

Free Prior and Informed Consent

Frederic Wilson

Asia Indigenous Peoples Pact (AIPP)

The UN
General
Assembly
adopted the

September 2007:
United Nations
Declaration on the
Rights of Indigenous
Peoples (UNDRIP)

ILO Convention No. 169

ILO 169 is the **only binding international treaty** that specifically recognizes the rights of Indigenous and Tribal Peoples. It sets standards on **land rights, consultation, participation, self-determination, and non-discrimination**.

Adopted: 1989 (revising the earlier Convention No. 107 from 1957)
Entered into force: 1991

Ratification:

As of 2025, **only 24 countries** have ratified ILO 169 — mostly in **Latin America and Europe**.

Ratified ILO 169

- **Latin America:** Bolivia, Mexico, Peru, Chile, Argentina, Guatemala, Honduras
- **Europe:** Norway, Denmark, Spain, Netherlands, Luxembourg
- **Asia-Pacific:** Only **Nepal** has ratified it.
- **Africa:** Only **Central African Republic** and **Democratic Republic of Congo** have ratified.



Fundamental Principles of the UNDRIP

The right to SELF
DETERMINATION

The right to FREE,
PRIOR,
INFORMED AND
CONSENT

What is FPIC?

- FPIC defines the relationship and level of engagement of Indigenous Peoples with outside entities.
- FPIC is an essential component in the exercise of Indigenous Peoples' rights to their lands, territories and resources,
- ... and crucial to the realization of their right to self-determination and cultural integrity.

Why is FPIC important for Indigenous Peoples?

- Indigenous Peoples have suffered systematic exploitation, discrimination and oppression through the violation of their rights to their territories, cultural heritage, dignity, and self-governance.
- FPIC was insisted upon by Indigenous Peoples, and introduced in customary international law in order to provide for social justice, and to ensure their collective survival and development, in the exercise



FPIC is therefore

a right;

a Process;

a mechanism

FPIC is a specific right for Indigenous Peoples and recognized in international laws and declarations.

FPIC involves the process of collective decision making.

FPIC is also a mechanism to safeguard against externally-imposed development initiatives.

Key element of FPIC

FREE

- Implies absence of any manipulation, coercion or intimidation
- Implies absence of external influence that hinders self-determination

PRIOR

- The right to undertake the decision-making process *before* the start of project/programme implementation.
- Includes respecting the duration of time for Indigenous Peoples to undertake their decision process.

INFORMED

- Basically, this is the right to have sufficient information for decision making.
- This involves relevant information about a project being disclosed or shared with the affected people in a timely manner, and in a form and language understandable to them.
- They must also have the freedom to secure additional information.

CONSENT

- This is the collective and independent decision of the affected communities, after undergoing their own process of decision-making.
- The first three elements (FREE, PRIOR and INFORMED) explain and set the conditions for the CONSENT.

CONSENT

- CONSENT also means having the right to SANCTION or SUPPORT project proponents based on due process.
- It includes the right to WITHHOLD or WITHDRAW consent if conditions are not met, or if in their judgment the project will adversely affect their community.

CONSENT


- CONSENT would have come about only after a series of consultations as needed,
- and after allowing enough time for indigenous communities to undertake their own internal deliberations prior to making their collective decision.
- Decision is usually arrived at by consensus.
- Strong opposing views mean the absence of consent.

Two tests:



- The outcome must be verifiable with community members.
- The consent must be given by those with authority and recognised by the community
- ... and who are accountable to the community.

The issue of Representivity

- 'Representivity' = the (political) recognition given by the state or authority to a particular individual or body to represent the Indigenous Peoples.



Reflect on the **importance** of the guidelines in promoting awareness and understanding of UNDRIP and FPIC and the **challenges** of IP's using them and navigating the complaints process



What needs to be in place if FPIC is to be followed?

- The Indigenous community must realise that FPIC is an important principle and tool that can be used for securing rights.
- Concurrently, education and awareness, and increased capacity among the indigenous rights-holders is needed.

- FPIC should be **incorporated into law**, not as a voluntary elective or a mere
- non-binding policy or guideline.
- That is, it becomes a law unto itself.
- In the interim, put compulsory guidelines in place wherever and whenever indigenous territories and rights are affected.

- Genuine representation, not politically-ascribed representivity, should be aspired to.
- Recognise that consultation cannot, and should not, be regarded as consent,
- ... and that a rigorous route lies in space between consultation and consent.

Promoting Awareness and Understanding

- Serve as **educational and advocacy tools** to spread awareness of IP rights.
- Help Indigenous leaders **frame discussions with state and corporate actors.**
- Bridge **international norms and local realities.**
- Example: Communities using FPIC guidelines to negotiate land use or reject harmful projects (Indigenous Community Protocol).

Challenges

- **Lack of knowledge or access** – many communities unaware of these mechanisms or their rights-including the OECD Guidelines.
- **Remoteness of mechanisms** – complaint or grievance systems are centralized, urban-based, or online only. Delaying in response by the NCP for ex.
- **Language and technical barriers** – documentation in non-local languages, legalistic format.
- **Threats and intimidation** – reprisals or surveillance when communities raise complaints.
- **Limited institutional response** – weak enforcement even after complaints are filed.

Reflection of practical realities – navigating the complaint process

- Steps of complaint mechanisms often unclear or bureaucratic.
- Need for **trusted intermediaries, legal aid, or CSO support**.
- Example: cases where IPs struggle to reach National Human Rights Institutions or WB grievance systems.
- Importance of **collective action** – communities filing joint cases for safety and visibility.

Lessons Learned and Reflections

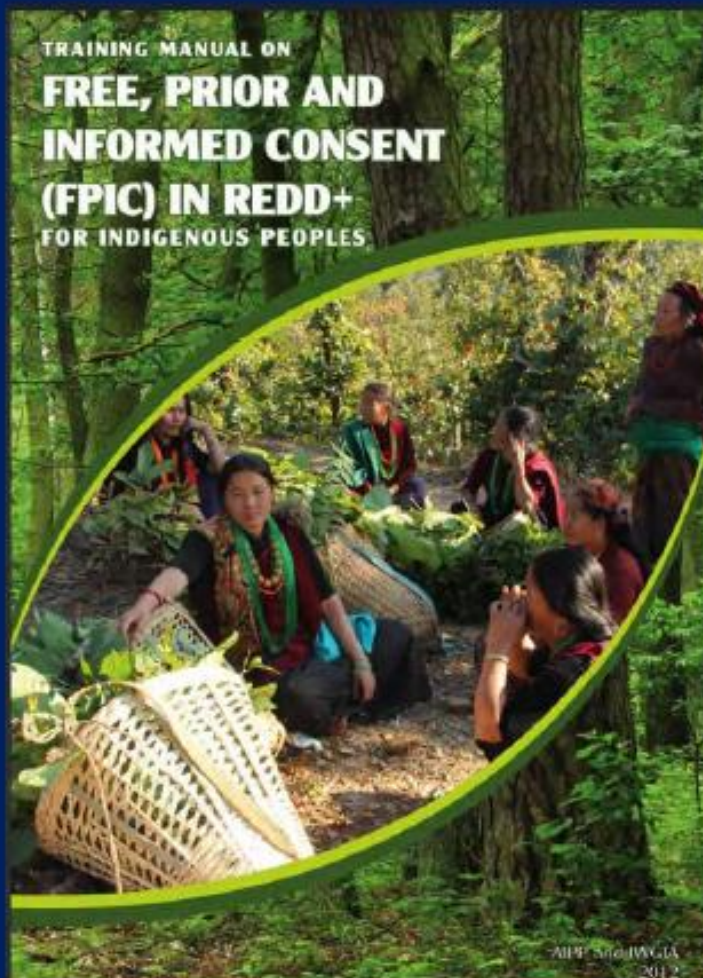
- Guidelines are useful, but **awareness and capacity building** are key.
- Need for **localization** – translate, simplify, and adapt to community contexts.
- Strengthen **safe access** to complaint systems and protection for defenders.
- Encourage **dialogue between IPs, governments, and private sectors** based on mutual respect.
- “No meaningful implementation of UNDRIP or FPIC without Indigenous participation.”

TRAINING MANUAL FOR INDIGENOUS PEOPLES ON

FREE, PRIOR AND INFORMED CONSENT (FPIC)



TRAINING MANUAL ON
FREE, PRIOR AND INFORMED CONSENT (FPIC) IN REDD+ FOR INDIGENOUS PEOPLES



WHAT IS FREE, PRIOR AND INFORMED CONSENT?

Hi I'm Corn, Pueblo Action Alliance's Environmental Justice Organizer!

I will be breaking down the importance of Free Prior and Informed Consent as it is strongly stated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).



“Our rights exist not only on paper, but in the ways we live, decide, and protect our lands.”