



# Guidance Note on FPIC Protocol

LLF ESMS Annex O

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## APPENDIX A TOR FOR FPIC FACILITATION AGENCY (TEMPLATE)

## APPENDIX B SCREENING CHECKLIST FOR DETERMINING INFORMED CONSULTATION AND PARTICIPATION OR FPIC REQUIREMENTS FOR AFFECTED IP

## ACRONYMS AND ABBREVIATIONS

Name	Description
E&S	Environmental and Social
ESMS	Environmental and Social Management System
FAO	Food and Agriculture Organization
FPIC	Free Prior and Informed Consent
GFN	Good Faith Negotiation
ICP	Informed Consultation and Participation
IP	Indigenous Peoples
IPP	Indigenous Peoples Plan
LL	Legacy Landscape
LLF	Legacy Landscapes Fund
SEP	Stakeholder Engagement Plan
ToR	Terms of References
VLD	Voluntary Land Donation
WB ESS	World Bank Environmental and Social Standards

## DOCUMENT HISTORY

Version	Revision	Prepared by	Reviewed by	Approved by	Date	Comments

## 1. INTRODUCTION

Indigenous peoples (IP) often belong to the most economically marginalized and vulnerable groups of society. Their economic, social, and legal status frequently limits their capacity to defend their rights to, and interests in, land, territories, and natural and cultural resources, and may restrict their ability to participate in and benefit from conservation and development projects or programs. In many cases, they do not receive equitable access to project/program information and benefits, or benefits are not devised or delivered in a form that is culturally appropriate, and they may not always be adequately consulted about the design or implementation of projects/programs that would profoundly affect their lives or communities.

International standards, such as international law and environmental and social (E&S) safeguards set out provisions ensuring the proper consultation of IP that will be given through obtaining their free, prior, and informed consent (FPIC). The history of the FPIC principle dates back almost a century and is related to the right of self-determination of indigenous peoples. The Native American Iroquois Confederacy of Canada and the United States initiated the process in 1923 when they appealed to the United Nations (then the League of Nations) to recognize their sovereignty. Their appeal was rejected, and another 80 years would pass by, before the United Nations General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. The UNDRIP recognizes FPIC as a right that should be respected by all actors aiming to execute projects that would affect the settlements, livelihoods, and well-being of indigenous peoples.

FPIC is not just a global convention, several countries have made it part of their national laws. Several indigenous communities have also set up their FPIC protocols for engaging with powerful actors. Powerful actors include governments, businesses, international organizations, non-governmental organizations (NGOs), traditional leaders, wealthy landowners, and religious institutions. FPIC aims to equalize the power differentials or asymmetries between indigenous people the powerful actors they engage with over access and control of land, resources, territories, livelihoods, and food security.

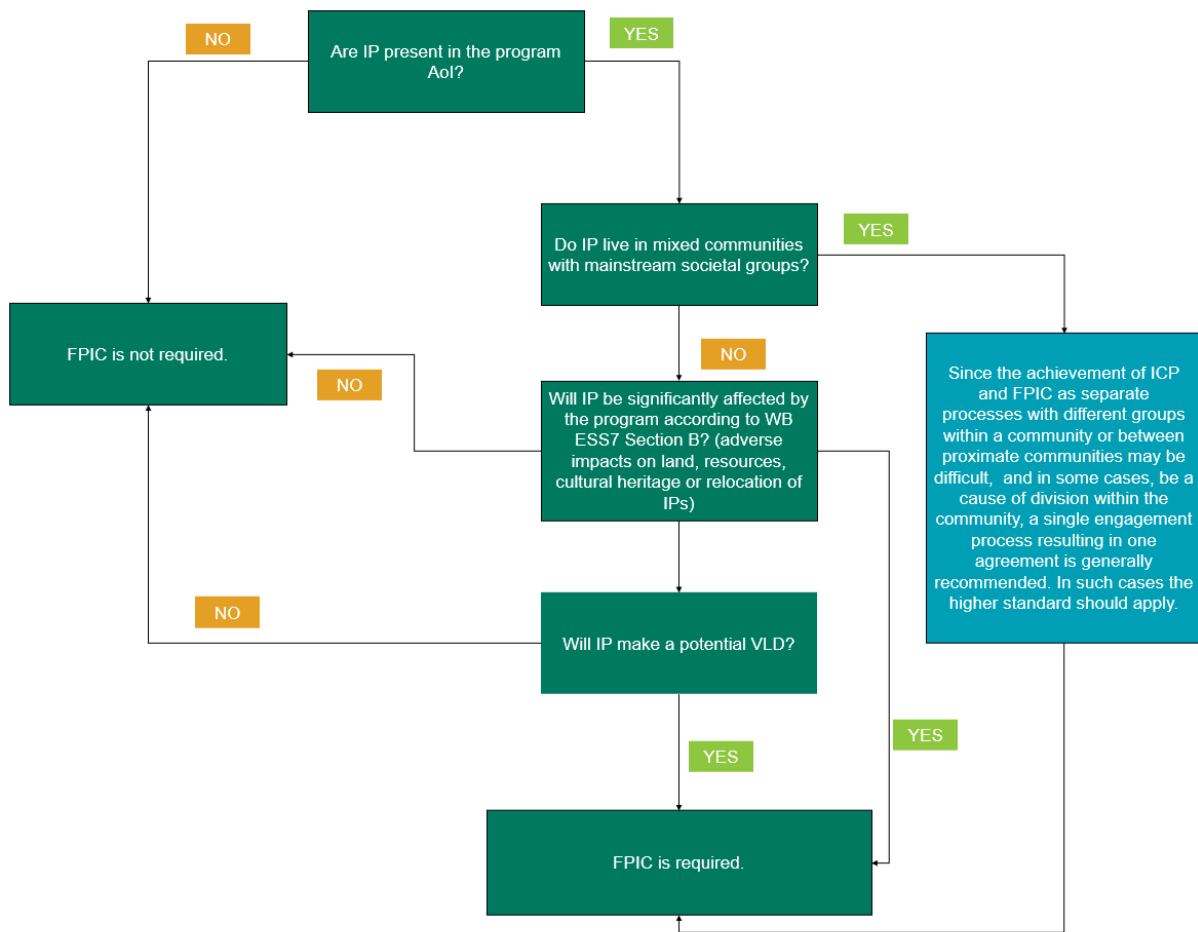
FPIC is thus a governance instrument for the inclusion of indigenous people in decision-making about their rights, land, resources, territories, livelihoods, and food security. It is not an instrument for the routine operational management of natural resources and cannot guarantee sustainable management of natural resources.

The FPIC is required for all legacy landscape (LL) programs where IP are involved and affected by the LL program. LLF acknowledges that at some LL programs seeking for LLF funds the FPIC process could be already ongoing or was already undertaken. In those cases, it is also important to consider that achieving FPIC once does not mean it lasts forever - it's an ongoing dialogue. The grantee is required to develop a FPIC protocol to guide the engagement with the IP. FPIC comprises a process and an outcome and builds upon the requirements for informed consultation and participation (ICP), while going beyond the ICP stipulations by additionally requiring good faith negotiation (GFN) between the program and affected IP communities, documented in a final outcome.

**Note:** This document provides a guidance and checklists that are aligned with the applicable standards listed in LLF ESMS manual. In all cases, the grantee and/or the party developing the FPIC documents and/or procedures must comply with the local/national requirements; then, the guidance provided in this document (including the other recommended publications) should be utilised to determine how to align the LL program with the applicable standards. If the LL program (or the grantee organisation) already have similar FPIC documents and/or templates developed and/or currently implemented, the grantee should conduct the gap analysis exercise between the existing template and/or document and this LLF guidance. The identified gaps should be closed following the rule – stricter applies.

The requirement to develop the FPIC might be stated in the environmental and social action plan (ESAP) that is part of the grant agreement between the grantee and LLF. Alternatively, such requirement will be triggered by legacy landscape (LL) program activities during the lifecycle of the

LL program. The decision tree (shown on Figure 1-1) aims to guide the grantee through the decision process.



**Figure 1-1 Decision Tree FPIC Requirements**

Nevertheless, LLF encourages the grantee to pursue the FPIC development and implementation on a voluntary/good practise basis even if the FPIC is not required.

### 1.1 Purpose

This document provides structure and guidance to the grantee on how to identify IP and how to initiate engaging with IP groups. In addition, it will clarify in which special circumstances FPIC will be triggered and provide step by step guidance on major stages of the FPIC process, including preparations before initiating the process and considerations that should be kept in mind after FPIC is obtained.

### 1.2 Objective

The objective of the FPIC protocol is to ensure that the grantee managing the legacy landscape (LL) program and/or other involved party consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing program actions/activities that may affect them. The grantee and/or other involved party should respect the traditional decision-making processes and ethnic/community already established FPIC protocols. Furthermore, some programs working with local communities choose to adopt FPIC as best practice.

## 2. APPLICABLE STANDARDS

The full list of the applicable standards for developing the FPIC protocol is indicated in the LLF ESMS manual document. In addition, the following standards were used for the development of this guidance note and should be reflected in FPIC protocol:

- World Bank Environmental and Social Standards (WB, 2018), in particular;
  - Guidance Note on ESS7 - Indigenous Peoples / Sub-Saharan African Historically;
  - Underserved Traditional Local Communities (WB, 2018)<sup>1</sup>.
- FAO Free Prior and Informed Consent: An indigenous peoples' right and a good practice for local communities (FAO, 2016)<sup>2</sup>;
- UN Declaration on the Rights of Indigenous People (UNDRIP, 2007)<sup>3</sup>;
- International Labour Organization Convention 169 (ILO 169);
- National laws, strategies and plans (relevant to FPIC).

## 3. KEY TERMINOLOGY

Table 3-1 below elaborates on key terms used in this FPIC protocol guidance note.

**Table 3-1 Key Terminology**

Term	Definition
<b>Community</b>	Usually defined as a group of individuals broader than the household, who identify themselves as a common unit due to recognised social, religious, economic, or traditional government ties, or through a shared locality
<b>Compensation</b>	Payment in cash or kind for an asset to be acquired or affected by a program at replacement value.
<b>Critical Cultural Heritage</b>	Includes natural areas with cultural and/or spiritual value such as sacred groves, sacred bodies of water and waterways, sacred trees, and sacred rocks.
<b>Customary Land and Resource Use</b>	Customary use of land and resources refers to patterns of long-standing community land and resource use in accordance with IP customary laws, values, customs, and traditions, including seasonal or cyclical use, rather than formal legal title to land and resources issued by the state.
<b>Customary Law</b>	Law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws.
<b>Displaced Persons</b>	All the people economically or physically displaced by a program's temporary or permanent land access restrictions or land acquisition

<sup>1</sup> <http://documents1.worldbank.org/curated/en/972151530217132480/ESF-Guidance-Note-7-Indigenous-Peoples-English.pdf>

<sup>2</sup> <http://www.fao.org/3/i6190e/i6190e.pdf>

<sup>3</sup> <https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples#:~:text=The%20Declaration%20addresses%20both%20individual.all%20matters%20that%20concern%20them.>

Term	Definition
<b>Free Prior and Informed Consent (FPIC)</b>	Free, prior, and informed consent (FPIC) is a collective human right of indigenous peoples <sup>4</sup> to give or withhold their consent prior to the commencement of any activity that may affect their rights, land, resources, territories, livelihoods, and food security. This right is exercised through representatives of their own choosing and in a manner consistent with their own customs, values, and norms. FPIC exists to promote, protect, and safeguard the full enjoyment and exercise of numerous underlying, fundamental human rights, including the rights to property, culture, and self-determination.
<b>Good Faith Negotiation (GFN)</b>	Good faith negotiation (GFN) involves on the part of all parties: <ul style="list-style-type: none"> <li>■ Willingness to engage in a process;</li> <li>■ Meet at reasonable times and frequency;</li> <li>■ Provision of information necessary for informed negotiation;</li> <li>■ Exploration of key issues of importance;</li> <li>■ Use of mutually acceptable procedures for negotiation;</li> <li>■ Willingness to change initial position and modify offers where possible; and</li> <li>■ Provision of sufficient time for decision making.</li> </ul>
<b>Grantee</b>	A NGO(-s) and/or party that is in contractual agreement with LLF and receiving grant funds through the grant agreement.
<b>Indigenous People (IP)</b>	Indigenous peoples (IP) are distinct social and cultural groups that share collective ancestral ties to the lands and natural resources where they live, occupy or from which they have been displaced.
<b>Informed Consultation and Participation</b>	A genuine dialogue between the parties, involving communication and disclosure of information, mutual respect, and good faith negotiations.
<b>Legacy Landscape Program/Program activity</b>	All activities <sup>5</sup> related to the legacy landscape and/or stakeholders that are planned, implemented and/or supervised by the grantee and/or their contractor.
<b>Legacy Landscape Staff</b>	All staff related to the legacy landscape program and/or program activity development and implementation (e.g., grantee, contractors, park management, etc.)
<b>Stakeholders</b>	Any and all individuals, groups, organisations, and institutions interested in and potentially affected by a program or having the ability to influence a program.
<b>Vulnerable People and Groups</b>	Those who are less able to access a program's benefits and / or more likely to experience adverse impacts from a program's activities as a result of a given status, which may stem from their ethnicity, colour, gender, sexual identity, language, religion, political or other opinion, national or social origin, property, birth or perceived social status. For the purpose of this document, when referring to vulnerable people and/or groups, IP are included in this definition.

<sup>4</sup> The LLF follows WB standard definition of IP (compare also 4.1) and requires the application of FPIC as defined per ESS. As best practice and also to avoid potential conflicts in communities where indigenous and non-indigenous people live in mixed settings, programs might and are encouraged to adopt FPIC to those mixed communities, as well as to other local communities and vulnerable groups affected by the program.

<sup>5</sup> The FPIC must cover not only LLF funded activities for the LL program, but all activities in the program specific legacy landscape and surroundings: For triggers of FPIC also compare 5.3.

## 4. INITIAL CONSIDERATIONS

### 4.1 Identifying Indigenous Peoples

The term IP and historically underserved peoples is used in a generic sense to refer to a distinct social and cultural group possessing the following characteristics in varying degrees:

- Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others<sup>6</sup>;
- Collective attachment to geographically distinct habitats, ancestral territories or areas of seasonal use or occupation, as well as to the natural resources in this area;
- Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture; and
- A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.

WB ESS applies to communities or groups of “*Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities who, during the lifetime of members of the community or group, have lost collective attachment to distinct habitats or ancestral territories in the project area because of forced severance, conflict, government resettlement programs, dispossession of their land, natural disasters, or incorporation of such territories into an urban area*”. ESS7 also applies to forest dwellers, hunter-gatherers, pastoralists, or other nomadic groups subject to satisfaction of the criteria set out in the standard.

Based on the above, the grantee, where the LL program is likely to impact upon IP, should consider engaging competent professionals (i.e., independent consultant, refer to Appendix A for the Terms of Reference). The professionals then have to ascertain whether a particular group is considered as indigenous for the purpose of the WB ESS7, and how it will be managed through a stakeholder engagement plan (SEP) and other documentation, including an indigenous peoples plan (IPP). For further guidance on the SEP and the IPP, please refer to the LLF ESMS documentation, [Annex P – Stakeholder Engagement Plan Outline](#) and [Annex N – Indigenous Peoples Plan](#). Furthermore, an example template for a preliminary IP screening is included in Appendix B.

### 4.2 Engaging with Indigenous People

Engagement and consultation with IP and other vulnerable people as spelled out above (Sub-Saharan African Historically Underserved Traditional Local Communities, such as forest dwellers, hunter-gatherers, pastoralists, or other nomadic groups) should be undertaken to address the following:

- To ensure that the development process of programs and/or activities fosters full respect for the human rights, dignity, aspirations, culture, and natural resource-based livelihoods of IP;
- To anticipate and avoid adverse impacts of programs and/or activities on IP or when avoidance is not possible, to minimize and/or compensate for such impacts.
- To strengthen traditional land management tools and strategies of IP.
- To promote sustainable conservation and development benefits and opportunities for IP in a culturally appropriate manner.

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<sup>6</sup> There are several known instances where governments do not recognise groups as distinct Indigenous Peoples. ESS7 uses the term “Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities” recognizing that groups may be referred to in different countries by different terms. Such terms include “Sub-Saharan African historically underserved traditional local communities,” “indigenous ethnic minorities,” “aboriginals,” “hill tribes,” “vulnerable and marginalized groups,” “minority nationalities,” “scheduled tribes,” “first nations,” or “tribal groups.”



- To establish and maintain an ongoing relationship based on ICP with the IP by a program throughout the program’s life-cycle;
- To ensure the FPIC of IP;
- To respect and preserve the culture, knowledge, and practices of IP, especially critical cultural heritage.

Furthermore, all relevant information should be communicated, and engagement conducted in a culturally appropriate manner. This includes the use of relevant local languages, as well as considering illiteracy and ensuring that relevant information is communicated effectively to illiterate people.

Any new activities under the LL program cannot proceed unless IP/ Sub-Saharan African Historically Underserved Traditional Local Communities<sup>7</sup> have been involved in an FPIC process through a process of mutual dialogue and agreement (or there is a clear commitment and defined path, e.g., the development of an IPP, SEP and FPIC protocol as part of the required ESAP in the preparation phase) between the affected communities/ individuals and the grantee proposing the LL program and/or program activity. Where activities have been undertaken without an FPIC process, the program should ensure that dialogue is established and/or continued with a view to seeking informed consent for activities already underway. The grantee shall prioritize and expedite the FPIC process to resolve legacy issues promptly.

## 5. FREE PRIOR AND INFORMED CONSENT

There is no universally accepted definition of FPIC. For the purposes of this document and in accordance with the applicable standards, FPIC is established as follows:

- The scope of FPIC applies to program design, implementation arrangements, and expected outcomes related to risks and impacts on the affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities;
- FPIC builds on and expands the process of meaningful consultation<sup>8</sup>, and will be established through good faith negotiation between the grantee and affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities;
- The grantee will document:
  - the mutually accepted process to carry out good faith negotiations that has been agreed upon by the grantee and Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities;
  - the outcome of the good faith negotiations between the grantee and Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, including all agreements reached as well as dissenting views; and
- FPIC does not require unanimity and may be achieved even when individuals or groups within or among affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities explicitly disagree.

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<sup>7</sup> As best practice and also to avoid potential conflicts in communities where indigenous and non-indigenous people live in mixed settings, programs might and are encouraged to adopt FPIC to those mixed communities, as well as to other local communities and vulnerable groups affected by the program.

<sup>8</sup> Further described in ESS10

## 5.1 What does FPIC mean in Practise?

In order, for FPIC to be fully legitimate, it must demonstrate that it is:

- ‘Free’ – the affected community gives its opinions willingly and is not persuaded, tricked or forced to say or agree to certain things.
- ‘Prior’ – the program will communicate with affected communities in advance, when consultation will take place, and carries out the consultation before decisions are made, not afterwards
- ‘Informed’ – the program will communicate the whole truth about the respective program, including the good things and the bad things that may happen and all the different alternative activities that can be done to achieve the program objectives and avoid or reduce harm.
- ‘Consent’ – The collective decision made by the rights-holders and reached through the customary decision-making process of the affected IP or communities. A freely given decision that may be a “Yes”, a “No”, or a “Yes with conditions”, including the option to reconsider if the proposed activities change or if new information relevant to the proposed activities emerges<sup>9</sup>. It should be noted that FPIC is an ongoing process, and that consent needs to be assured throughout this process. Changing circumstances in the LL program can lead to a change in perception of affected communities. Since FPIC can only be provided at a single point in time, the grantee should seek to maintain consent of affected communities throughout the LL programs lifecycle. Programs with long life cycles may, therefore, choose to develop an agreement that involves commitments being delivered through periodic development plans covering defined program planning periods. For such LL programs, IPPs can be useful, since they provide an outline of measures to mitigate adverse impacts on IP and for provision of opportunities and benefits to them, tied to a clear implementation schedule and budgetary plan.

## 5.2 What are Good Faith Negotiations?

Good faith negotiation means the grantee and/or LL program staff must engage with IP in a way that they fully agree from the start of discussions. The grantee and/or LL program staff must show that it will respond to any queries quickly, regularly, and in a language that can be understood. All relevant information needs to be presented so that IP and vulnerable people can make an informed decision. The grantee must discuss any serious concerns parties involved may have with the LL program and be willing to change program plans to avoid problems and even to stop certain LL program activities.

Good faith negotiation involves, on the part of all parties:

- Willingness to engage in a process and availability to meet at reasonable times and frequency;
- Sharing of information necessary for informed negotiation;
- Use of mutually acceptable procedures for negotiation;
- Willingness to change initial positions and modify offers where possible; and
- Provision of sufficient time for the process.<sup>10</sup>

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<sup>9</sup> According to World Bank ESS 7, paragraph 25 (d) FPIC does not require unanimity and may be achieved even when individuals or groups within or among affected IP explicitly disagree.

<sup>10</sup> According to World Bank Guidance Note 25.3

### 5.3 When is FPIC triggered?

It is important to note that FPIC is triggered in specific circumstances. The below guidance provided by WB ESS7 outlines these instances in which the program will trigger FPIC:

- *Have adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation;*
- *Cause relocation<sup>11</sup> of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities from land and natural resources subject to traditional ownership or under customary use or occupation; or*
- *Have significant impacts on Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities' cultural heritage that is material to the identity and/or cultural, ceremonial, or spiritual aspects of the affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities' lives.*

As mentioned above in the identification of IP, it is recommended that in the case of FPIC being triggered, the grantee will engage a specialised consultant to assist in handling elements of the SEP, inclusive of the IPP (please refer to the LLF ESMS documentation, [Annex P – Stakeholder Engagement Plan Outline](#) and [Annex N – Indigenous Peoples Plan](#)). Where land acquisition triggers FPIC, this is discussed in further detail in the LLF ESMS documents, [Annex L – Process Framework for Involuntary Access and Use Restriction](#).

### 5.4 Starting the FPIC Process

Before the FPIC process can be initiated the program should identify key actors relevant for it and reach out to them, in order to prepare them for the FPIC process. Key actors that should be considered and approached include the following:

- All IP groups affected by the program activities whose FPIC is required (this may comprise multiple groups and different social units, e.g., clans, tribes etc.)
- All appropriate decision-making institutions / authorities in the community. Communities must be represented by institutions of their own choosing through verifiable processes, which may differ from institutions formed based on government structures
- Supporting organizations (e.g., relevant government agencies, regional or national representative organizations of indigenous peoples and / or experts or advocacy groups on customary / community rights)
- Only for programs that require land acquisition or restrictions on land access and use: All land holders and customary rights, e.g., through participatory community mapping (in cases that involve impacts on lands and natural resources subject to traditional ownership or under customary use)
- Depending on the complexity of the program context: Process facilitator or facilitating agency.

Once all relevant actors are identified and informed about the planned FPIC negotiations, the process can officially be initiated.

#### *Government Involvement*

There will be instances where governments (e.g., government partner agencies) are obliged under national legislation or international provisions to obtain FPIC. This does not relieve the grantees from their obligation to undergo an FPIC process for any program activities that require it. The grantee is encouraged to collaborate with the respective government in achieving FPIC in order to operate efficiently and prevent stakeholder fatigue. If the government is cooperative in regards to FPIC,

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<sup>11</sup> Note: LLF grants do not fund relocation of IP. Please refer to LLF ESMS Documents, Annex B – Exclusion List.

the grantee is encouraged to participate throughout the process and leverage that the government’s actions align with the FPIC provisions set out in the applicable standards.

Where government processes involve program-level decision and actions, the grantee must review these processes in relation to the FPIC requirements set out by the applicable standards and address and identify gaps where feasible.

## 6. FPIC PROCESS

### 6.1 Key Steps

As abovementioned, FPIC is an ongoing process that needs to be maintained throughout the LL programs lifecycle. Programs with long time spans might therefore, develop a FPIC protocol (i.e., agreement) that involves commitments being delivered in various stages. This can be best achieved through periodic development plans, such as IPPs. For programs with a wider scope and/or expected larger timeframe, it is therefore recommended to embed the FPIC process to the IPP.

It should be noted that there is no single approach to reach FPIC and that the design of the process will depend on the LL program-specific context, number of indigenous groups involved, country context, project scope and planned program lifecycle etc. In general, there are a few documents that are normally produced as part of the FPIC process, that include, but are not limited to:

- Framework document, containing the principles of engagement, program design, implementation process as it relates to IP and basic principles for obtaining FPIC;
- IPP or similar actions plan (please refer to the LLF ESMS documentation, [Annex O – Indigenous Peoples Plan](#))
- FPIC documentation (e.g., protocol) reflecting the mutual consent to the process and proposed actions, signed off by the program and IP. This agreement can refer to or endorse the proposed IPP, but can also establish that the IPP will be developed after FPIC is obtained.

Irrespective of the documents produced, the FPIC process can generally be divided into three major stages, as shown in Figure 6-1 below. The following sub sections will provide guidance on each stage in the process.



**Figure 6-1 FPIC Process**

#### 6.1.1 Mutual Agreement on Discussion and Decision-Making Framework

The FPIC process should be commenced with establishing a mutual understanding between the LL program and affected IP on FPIC processes that are appropriate to the local situation. The mutual agreement on discussion and decision-making framework is a FPIC process itself, as such it is the part of the FPIC protocol construction. For some LL programs, with a particular complex background or various IP groups involved, it is recommended to engage an independent FPIC facilitator that should be a trained entity with relevant expertise in guiding the process. The facilitator will play a key

role in communicating with relevant IP groups and representatives and informing them about their right to FPIC. Depending on the scope of the LL program and number of IP or IP groups involved, the IP may form a committee of representatives that will negotiate the FPIC protocol. However, if feasible the FPIC process should prioritize individual processes with each IP and respect local FPIC protocols where they are available.

At this stage it should be also concluded, how differences will be communicated and resolved during the FPIC negotiations. Defining adequate conflict resolution mechanisms prior to commencing discussions helps to ensure that differences do not grow into broader conflicts that frustrate agreements and programs. If possible, conflict resolution mechanisms should build on already existing customary procedures used by the IP.

Finally, the grantee and/or independent facilitator will agree with affected IP groups on the overall process for achieving FPIC. The grantee and/or facilitator will propose a discussion and decision-making framework for the FPIC negotiations which will include a code of conduct for both parties and steps to be followed in the FPIC discussion and decision-making process. The code of conduct will be based on following principles of good faith negotiation that include the following provisions:

- All parties will be available to meet at reasonable time and frequency;
- All parties to share information necessary for informed negotiation;
- All parties will be willing to change initial position and modify offers where possible;
- All parties will give each other reasonable time for decision making;
- All parties will put their view peacefully and will not resort to violence and threat; and
- All parties will not engage in discussion when they are under influence of any hallucinogens.

All parties will discuss and agree on the quorum required for their meetings and how proceedings of their meetings will be documented. The agreed discussion and decision-making framework will have a target timeframe/schedule for completion of each step in the FPIC process. Both parties will put their best efforts to complete the process within this timeframe.

The grantee and/or facilitator will draft a version of the agreed discussion and decision-making framework, including the above-mentioned provisions in relevant local language, that is to be signed by trusted representatives of the IP group(s).

A poster on accepted code of conduct should be prepared and displayed at the meeting venue and at future negotiation meetings. The poster should aim to inform illiterate stakeholders and thus, contain little or no writing. The grantee and/or facilitator will request all meeting participants to follow the mutually agreed rules throughout the FPIC process.

### **6.1.2 Discussion and Decision-Making Process**

The next step in obtaining FPIC is the discussion and decision-making process. Negotiations consist of a two-way dialogue between the IP community and the LL program (i.e., the grantee), regarding proposals, interests, and issues. At this stage, potential benefit opportunities that the LL program should offer IP as compensation for any adverse impacts should be negotiated (proportionate to the severity and the LL's involvement/contribution as well as leverage over the risk causing entity according to the UNGP involvement framework). Independent moderators or third-party facilitators should be involved in the process as required and agreed, in particular indigenous and environmental officials/ institutions.

The following aspects should be considered when entering the discussion and decision-making process:

- Discussions should be held at a place and time most convenient for IP;
- The right to veto should be conveyed to IP, making clear that they are not obliged to take decisions or make promises if they are unsure;
- All proceedings and outcomes of the discussion stage should be documented and made available to all parties, using culturally appropriate formats;
- Agreements reached must be mutual and recognized by all parties. This should take into account customary modes of decision making and consensus seeking. The LL program should respect customary decision-making procedures (e.g., show of hands, performing a ritual ceremony making the agreement binding etc.).

Please note, that the discussion and decision-making process is likely to involve several meetings between the LL program and relevant IP groups or representative bodies, as well as between IP representatives and their groups. Therefore, it is essential to plan enough time for this stage of the process, in order to guarantee that IP and LL program have sufficient time to refer back to their communities and other stakeholders and include their input into further negotiation meetings and outcomes. Furthermore, the results and open points of each meeting should be carefully documented in order to keep consistency. If possible and agreed with all groups, there should be audio-visual records of the FPIC process in addition to written documentation, so that illiterate groups will also be able to access documentation of the process.

### **6.1.3 Documentation Report of FPIC Process and Final Agreement**

When a mutual agreement can be reached and FPIC is obtained during the discussion and decision-making process, a final document should report the FPIC outcome. Documentations of the prior stage will help to finalize the FPIC outcome.

In order to improve transparency and accountability of the process, an independent third party should be involved in the final meeting in which the final FPIC protocol will be signed. The role of the third party should be to witness that IP consent is free, preliminary, and based on full information, guarding against manipulation of the FPIC process. Therefore, the third party<sup>12</sup> should be a trained expert in IP and should have knowledge of the local context.

Despite the final agreement, a process documentation report summarizing each stage of the FPIC process should be prepared. This can be a free-standing report or be incorporated into the final FPIC protocol. The process documentation report will cover all stages of the FPIC process documenting the following:

- Process of identification of affected IP for FPIC, IP representatives and mediators (if applicable);
- Process of capacity building of IP representatives to undertake good faith negotiations;
- Agreed engagement and negotiation framework (including the process undertaken to agree upon the framework);
- Summary of consultations / meetings / engagement undertaken as part of the FPIC process; and
- Approval and opinion of an independent third party on the process and outcomes.

## **6.2 Gender Considerations**

The LL program impacts can disproportionately affect indigenous women, as their unique role in the household means they may have more difficulties coping with the familial disruption that for example

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<sup>12</sup> The third party must be someone in who the IP show trust (e.g., a stakeholder, an independent consultant, an indigenous lawyer in the few contexts where this is possible).

resettlement can cause than do their male counterparts. This is particularly the case if the LL program-related engagement efforts, including FPIC, do not effectively enable indigenous women's meaningful and sustained participation throughout the process. Therefore, it is critical to mainstream gender considerations into all components of the FPIC planning.

According to the WB, 'gender mainstreaming' is *"the process of assessing the implications for women and men of any planned action, including legislation, policies or programs, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally, and inequality is not perpetuated."*

All FPIC processes should be sensitive to these issues, and thus seek to involve gender considerations substantively and equitably into the process planning, so that the unique needs and perspective of women are equitably represented in the final FPIC protocol and other documents, such as the IPP. Initial actions in this regard should include, but are not limited to:

- Ensuring that FPIC and community meetings are conducted at times and in locations that are convenient for women to attend, for example, holding focus group discussions with women, and youth, allowing a safe space for commentary;
- Paying explicit attention to the unique constraints that female-headed households may face in participating in consultations, and accommodating these women accordingly;
- Engaging a facilitator sensitive to gender issues<sup>13</sup> in the respective IP community;
- Ensure that there is at least one female IP representative present at FPIC negotiation meetings;
- Holding women-only focus groups and meetings, if and where appropriate, to encourage free speech and open representation of women's concerns and expectations; and
- Providing anonymous / confidential / one-on-one consultation mechanisms and / or mechanisms for written submission of comments for women who do not feel comfortable voicing their opinions publicly (i.e., in front of husbands or other relatives, or at community meetings).

By facilitating the equal and open participation of women in the FPIC negotiations, the LL program can ensure that women are able to fully benefit from final agreements reached.

### 6.3 Post FPIC Considerations

If there are significant changes to the LL program design, implementation arrangements, and/or expected outcomes that result in additional risks to, and impacts on, the affected communities of IP, the project needs to seek renewed FPIC from affected communities. This includes a repetition of all essential steps in the FPIC process, as outlined above.

Additionally, there should be monitoring and evaluation provisions, to trace effectiveness of agreed measures. Those shall be further elaborated on in a separate document, such as the IPP.

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<sup>13</sup> Please note, that in some instances depending on the community context it might be necessary that this facilitator is a woman.

## 7. FURTHER RESOURCES

For further Guidance on FPIC, please refer to:

- Guidance Note on Performance Standard 7: Indigenous Peoples (IFC, 2012)<sup>14</sup>;
- Equator Principles Guidance Note: Evaluating Projects with Affected Indigenous Peoples (EP, 2020)<sup>15</sup>;
- IUCN Standard on Indigenous Peoples (IUCN, 2016)<sup>16</sup>;
- Indigenous Peoples and Conservation: WWF Statement of Principles (WWF, 2008)<sup>17</sup>.

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<sup>14</sup> [https://www.ifc.org/wps/wcm/connect/9baef8f6-9bd9-4d95-a595-7373059081d4/GN7\\_English\\_2012.pdf?MOD=AJPERES&CVID=mRQk089](https://www.ifc.org/wps/wcm/connect/9baef8f6-9bd9-4d95-a595-7373059081d4/GN7_English_2012.pdf?MOD=AJPERES&CVID=mRQk089)

<sup>15</sup> [https://equator-principles.com/app/uploads/Affected\\_Indigenous\\_People\\_Sep2020.pdf](https://equator-principles.com/app/uploads/Affected_Indigenous_People_Sep2020.pdf)

<sup>16</sup> <https://www.iucn.org/sites/default/files/2022-05/iucn-esms-standard-on-indigenous-people.pdf>

<sup>17</sup> [https://awsassets.panda.org/downloads/183113\\_wwf\\_policyrpt\\_en\\_f.pdf](https://awsassets.panda.org/downloads/183113_wwf_policyrpt_en_f.pdf)



## **APPENDIX A      TOR FOR FPIC FACILITATION AGENCY (TEMPLATE)**

## 1 BACKGROUND

*[Insert the LL program background information according to latest LL program description and as per outcomes of FPIC screening process.]*

## 2 SETTLEMENTS TO BE COVERED IN FPIC PROCESS

*[Insert information about relevant settlements and various IP groups as per outcomes of FPIC screening process as provided in Appendix B]*

## 3 OVERVIEW OF FPIC PROCESS

The FPIC process to be followed is broadly divided into three stages.



## 4 DELIVERABLES AND RESPONSIBILITIES

Stage	Responsibilities	Deliverable
I	<ul style="list-style-type: none"> <li>■ Identification of IP representatives and formation of committee</li> <li>■ Capacity building of representatives of IP on FPIC process and their rights</li> <li>■ Reaching mutual agreement with community on FPIC process</li> <li>■ Translation of benefit package and designing Information sharing tools</li> </ul>	<ul style="list-style-type: none"> <li>■ Documentation of capacity building of IP representatives on FPIC</li> <li>■ Mutually agreed FPIC process and composition of IP representative committee.</li> </ul>
II	<ul style="list-style-type: none"> <li>■ Information Dissemination</li> <li>■ Facilitation of FPIC related internal meetings of IP and discussion on the draft benefit package</li> <li>■ Facilitation of discussion/negotiation between the LL program proponent and IP representatives committee</li> <li>■ Helping Mediation Committee to resolve issues and measure consent.</li> </ul>	<ul style="list-style-type: none"> <li>■ The mutually agreed FPIC protocol.</li> </ul>
III	<ul style="list-style-type: none"> <li>■ Documentation (Photos, Video, for each meetings/events) of FPIC process</li> </ul>	<ul style="list-style-type: none"> <li>■ FPIC process documentation report</li> </ul>

## 5 PERSONNEL REQUIREMENT

The FPIC Facilitation Agency should seek to mobilize following key personnel for completing these tasks. However, it is possible to divert from this structure and/or employ specialists among the program stakeholders, if feasible.

<b>Designation</b>	<b>Desired Qualification and Experience</b>
<b>Coordinator</b>	The coordinator to be a post-graduate in social sciences/social work with at least 15 years of experience in rural/tribal development. Prior involvement in FPIC related work with prominent civil society organizations or multilateral development finance organizations will be preferred.
<b>Facilitator (Male)</b>	The facilitator to be a graduate in social sciences/social work with at least 5 years of experience in facilitation of participatory rural appraisals. The facilitator needs to have knowledge of livelihood issues and social context in region and familiar with the local language spoken by the IP.
<b>Facilitator (Female)</b>	The facilitator to be a graduate in social sciences/social work with at least 5 years of experience in working with rural women. She should have knowledge of livelihood and social context of women in the region. She should have prior experience in facilitating participatory rural appraisal processes involving rural women and should be familiar with the local language spoken by the IP.
<b>Documentation Assistant</b>	The documentation assistant should be a graduate in social sciences/mass communication. S/he should have at least 5 years of experience in rural/tribal development and have carried out process documentation of development projects.

## 6 ORGANIZATION PROFILE

The organization should have at least 10 years of experience in working in rural and tribal development issues in the region. The organization should have a reputation of successfully implementing projects related to community mobilization and capacity building. They should have prior experience of working with IP and should have credibility as a fair and impartial organization protecting rights of IP.

However, it should be noted that these are ideal requirements and that there might be qualified IP organizations not fulfilling these criteria. Therefore, it should be decided on a case-by-case basis, if a respective organization can be considered as qualified for the purpose of facilitating the FPIC process at stake.

**APPENDIX B            SCREENING CHECKLIST FOR DETERMINING INFORMED  
CONSULTATION AND PARTICIPATION OR FPIC  
REQUIREMENTS FOR AFFECTED IP**

### Issue 1: Are Indigenous Peoples impacted by the LL program?

ESS 7 Considerations	Assessment
Are there any indigenous persons present within the project AoI?	
<p><i>If yes, please outline:</i></p> <ul style="list-style-type: none"> <li>■ Which ethnic groups are present?</li> <li>■ How many Indigenous Persons are using the site?</li> <li>■ Characterise the land use of the site by indigenous persons (i.e. grazing, agriculture, foraging, cultural)</li> <li>■ Characterise the frequency of use of the site (i.e., daily, weekly, monthly, ad-hoc)</li> </ul>	
Will the project cause direct, indirect or induced impacts (consider changes to formal / informal land tenure system, social infrastructure, livelihood productivity and income generation, community health, safety and security, cultural identity etc.) to identified indigenous groups?	
Will the project adversely impact access to the natural resources they are dependent on for their livelihood?	
Is there a year-round or seasonal reliance on the natural resource base which will be potentially impacted?	
How will temporary and permanent impacts on natural resource bases affect IP' livelihood or food supply?	
<b>OVERALL CONCLUSION</b> on adverse impacts on IP	

### Issue 2: Is Free, Prior and Informed Consent (FPIC) Required?

ESS 7 Considerations	Assessment
Is the LL program located on or intends to develop (e.g., make a use of) natural resources on land traditionally owned by, or under the customary use of, Indigenous Peoples, and can adverse impacts be expected?	
Is the LL program requiring the relocation of indigenous peoples from lands and natural resources subject to traditional ownership or under customary use?	
Is the LL program going to have significantly impact on critical cultural heritage that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples lives?	
Will the LL program intend to use the cultural heritage including knowledge, innovations, or practices of Indigenous Peoples for commercial purposes	
<b>OVERALL CONCLUSION</b> if special circumstances requiring FPIC is relevant.	

If the overall conclusion of assessment of Issue-1 is that there are impacts on IP, then the LL program need to adopt a culturally appropriate process of engagement with affected IP. If affected IP will experience the LL program impacts differently than other non-IP population, a separate Indigenous Peoples Plan (IPP) needs to be prepared<sup>1</sup>.

If the overall conclusion of assessment of issue-2 is that any (one or more) of the considerations are triggered, then the LL program will need to implement a Free Prior Informed Consent (FPIC) process prior to the implementation of the LL program interventions that affects concerned IP population. The LL program proponent (grantee) and affected IP will decide on appropriate mitigation measures and benefit package through a good faith negotiation process. A credible FPIC process must ensure a culturally appropriate and meaningful engagement aligned with the guidance of WB ESS 7.

If there are no negative impacts to Indigenous Peoples, then a process of informing the groups should still occur, however the requirements for ongoing engagements to achieve FPIC principles are not required.