project. Sometimes resettlement is managed by the national government on behalf of the project developers.

Risks

Exposure to injury, loss or danger. Risks can be experienced by individuals or an entire community. Project developers also face risks, for example damage to their reputation if they are involved in disputes or conflicts with project-affected people.



SETTING THE SCENE: WHY THIS GUIDE AND WHY NOW?

Around the world large-scale infrastructure and extractive industries projects are being developed at a fast pace. These projects are being driven by an ever-increasing demand for natural resources. These include logging for timber, mining for minerals and oil, and damming rivers for hydro-power. They can lead to massive changes in the lives of people, the nature of their livelihoods and the environment in and around the project area.

If developed sustainably, these projects can have benefits for local people. Such projects should avoid negative environmental and social impacts, and do no harm.

But too often such projects lead to problems and negative, long-lasting impacts, including for human rights. One of the major reasons is because they are developed without any real consideration for the rights and interests of project-affected people and the environment.

There are many different ways in which a large-scale development project could affect your community. Some potential effects of a project are:

Positive effects or benefits

- More jobs for community members
- Skills training
- Better water supply and hygiene systems
- Improved food production
- Financial benefits
- New schools, health clinics and houses

Negative effects or impacts

- Pressure to move off your land
- Denied access to land used for food production or cultural practices
- Your air or water being polluted
- Fish, animals or plants in your area disappearing
- Increase in violence and social stresses
- Jobs are often temporary
- Workers coming to the project site creates health risks for communities

Free, Prior and Informed Consent is an important collective right that can help make projects more sustainable. It can be claimed by Indigenous Peoples where a project impacts on their lives, livelihoods or lands and territories. For other project-affected communities, their full and effective participation in negotiation over the planning and implementation of these projects must be ensured.

Even where national laws give a weak protection of the right to FPIC, and the right of project-affected peoples to consultation and participation in decision-making processes, these rights can and should be recognised by project developers.

This guide aims to help all project-affected communities better understand FPIC and how it works. It aims to give them some resources and support in protecting their rights where a project is proposed in their area. It is a tool for communities to hold project developers and governments accountable.

UNDERSTANDING FPIC: FREE, PRIOR AND INFORMED CONSENT

Free, Prior and Informed Consent (FPIC) is about indigenous communities having a specific right that others should respect. It is a collective right. This means your community as a whole, has the right to give or deny your Free Prior and Informed Consent.


Each part of the term has important meanings for you and your community. Following is a simple explanation of what each term means:

- **Free** from force, intimidation, manipulation, coercion or pressure by any government or company.
- **Prior** to government allocating land for particular land uses and prior to approval of specific projects. You must be given enough time to consider all the information and make a decision.
- **Informed**, you must be given all the relevant information to make your decision about whether to agree to the project or not (see page 18 and 19 for list of questions to ask the project developers). Also:
 - This information must be in a language that you can easily understand.
 - You must have access to independent information, not just information from the project developers or your government.
 - You must also have access to experts on law and technical issues, if requested, to help make your decision.
- **Consent** requires that the people involved in the project allow indigenous communities to say 'Yes' or 'No' to the project and at each stage of the project, according to the decision-making process of your choice. The right to give or withhold consent is the most important difference between the rights of Indigenous Peoples and other project-affected peoples.

For non-Indigenous-Peoples your right to consultation and negotiation in decision-making processes that affect you should also be guided by the principles of FPIC. Consultation and negotiation should be undertaken only when you are not forced or pressed to participate, prior to decisions being made and consent should only be sought when you are fully informed of the issues being discussed and negotiated.

FPIC protects your community's right to negotiate in decisions which affect you. This means it can be a traditional decision-making process. Some communities select **community representatives** to negotiate with the project developer on behalf of the community.

Remember: to assist you in understanding FPIC, it is advised that you spend time reading each article of the United Nations Declaration on Rights of Indigenous Peoples.



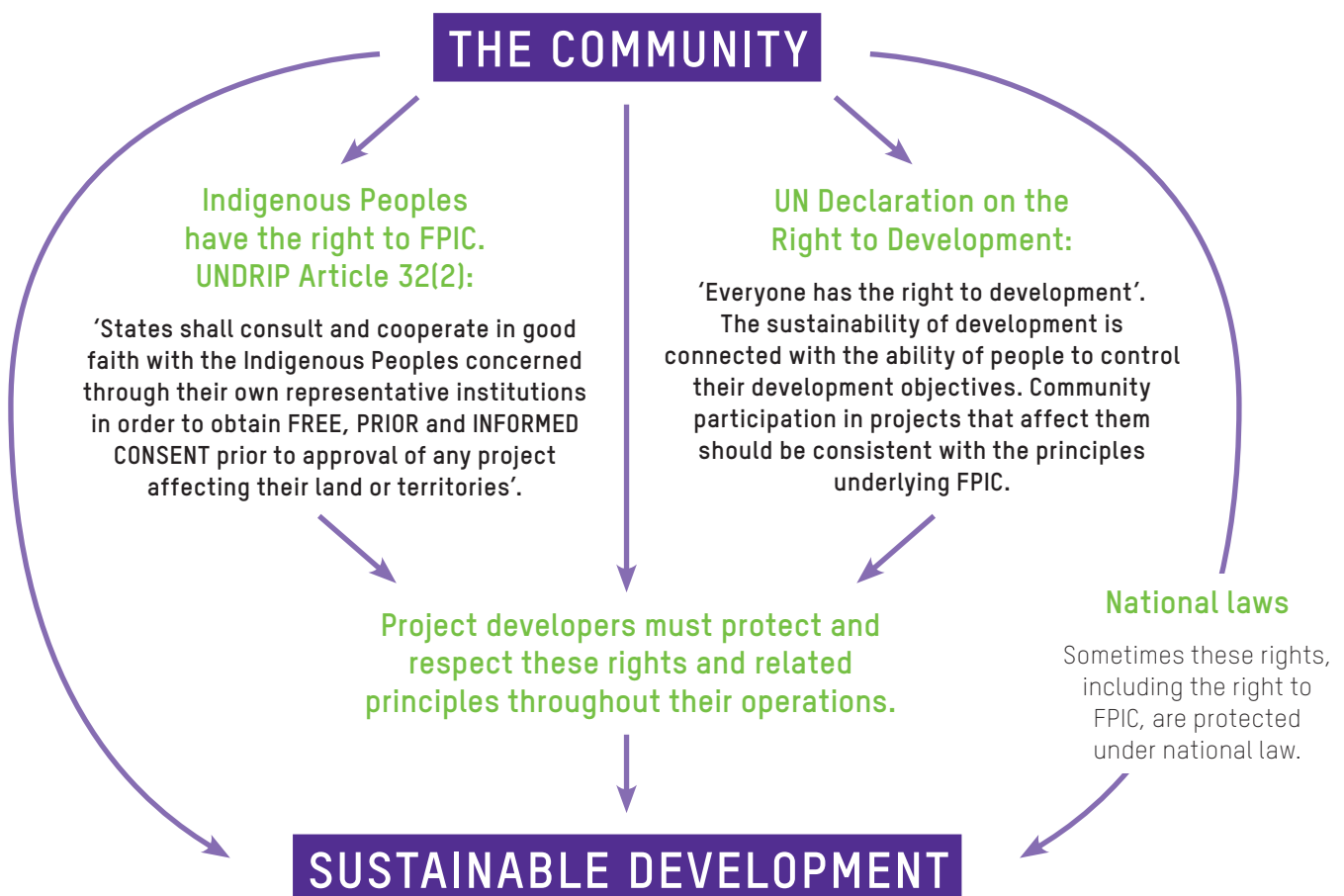
Communities need to guard against project developers who might attempt to establish their own imposed processes when traditional decision-making processes already exist.

WHERE DOES FPIC COME FROM? WHO DOES IT APPLY TO?

Free Prior and Informed Consent is a right recognised in international law. It is included in national laws in some countries — such as the Philippines and in parts of Australia (although laws may vary between states and provinces).

FPIC is also recognised as good practice in development projects. It can benefit companies investing in large-scale development projects. For example, it can reduce the risk of conflict between the community and company if communities are actively involved in project decisions from the outset. Also governments can benefit from protecting this right of their people.

This flowchart gives a simple overview of where FPIC comes from and who it applies to:



Note: The International Bill of Rights — comprising the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the International Labour Organization's core conventions — all have relevance for the application of the FPIC principles for all project-affected peoples.

PRACTICAL STEPS: HOW TO USE FPIC TO PROTECT YOUR RIGHTS





STEP 1

Find out who is developing the planned project

First, you need to know who is planning the project that may affect your community. Then you will know who are the people who should be seeking your consent.

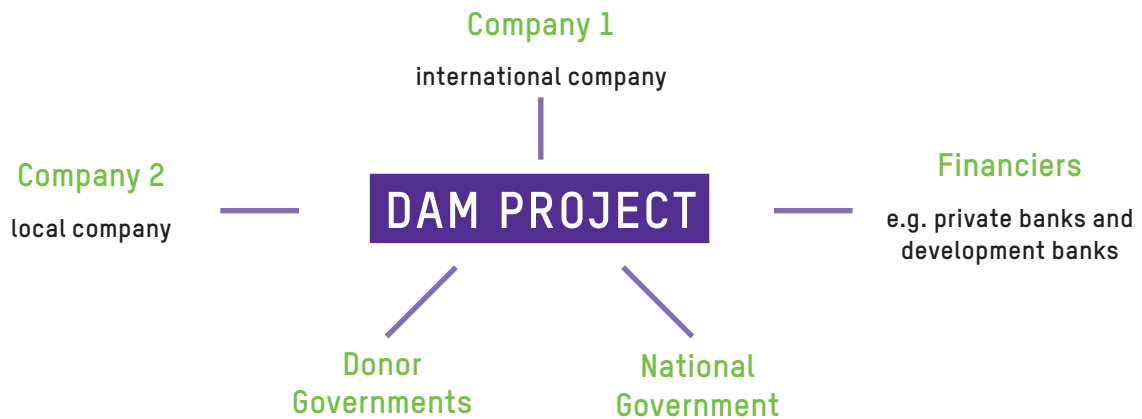
The project planners and developers may include:

- your government;
- a private company (such as a mining or construction company);
- the government of another country;
- a local authority (such as an Environmental Protection Agency or Department of Environment and/or Natural Resources); and
- a bank or international financial institution (such as the World Bank, the Asian Development Bank or the African Development Bank).

Sometimes it may be difficult to find information about the project developers. Large projects usually involve a mix of private and government interests. If you have problems finding information about the project, you can get assistance from other organisations, including local and international NGOs. The media, including international newspapers and industry magazines (for example mining magazines) may also have information on planned projects.

Sometimes the project developers are not from your country. This can make it more difficult to contact them and you may need help from others.

WHO IS RESPONSIBLE?



Often the project developers and those with a responsibility to seek your consent are a combination of all of the above organisations.

TIP 1:
Find out if there is an organisation that helps to manage the land or natural resource in all neighbouring countries. For example, there might be a river governance organisation that works in each country that a river flows through. If there is, check whether your government is part of the organisation. If you are concerned about a dam project you may be able to find out more about the project with their help.



STEP 2

Request information from the project developers

It is important to know how the proposed project will impact on your community. Then you can make an informed decision on:

- whether to give or deny consent;
- changes you would like to the project design; and
- prior conditions you need met before you agree to the project.

Some of the ways in which a project can affect a community is set out in the section 'Setting the scene: why this guide and why now?' on page 10.

If you think your community might be affected by the project, you have the right to ask or to be given information from the project developers in your own language. It is important for your community to become fully informed about the project, its potential impacts and what the project developer will do to prevent or reduce them.

Requesting copies of environmental and social impact assessments in your own language is very important. This helps ensure all members of the community are informed and understand the potential impacts. It also helps in preventing the negotiating process being 'captured' by a few community members who may be more interested in personal benefit rather than community benefit.

It is important to get good information about the geographic scope of the project and to ensure that the project developer correctly identifies all potentially affected communities. If your community is not considered to be 'potentially affected' by the project developer, the developer may try to avoid consulting and negotiating with your community.

One way of getting this information is to ask the project developer questions. You can then record this information and take it back to your community to discuss it. The box on the next page provides some useful questions to ask.

You can also directly ask the relevant government department in your country. This could include the Department of Environment, Mining, Forests and Agriculture or Treasury. This will vary from country to country.

Your community may be affected even if the project is not in your immediate area. For example, water pollution due to a development may spread and affect a community living outside the direct area of the project. Or a dam might block migrating fish which will impact on your food source and livelihood.

Remember: even a project that is based in another country may impact on your community. For example, a mine in another country may dispose of its waste in a river that flows through your country and that your community relies on for water.

TIP 2:
You can request information about the project, in a language and a form that is understandable to your community.

Some helpful questions to ask the project developer

UNDERSTANDING THE PROJECT

- What is the project? What will it do?
- How big is the project? When will it be built? How long will it operate?
- Who are the project developers (for example private company, government)?
- What is the history or past performance of the company? Do they have a good or bad reputation?
- Who is providing the investment loans (for example commercial bank, World bank, investment fund)?
- What is each project developers' main business?
- What is the nationality of the project developers?
- What will be built for the project (for example roads, dams, large electricity poles)?
- Who will be involved in the project, in addition to the company or Government (for example suppliers, contractors)?
- What support is the Government providing (for example no or reduced taxes for the project developers, reduced charges for land access and use)?
- What is the opinion of the local governing bodies regarding the project?

PROJECT IMPACT

- What land will be affected?
- Are there any maps showing affected lands? Will any effects on land and other resources be permanent?
- Will the project developer conduct human rights, environmental, gender and social impact assessments?
- What are the potential risks of the project (for example pollution or entry into a sacred area)?
- Are there any independent reports detailing these risks and are they available for the community?
- What benefits will there be for local communities? Will the benefits be permanent or temporary?
- What will the company contribute to the community (for example schools, roads, hospitals and other social development programs?)
- Will the project contribute to securing community land holdings? If the project developers take away our land will we be compensated including by offering us new land?

COMMUNITY CONSULTATION AND NEGOTIATION

- What opportunities will the community have to provide input into project design? How will this be managed?
- How can communities participate in the environmental and social impact assessment process?
- Who has conducted the environmental and social impact assessments and will they be translated into local languages?
- Who has the company consulted with? Does the company think they have community consent?
- What process will be followed if there is any change to the project design?
- Will the company negotiate with communities at each stage of the project?
- How will the project developer respond to community concerns?
- Is the project developer prepared to disclose all profits and payments connected with the project?
- Where will the profits from the project go?

Note: these are just suggested questions. There will be many other questions to ask project developers that relate specifically to the project, your community and cultural beliefs.





STEP 3

Hold discussions within your community

Once you are in contact with the project developers, you should begin to discuss the project in detail within your community. The whole community should be well informed about the proposed project. Tools such as maps, brochures, posters and videos can be used to inform all community members. This will help ensure everybody understands the potential benefits and impacts the project may have. Your community should decide what is important. Then your community representatives can negotiate with the project developers if that is what the community decides should be the next step.

When discussing what you want, use practices acceptable to your community to reach an agreement. It is very important to take into account the views of all community members who may be affected. Try to ensure that all community members, including women and young people, are involved in your decision-making processes. This is because a large-scale project affects everyone differently.

Often there are several communities affected by one project. Project developers must tell you about any agreement it makes with other communities. It may be helpful to your community to find out if other communities are affected by the same project. You may be able to work together to negotiate with the project developers or government.

Often some parts of a community may support a project while other parts of a community oppose the project. Some project developers might try to divide communities into 'for' and 'against' groups. This can undermine the ability of a community to make a collective decision on the project and can lead to ongoing tensions in a community.

It is possible that several communities will be affected by a project but that one community will be affected more than others. If this is the case, it is important to try to develop a common approach with other communities so that the worst affected communities have a strong voice.

TIP 3:

You do not have to make any decisions at this stage. Your first decision may be that you want more information from the project developers.



STEP 4

Community negotiations with the project developers

As a community, you have the right to be consulted and to negotiate with the project developers. Talking with the developers does NOT mean you agree to the project. You are simply claiming your right to obtain information about the project.

The project developers should consult with your community and obtain your Free Prior and Informed Consent in the early stages of project planning and before each new stage of the project. This means that if you agree to an aspect of the project at the first stage, the developer must obtain your FPIC again at the next stage. If resettlement of the community is likely, the terms and conditions must be negotiated with the community before a final decision is made.

TIP 4:

The project developer should not force you to enter into negotiations before you are ready to do so. The project developers must give you enough time to consider the information, decide how you want to negotiate with the project developers, and finally to make a decision as a community.

It is important that all members of your community are involved in negotiating benefits and not just a few leaders or 'elites' who may be interested in maximising their own personal benefits at the expense of the whole community. All members of your community should guard against 'elite capture' of the community and developer negotiation process.

The construction of large-scale development projects usually brings major financial benefits to the investors. Unfortunately, local communities are not always given the opportunity to share in the financial or other benefits. Putting in place 'benefit sharing' mechanisms can ensure project-affected communities receive benefits from the project. For example, it may enable your community to choose what benefits it wants to receive. This has the potential to improve the livelihoods of your community. It demonstrates how the project can add value to the community.

Some examples of benefits that you could negotiate for your community includes:

- More jobs for community members;
- Skills training and job placement programs;
- New schools and health clinics;
- Special access and use rights to natural resources in the project areas for project-affected communities;
- Agreement with the project developers to leave some land untouched — for example, areas of cultural value, and
- Sharing of revenues from the project.

TIP 5:

If construction has already started on a project without community involvement or consent, the developer needs to be told that they are not following acceptable practice. You can still have your say. You may still be able to stop construction, insist that the project developer only proceed if your community grants its Free, Prior and Informed Consent, negotiate benefits for your community or change the way that the project operates.



STEP 5

Seek independent advice


Negotiating with project developers can be difficult. Project developers sometimes try to avoid involving communities. The issues involved are complex. You have the right to get independent legal and technical advice to help you understand the effects of the proposed project. For example, the company informs you that they will be using mercury. If you have never heard of mercury or don't know much about it, you can ask for advice from a scientific expert.

Remember that your decisions should be informed decisions. One of the underlying principles of FPIC is that consent by Indigenous Peoples should be informed consent. For all other project-affected community members, their participation in consultation and negotiation in decision-making processes should be based on being fully informed on the issues being discussed and negotiated.

It is important not to rely only on information the project developers give you. Project developers may try to make the project seem attractive to affected communities in order to gain consent. Information from other sources will ensure you fully understand the impact of the project in the short and long term, and what rights are available to your community.

Remember: It is important to find out whether the National laws of your country protect your rights to FPIC, or similar processes to FPIC. Independent advice can help you with this issue.

For more information about where you can get independent advice, see page 30.



Even where national laws protect community rights to FPIC, things can still go wrong. Corruption, poor or no enforcement, or a lack of independence in government agencies responsible for ensuring that FPIC occurs as required by the law, can create problems for communities trying to claim their right to FPIC.



STEP 6

Make decisions as a community

Free, Prior and Informed Consent is a collective right. Therefore, your community must make a decision together in accordance with your own traditional decision-making processes.

If you decide to say 'yes' to a project, you should make sure that the agreement you make with the project developers is recorded in writing. You can write this in your community's language(s). This agreement should be legally binding.

This can be a very difficult process and understanding project contracts, government approvals and legal documents is very complex. It is advisable to ask for assistance from an NGO or someone else with relevant expertise to help you if you do not understand the contracts and other documents.

If your community does give its consent to a project, your community may choose to enter into an impact benefit agreement (or similar) with the project developer. This is a legal agreement that records the agreement reached between your community and the project developer. It records what conditions the project developer must meet and when these conditions be implemented or delivered.

Remember: If your community believes that the project will not be positive for the community, you can say 'no' — or in other words not give your consent — to the project. The project should only proceed if the consent of Indigenous Peoples is obtained by both the government and project developer. For non-indigenous project-affected communities when they say 'no' to a project this should be accounted for.

Some project developers might attempt to get community 'consent' for a project by getting landowners and their representatives drunk and forcing them to sign documents.

Some project developers attempt to get community 'consent' for a project by establishing their own community decision making processes. These processes do not involve traditional decision-making structures or legitimate community representatives and are designed to obtain a 'yes' even though the process is fake.

Remember: The project developer must not pressure, threaten or force you in any way to make a decision or give your consent to the project. Some examples of how project developers sometimes make the process difficult are:

- Not including communities in the early stages of impact assessments;
- Forcing communities to sign agreements when it is clear they don't fully understand the impacts of the projects; and
- Only negotiating with or talking to a few individuals who may not represent community views.



STEP 7

Ongoing communications with the project developers

Free, Prior and Informed Consent is an ongoing process. Large-scale development projects take many years to plan and then start, and then may impact on your community for many years or even generations. The project developer should make sure your community is informed regularly about the project progress. You must be given the chance to ask questions and raise concerns. Your community's right to FPIC must be respected throughout the whole process.

Appendix 3 on page 34 outlines the typical phases of a large-scale project. This is included to highlight the importance of understanding the different activities that can occur at each stage of the project, and what project developers should do to involve communities at each stage.

Remember: FPIC should not be a 'one-off' process, it is an ongoing process. This means regular dialogue and agreement between the project developers and affected communities is good practice.

If you say 'yes' or 'no' to a project, community representatives can continue to undertake negotiations on behalf of your community. They must ensure that the whole community is collectively informed.

TIP 6:
Asking independent agencies to assist with monitoring can help convince the project developers that concerns about the project impacts and commitments are legitimate.

TIP 7:

It is important to understand and negotiate an exit strategy with the project developers before the project finishes. This could include ongoing access to clean water, maintenance of facilities and re-training to increase employment opportunities.

Community representatives also need to monitor the project development if the project proceeds. It is important for the community to keep track of whether the company/government is meeting its commitments. One way to do this is to negotiate specific outcomes or conditions of the project. These should be written down and timelines agreed to.

The project developer may change through the life of the project. New project developers should uphold commitments made by previous developers — however, you may want to seek independent advice to understand if a new project developer is bound by previous agreements. This is one reason why it is important to have a written record of your community's decision about the project and benefits you have negotiated. You may wish to try to negotiate improved benefits for your community with a new developer.

Your community may also wish to establish a permanent community and project developer forum for regular and ongoing communications. This forum could also be used to handle concerns or grievances that your community may have with the operation of the project if the project proceeds.

The steps described above are designed to assist you and your community claim your right to Free, Prior and Informed Consent, your right to be consulted and your right to negotiate in decision-making processes that affect you.

WHERE CAN WE GET SUPPORT AND MORE INFORMATION? WHO ELSE IS WORKING ON NATURAL RESOURCE ISSUES?

What can you do if the government or project developer ignores you? Even if you attempt to follow these steps, the project developers may just ignore you and continue with the project. You may decide to then develop an advocacy strategy that suits your circumstances and community interests. This may include: community protests, peaceful resistance, and raising awareness through the media and local and international NGOs. Some NGOs have developed useful advocacy guides.

KEY RESOURCES

- **United Nations Declaration on Rights Indigenous Peoples (UNDRIP)**
<http://www.un.org/esa/socdev/unpfii/en/declaration.html>
- **Free Prior and Informed Consent: The Role of Mining Companies**, Oxfam Australia, 2007
http://www.oxfam.org.au/campaigns/mining/docs/FPIC_statement.pdf
- **Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects**; World Resource Institute, 2009
<http://www.wri.org/publication/breaking-ground-engaging-communities>
- **FREE and EQUAL towards respect for the Human Rights of Indigenous Peoples of Australia: A guide for community advocates**, Oxfam Australia and Diplomacy Training Program, 2009
http://www.dtp.unsw.edu.au/documents/FreeandEqual_FALR_002.pdf
- **Dams, Rivers and Rights: An Action Guide for Communities Affected by Dams**, International Rivers Network, 2006 (available from website in 10 languages)
<http://www.internationalrivers.org/en/node/579/>
- **Amnesty International Campaigning Manual**, 1997
www.amnesty.org/en/library/info/ACT10/002/1997
- **Care Advocacy Tools and Guidelines: Promoting Policy Change**, 2001
http://www.care.org/getinvolved/advocacy/tools/english_00.pdf
- **Advocacy for social justice A Global Action and Reflection Guide**, 2001
www.oxfamamerica.org/publications/advocacy-for-social-justice

ORGANISATIONS

United Nations

- **The United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous People**
<http://www2.ohchr.org/english/issues/indigenous/rapporteur/>
- **The United Nations Permanent Forum on Indigenous Issues**
<http://www.un.org/esa/socdev/unpfii/>

International non-government organisations

- **Asia Indigenous Peoples Pact**
www.aippnet.org
- **Catholic Agency For Overseas Development (CAFOD)**
www.cafod.org.uk
- **Forest People's Program**
www.forestpeoples.org
- **International Rivers**
www.internationalrivers.org
- **Oxfam America**
www.oxfamamerica.org
- **Oxfam Australia**
www.oxfam.org.au

Organisations in your area

- Your local community-based organisation and other local NGOs
- An NGO forum or umbrella group in your country
- Your local community legal service
- Your local authorities (such as an Environmental Protection Agency or Department of Environment and/or Natural Resources)

APPENDIX 1:

COUNTRIES THAT HAVE EXPRESSED SUPPORT FOR THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP)

UNDRIP is a declaration. In international law this means it is not legally binding on countries. It is still very important as it sets out standards recognised and agreed to by the international community and governments.

If your country has supported the declaration, it should be committed to working towards protecting those rights.

The flow chart on page 12 shows the importance of UNDRIP in protecting the rights of Indigenous Peoples and contributing to sustainable development.

147 COUNTRIES IN SUPPORT OF UNDRIP

Afghanistan, Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cambodia, Cameroon, Cape Verde, Central African Republic, Chile, China, Colombia, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kuwait, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Mongolia, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Paraguay, Peru, the Philippines, Poland, Portugal, Qatar, Republic of Korea, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tanzania, Thailand, the former Yugoslav Republic of Macedonia, Timor-Leste, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, United Kingdom, Uruguay, Venezuela, Vietnam, Yemen, Zambia and Zimbabwe.

Source: <http://www.un.org/esa/socdev/unpfii/en/declaration.html>

APPENDIX 2:

FRAMEWORK FOR RESEARCHING LOCAL LAWS ON FPIC

These questions are designed to help understand whether your right to Free Prior and Informed Consent is protected in the National law in your country:

1. **Has your country expressed support for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)?**

Check the list on page 32 to see whether your country is listed as supporting UNDRIP. If it is not listed then check the UN website: www.un.org/esa/socdev/unpfii/

2. **Is there any legislation in the national laws of your country which gives support to FPIC?**

IF YES:

What do the provisions say?

Look in detail at the legislation to see what is required under law.

Who does it apply to?

Check to see whether the legislation can apply to all project-affected communities, or whether it is specific to Indigenous Peoples.

What procedures does the law require?

Compare your country's laws to Article 32 of UNDRIP to see whether each aspect of FPIC is covered. Look closely at what procedures the law sets out.

IF NO:

Is there any legislation in the National laws of your country which support similar processes to FPIC?

Look at whether your country has legislation which set out similar processes to those of FPIC. These could be found in laws relating to infrastructure development e.g. planning legislation.

What processes are required under law?

Look in detail at the processes it sets out. What aspects of FPIC are required by law? Examples may include: community consultation procedures, planning requirements, the requirement for environmental and social impact assessment.

3. **Is there any case law in your country which supports Free Prior and Informed Consent (FPIC)?**

IF YES:

What have the courts decided?

Look at cases of project-affected communities claiming their right to Free Prior and Informed Consent in any sector: mining, dam, logging. Look in detail at what the courts decided by reading their judgements.

Can it apply to your case?

Look at the circumstances of cases which are similar to yours. Read about what the court said. Could similar reasoning could be applied in your situation.

IF NO:

Are there case studies of similar projects in your country?

If there have not been court cases, research whether other communities have been affected by large development projects. What actions did they take? There may be case studies which help you in protecting your rights. Are there local community groups taking action against proposed development projects in your country? Check whether organisations in your local area have more information on where to find help for FPIC processes.

APPENDIX 3:

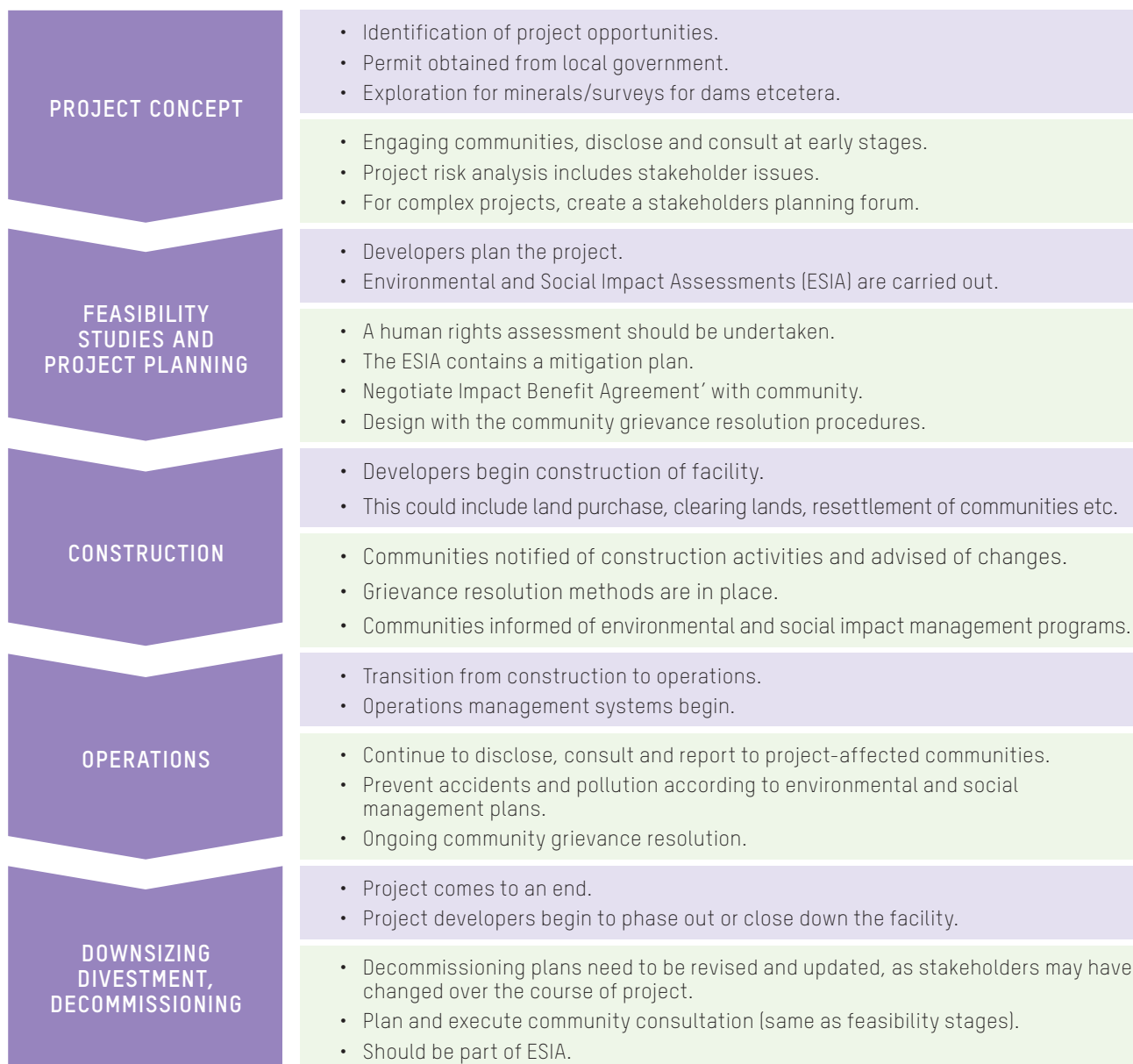
PROJECT CYCLE

Not all projects are the same. However, large projects may have the following phases. This diagram is an overview of a typical project cycle. It aims to help you understand the processes involved when engaging with project developers.

Activities: Outlines what usually happens at each stage of a project in large-scale infrastructure developments.

Good Practice activities to involve communities: This is what project developers should be doing to ensure communities are involved at every stage of the project.

PHASES OF PROJECTS



FPIC sought at key decision-making points throughout the project



SPACE FOR NGO STAMPS



OXFAM