



# DECISION-MAKING IN GOVERNANCE AND DEVELOPMENT INITIATIVES

The Place of Indigenous  
Communities

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Historically there has been very minimal / lack of deliberate, proactive, transparent, and robust participatory engagement between Indigenous Peoples and government agencies, development actors during development project and natural resource management.

The absence of human rights based approach that incorporates participatory decision-making in development initiatives undertaken within indigenous communities territory has often led to:

- Marginalization
- Dispossession and displacement through forced evictions
- Project that don't address community felt needs and reflect on-the-ground realities
- Fostering of an Elite capture and control scenario insulating community from engaging meaningfully with projects thereby breeding corruption and discontent
- Tension and Conflicts, often leading to loss of life and properties

Due to the negative consequence of lack of participatory development within IPs' territories, international human rights mechanism, including the United Nations system arising from agitation from IPs, have established the concept of Free Prior Informed Consent (FPIC) which provides deliberate measures to facilitate full and effective participation of IPs in any project and actions taken within their lands.

FPIC has been recognized by a number of intergovernmental organizations, international human rights bodies, conventions and progressively by national laws and policies.



# WHAT IS FPIC?

**Free, Prior, and Informed Consent (FPIC)** is a new international principle that gives the indigenous peoples the rights to approve or reject any proposed projects or actions that affects them and their wellbeing including in Natural Resource Management, Economic Development, threat to Indigenous/Traditional Knowledge and right to self-determination and cultural identity.

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## **International Labour Organization's Convention on Indigenous and Tribal Peoples in Independent Countries (ILO 169)**

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Articles 6, 7, and 9 States that consent must be acquired before indigenous communities are relocated or before development is undertaken on their land.

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## **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**

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The strongly reinforced the ILO No. 169. Article 10 states that "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

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## **The Constitution of Kenya 2010**

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The Constitution of Kenya provides a strong legal framework for citizen participation. The constitution recognizes 'people participation' as one of the country's values and principles of governance<sup>1</sup> and instructs public servants to include citizens "in the process of policy making."<sup>2</sup> Equally notable is the recognition that an object of devolution is to "enhance the participation of people in the exercise of the powers of the State and in making decisions affecting them"<sup>3</sup>. Furthermore, the burden of facilitating public participation in development is placed on national and county state agencies, including transparency in provision of timely and accurate information<sup>4</sup>.

Specifically for Indigenous communities, the constitution obligates the state to provide for adequate representation of "marginalized groups" in all levels of government, execute affirmative action on behalf of these groups, and promote the use of Indigenous languages and the free expression of traditional cultures.<sup>5</sup>

The new constitution not only gives credence to indigeneity on the basis of hunter gatherer and pastoral lifestyles but also links these aspects with marginalization in line with the African Commissions on Human and Peoples Rights decision in 2003.

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1 Constitution of Kenya, 2010, Article 10(2)(a)

2 Constitution of Kenya, 2010, Article 232(1)(d),

3 Constitution of Kenya, 2010, Article 174(c)

4 Constitution of Kenya, 2010, Articles 118(1)(b) ; 196(1)(b) and Article 232 (1) (f)

5 Constitution of Kenya, Article 260, arts. 54, 100

# THE MEANING OF FPIC

Previously participatory-decision making has been confused with dissemination of information on projects, whereas FPIC is an extensive continuous participatory process. Following are key highlights of each of the elements of PFIC.



F

**Free:** This means that the Community must be free to participate and decide in negotiations that affect them without force, intimidation, manipulation, coercion, or pressure from external entities (government, company or organization) seeking consent.



P

**Prior:** This means the community must be given sufficient amount of time to review and consider all necessary information and to reach a collective-decision before the implementation of the project begins. The community must decide how much time it needs.

Furthermore, this engagement should continue throughout the project cycle if meaningful community inputs, including in project monitoring is to be realized.



I

**Informed:** The interested parties must provide sufficient, complete, appropriate information to the community so that it can assess the potential benefits and risk of a particular action. Information must be provided in an understandable language and form that is easily accessible to the community. The specific information that must be clearly provided and understood includes:

- The nature, size, pace, reversibility and scope of any proposed project or activity;
- The reason(s) or purpose of the project and/or activity;
- The duration of the project;

- Areas that will be affected;
- A preliminary assessment of the likely economic, social, cultural and environmental impacts, including potential risks and fair and equitable benefit sharing in a context that respects the precautionary principle;
- Personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others)
- Procedures that the project may entail.



## C

**Consent:** The community must have the option of saying “YES” or “NO” to the project before planning begins, along with a detailed explanation of the conditions under which consent will be given. This decision must be respected absolutely by all interested parties. The community must also be given the opportunity to provide feedback at every stage of project development and execution to ensure that the conditions of consent are met.

If the conditions of initial consent are not met, the community must have the option of withdrawing its consent and all interested parties must immediately cease any part of the project to which the community had not agreed. The FPIC decision must be clearly documented including in a language and format understood by communities.

# ILEPA'S EXPERIENCE WITH FPIC

ILEPA is currently undertaking a 3D-Community participatory mapping project at Elangata Enterit/ Enkutoto Group Ranch, Narok South. In recognition of communities' constitutional rights to self-determination realizable through FPIC, before undertaking the project it was crucial for ILEPA to get the community's consent,

ILEPA in consultation with community members organized and executed a series of information sharing and consultation sessions ultimately leading to joint decision-making and consent of the community. The consultation sessions brought together the different community leaders and representative structures of decision making at the local level, convened on days, dates and sites proposed by the community members. Participants to the meeting included, council of elders, youth groups, including university students, Wazee na Wamama wa Vijiji (Village committees), Group ranch leaders, National government administration officers (Chiefs), traditional age-set leaders (Ilaiguanak Lolporori) and other opinion leaders. Efforts were made ensure strong representation of women.

The local maa language was the main language of engagement, to ensure deep understanding and informed decision making and feedback. In the meeting ILEPA staff took time to explain to the

community what the project would entail, potential risks and benefits to the community, and the respective roles and responsibilities. Finally, the community was granted sufficient time to dialogue and reflect on the potential impacts of the project among themselves, before getting back to ILEPA giving consent to the project. The entire FPIC process was comprehensively documented.

While going through the FPIC process described above wasn't always easy, the benefits of FPIC including community ownership of the project, pre-empting potentially conflict situations, and, incorporating indigenous knowledge and local perspective into the project design and implementation, ultimately contributing to project sustainability far outweigh, the risks associated to avoiding FPIC. For these reasons, ILEPA is committed to continual engagement of the community through FPIC in the entire project life-cycle.

On account of this and other experiences on FPIC, ILEPA in partnership with the National REDD+ Coordination Office and UNDP is presently providing consulting services to develop national guidelines for Free Prior Informed Consent in Kenya. This initiative will provide the missing and crucial framework for enabling implementation of FPIC in the Country.

# MAKING FPIC WORK

- Government and development actors should adopt a human rights based approach, including the respect for Indigenous Peoples rights in development planning and implementation
- Safeguarding, enforcing and monitoring the right to FPIC is critical
- Clarity on Who seeks for consent is essential – National and County Government agencies, Project Proponents and other external Development actors
- Appreciating that Indigenous peoples' decision-making systems are often highly inclusive and may take relatively longer time to reach consensus is important
- Establish mechanism to enhance the capacity of IPs to effectively engage on technical matters of Projects and facilitate decision-making,
- Support IPs' mechanisms for effective self-selection processes in representative structures in development practice
- Duty bearers to establish clear guidelines for the operationalization of FPIC among indigenous peoples



Indigenous Livelihoods Enhancement Partners

ILEPA

"Enhancing Indigenous Resiliency"

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