



Regional FPIC Handbook: Practicing Free, Prior, and Informed Consent in ASEAN Customary Tenure Systems in Forested Landscapes



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Regional FPIC Handbook: Practicing Free, Prior, and Informed Consent in ASEAN Customary Tenure Systems in Forested Landscapes

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Acronyms and Abbreviations

AIPP	Asia Indigenous Peoples Pact
ASEAN	The Association of Southeast Asian Nations
ASEAN CT Guidelines	ASEAN Guidelines on Recognition of Customary Tenure in Forested Landscapes
ASFN	ASEAN Social Forestry Network
AMS	ASEAN Member States
AMAF	ASEAN Ministers of Agriculture and Forestry
ASOF	ASEAN Senior Officials on Forestry
AWG-SF	ASEAN Working Group on Social Forestry
CBD	United Nations Convention on Biological Diversity
CLT	Community Land Title
CSO	Civil Society Organization
CT	Customary Tenure
CTS	Customary Tenure Systems
FAO	Food and Agriculture Organization
FGD	Focused Group Discussion
FPIC	Free, Prior, and Informed Consent
ILO	International Labour Organization
IP	Indigenous Peoples
IP and LC	Indigenous Peoples and local communities
IWGIA	International Work Group for Indigenous Affairs
KII	Key Informant Interview
LC	Local communities
MOA	Memorandum of Agreement
PRA	Participatory Rural Appraisal
REDD+	Reducing Emissions from Deforestation and Degradation, including (+) the role of conservation, sustainable management of forests, and enhancement of forest carbon stocks
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGP	UN Guiding Principles on Business and Human Rights

I. Background

Free, Prior, and Informed Consent (FPIC) provisions have strengthened significantly in recent years under the ASEAN region's international and national laws, policies, and programs. The ASEAN Working Group on Social Forestry (AWG-SF), formerly known as the ASEAN Social Forestry Network (ASFN), plays a pivotal role in providing policy recommendations. These recommendations aim to enhance sustainable forest management and improve the welfare and livelihoods of Indigenous Peoples and local communities (IPs and LCs), forest dwellers, and other forest-dependent communities.

At the 2013 AWG-SF Conference, delegates recommended establishing FPIC as a minimum standard for implementing social forestry and REDD+.¹ The ASEAN Senior Officials on Forestry (ASOF) subsequently adopted this recommendation as part of its 2013 Strategy on Social Forestry in Climate Change and Biodiversity Conservation.

The 2017 AWG-SF Conference in Chiang Mai, Thailand, emphasized the importance of securing FPIC for Indigenous Peoples in any forest landscape restoration and management initiative, plan, or program. This aligns with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which sets the minimum safeguards. The conference also urged ASEAN Member States (AMS) to develop national FPIC guidelines, ensuring the full and effective participation of IPs and LCs.

Since then, several legal reforms regarding land have been proposed and partially adopted in the region. For example, customary tenure (CT) and FPIC have been recognized as key indicators in important guidelines for responsible investment in food, agriculture, and forestry. The AWG-SF action plan for ASEAN Cooperation on Forestry, released in 2020, identified two priority activities under Strategic Thrust 1, Activity 1.1.3a, which focus on CT and FPIC. These developments mark significant progress in implementing FPIC at the regional level.

Despite these advancements, challenges persist. The implementation and recognition of FPIC still vary among ASEAN countries. In several Mekong regions, customary forest tenure, access, and ownership remain conditional and restricted, leading to frequent land conflicts. Encroachment on customary lands and forests threaten traditional rights, impeding both livelihoods and conservation practices. Moreover, many countries have yet to develop and

¹ Reducing Emissions from Deforestation and Degradation, including (+) the role of conservation, sustainable management of forests, and enhancement of forest carbon stocks

institutionalize national-level FPIC guidelines, hindering the full realization of IPs and LCs' rights.

The increasing involvement of IPs and LCs in policy development often lacks adequate support or recognition. Many development projects in forested landscapes proceed without the consent of these communities. In some cases, these projects, encroach upon community or customary forests. The following projects, proposed in customary land in forested landscapes should obtain FPIC from its customary land tenure rightsholders:

- Exploration, development, use, and management of land, energy, minerals, forests, water, marine resources, and other natural resources requiring permits, licenses, leases, contracts, concessions, agreements, or renewals/extensions
- Any project involving displacement or relocation
- Resettlement programs and projects
- Conversion of CT areas into agricultural plantations, industrial areas, or economic zones
- Carbon trading and related activities
- Access to and use of genetic resources in the development and commercialization phase
- Activities affecting IP and LC customary land tenure holders' spiritual and religious traditions, customs, and practices, including archaeological exploration and excavations

IPs and LCs lack sufficient awareness and capacity regarding international and regional mechanisms to safeguard their rights. This limits their ability to effectively engage with authorities and businesses that threaten their territorial and cultural integrity by disregarding these safeguards. Furthermore, the weak recognition of IPs and LCs' land tenure exacerbates their vulnerability to large-scale public and private development projects.

Addressing these challenges requires concerted efforts to empower IPs and LCs, raise awareness about their rights, and strengthen protective mechanisms within the framework of sustainable development.

The recent adoption of the ASEAN Guidelines on Recognition of Customary Tenure in Forested Landscapes (ASEAN CT Guidelines)² by the ASEAN Ministers on Agriculture and Forestry (AMAF) marks a significant step forward. Developed by AWG-SF in partnership with the Non-Timber Forest Products Exchange Programme (NTFP-EP) Asia and its alliance partners, these guidelines establish a clear and comprehensive regional approach to recognizing CT.

² See <https://asean.org/book/asean-guidelines-on-recognition-of-customary-tenure-in-forested-landscapes/>

A key objective of the ASEAN CT Guidelines is to establish an inclusive and gender-responsive framework for recognizing CT across the region. This includes encouraging AMS to strengthen governance, improve policy coherence, and enhance research and monitoring at both national and sub-national levels. These efforts align with regional and international principles on tenure rights, food security, gender mainstreaming, and sustainable development.

The ASEAN CT Guidelines also emphasize the Right to Free, Prior, and Informed Consent (Principle 6). This principle underscores the importance of recognizing IPs and LCs' right to FPIC. This involves providing freely available, accurate, and unbiased information to empower communities to self-determine and collectively decide activities within their customary tenure systems.

The recent regional framework supporting the recognition of CT and the exercise of FPIC provides an opportunity to address numerous application challenges. However, many state authorities and government institutions lack expertise in developing or implementing FPIC policies. Therefore, it is crucial to support the AMS, IPs and LCs, and relevant policymaking agencies and stakeholders in appreciating and implementing FPIC when recognizing CT. Access to valuable tools and resources is essential effectively to operationalizing ASEAN standards and guidelines, particularly regarding the recognition of CT and FPIC.

In furtherance of sustainable forest management, particularly in line with the food, agriculture, and forestry sector under the ASEAN Economic Community pillar, the 17th AWG-SF meeting agreed on the proposal to develop the Regional FPIC Handbook: Practicing Free, Prior, and Informed Consent in Customary Tenure System in Forested Landscapes. Subsequently, the 26th ASOF Meeting held on 15-16 June 2023 agreed to the recommendation of the 17th AWG-SF to develop the Handbook as one of the key deliverables of forestry cooperation in ASEAN for 2024.

An important note on terminology: Indigenous Peoples and Local Communities, collectively known as "IPLCs", was first used in the United Nations Convention on Biological Diversity and its supplemental agreement, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. Since then, governments, United Nations agencies and programs, and non-governmental organizations worldwide have widely adopted the acronym. The term IPLC was also included in the ASEAN CT Guidelines. However, for the purposes of this handbook, the abbreviations IPs and LCs will be used. This handbook recognizes that Indigenous Peoples

and local communities are distinct groups, with Indigenous Peoples holding rights enshrined in the UNDRIP.

Nothing in this handbook may be construed as diminishing or extinguishing the rights that Indigenous Peoples and local communities currently have or may acquire in the future.

II. Objectives

The objective of the FPIC Handbook is to provide a reference for policymakers and government officials working in areas such as land, agriculture, forestry, the environment, and other relevant sectors in ASEAN. It aims to assist them in engaging with IPs and LCs and in implementing activities, interventions, research, and development projects related to or involving customary lands, territories, and natural resources.

The FPIC Handbook aims to enhance the understanding, co-designing, and implementation of the FPIC process with IPs and LCs, who are CT rightsholders. This approach is tailored to their local governance structures and decision-making processes, supporting the recognition, protection, and promotion of CT in the region.

Additionally, the FPIC Handbook serves as a complementary resource document for implementing the ASEAN CT Guidelines. It is developed based on existing resources from agencies such as Food and Agriculture Organization (FAO), Asia Indigenous Peoples Pact (AIPP), Oxfam, and International Working Group on Indigenous Peoples (IWGIA).

Furthermore, the Handbook focuses on FPIC within the context of CT. It involves mapping Customary Tenure Systems (CTS), gathering relevant information, and identifying customary rightsholders. This process ensures that during the FPIC process:

1. There is rights-based representation in decision-making;
2. IPs and LCs are consulted according to their customary decision-making processes; and
3. Communities can collectively exercise their right to self-determination regarding the priorities and strategies for developing or using their lands, territories, and resources.

By adhering to these principles, the FPIC Handbook aims to facilitate respectful and meaningful engagement with IPs and LCs, promoting their rights and supporting sustainable development in the ASEAN region.

III. Intended Users

The intended primary users of the handbook are policymakers at the national and sub-national level, frontline government and local government offices working on land, agriculture, forestry, and the environment. These users engage with IPs and LCs and/or implementing activities, interventions, research, and development projects on or involving their customary lands, territories, and natural resources.

Secondary users are domestic and foreign investors, local and international non-governmental organizations, and academic institutions. Civil society groups and community-based organizations working in ASEAN may also use the handbook as a reference for policy engagement, advocacy, and knowledge-sharing.

IV. Definition of Terms

A. Indigenous Peoples

Due to their diversity, adopting a single definition of Indigenous Peoples that applies universally across regions and countries has proven challenging. As emphasized in numerous human rights documents, the concept of Indigenous Peoples centers around identity, primarily determined by self-identification. Consequently, UN bodies, as articulated in international legal agreements such as the UNDRIP, the International Labour Organization (ILO) Convention 169, and the Food and Agriculture Organization (FAO) Policy on Indigenous and Tribal Peoples, have developed a modern understanding of this term, which includes the following criteria:

- Self-identification as Indigenous Peoples at the individual level, accepted by the community as their members;
- Self-ascription and ascription by others as indigenous due to their descent from populations that inhabited the country or geographical region at the time of the conquest, colonization, or the establishment of present State institutions;
- Historical continuity with pre-colonial and/or pre-settler societies;
- Strong connection to territories and surrounding natural resources;
- Distinct social, economic, cultural, and political systems;
- Distinct language, culture and beliefs;
- Position as non-dominant groups within society; and
- Commitment to preserving and perpetuating their ancestral environments and systems as distinctive peoples and communities.

The 2007 UNDRIP affirms that Indigenous Peoples, like all other peoples, have the right to self-determination, allowing them to freely determine their political status.

According to AIPP and IWGIA, governments in Asia use various terms like “ethnic minorities,” “hill tribes,” “tribal people,” “aboriginal people,” and “native people” to refer to Indigenous Peoples. They emphasized that these terminologies do not necessarily imply that these groups are the sole original inhabitants of their respective countries (Asia Indigenous Peoples Pact & International Work Group for Indigenous Affairs & International Work Group for Indigenous Affairs [AIPP and IWGIA], 2010).

3 See https://www.iwgia.org/images/publications/0513_REDD_policy_makers_briefing_eb.pdf

Anthropological studies emphasize that IPs are not homogeneous entities. They are also dynamic and evolving. Consequently, they may fully or partially practice their social, economic, cultural, and political systems or adapt them to current realities.

Identifying certain groups as IPs and recognizing, respecting, fulfilling, protecting, and promoting their rights should not depend solely on whether or not the national government has officially acknowledged them.

B. Indigenous Peoples and Local Communities

The term Indigenous Peoples and Local Communities was first introduced in the United Nations Convention on Biological Diversity (CBD). Collectively known as IPLCs, they are identified by the following characteristics:

- **Close and traditional dependence on biological resources:** These communities have a longstanding and intrinsic reliance on biological resources for their daily living, cultural practices, and overall survival. This dependence is a fundamental aspect of their identity and way of life.
- **Embodying traditional lifestyles:** They maintain traditional lifestyles that have been inherited and preserved through generations. These lifestyles are deeply rooted in the natural environment and reflect sustainable practices that have evolved over time.
- **Possession of traditional knowledge, innovations, and practices:** These communities hold unique traditional knowledge, innovations, and practices. This knowledge is specifically relevant to the conservation of biological diversity and the sustainable use of its components, highlighting their crucial role in environmental stewardship.

Since then, the acronym “IPLCs” has been widely adopted by UN agencies and programs, including policy instruments and programs related to REDD+.

Indigenous Peoples and local communities were again used in CBD’s supplemental agreement, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity⁴, as well as Kunming-Montreal Global Biodiversity Framework to refer to the same collective of peoples. In the Kunming-Montreal Global Diversity Framework, Indigenous Peoples and local communities are acknowledged to have important roles and contributions as “custodians of biodiversity and as partners in its conservation, restoration and sustainable use”⁵. The framework agreement underscores that nothing in the framework may be construed as diminishing or extinguishing the

4 Entered into force on 12 October 2014

5 See <https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf>.

rights that Indigenous Peoples currently have or may acquire in the future. This implies the inclusion of the term “Indigenous Peoples and local communities.”

In the ASEAN CT Guidelines context, “Indigenous Peoples and local communities” is a collective term for the diverse and heterogeneous groups of women, men, and youth comprising smallholder farmers, forest-dependent communities, fishing communities, peasants, and Indigenous Peoples” (Association of Southeast Asian Nations [ASEAN], 2022). Indigenous Peoples may be referred to in different countries by such terms as “Indigenous ethnic minorities”, “ethnic minorities”, ethnic groups, “aboriginals”, “Adat,” “hill tribes”, “minority nationalities”, or “tribal groups” (ASEAN, 2022), “natives” or “customary law communities”.

As used in the ASEAN CT Guidelines, Indigenous Peoples were further clarified to include:

“Those peoples who self-identify as indigenous or tribal, primarily hold land and natural resource rights to ancestral territories at the community level”, and who are either: (1) “regarded as indigenous on account of their descent from the populations which inhabited [a] country, or a geographical region to which [a] country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions”; (2) “tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations”; or (3) traditional peoples who may not be referred to as “indigenous” or “tribal” by others, but who share the characteristics of other peoples recognized as indigenous and tribal, including a cultural heritage distinct from a country’s majority population, a natural resource-based livelihood grounded in traditional practices and a deep cultural connection to nature within specific ancestral territory, and a customary land tenure system in which resource rights are primarily held at the community-level” (ASEAN, 2022).⁶

“Local communities”, as defined in ASEAN CT Guidelines, include rural communities who do not self-identify as “Indigenous Peoples” or “tribal peoples” but who share many of the same characteristics, including:

- A cultural heritage distinct from a country’s majority population
- A natural resource-based livelihood grounded in traditional practices honed over many generations
- A deep cultural connection to nature within specific community territories, and
- A CTS in which resource rights are primarily held at the community-level⁷

⁶ The ASEAN CT Guidelines referenced Boyd and Keene (2021) as a source for this definition.

⁷ Boyd and Keene (2021) in Association of Southeast Asian Nations (2022) ASEAN Guidelines on Recognition of Customary Tenure in Forested Landscapes. Jakarta, Indonesia: ASEAN Secretariat.

“Peasants”, as defined in the ASEAN CT Guidelines, adopts the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (2018)⁸. Specifically, it states, “any person who engages or who seeks to engage, alone, or in association with others or as a community, in small-scale agricultural production for subsistence and/or for the market, and who relies significantly on, though not necessarily exclusively, on family or household labor and other non-monetized ways of organizing labor, and who has a special dependency on and attachment to the land.”

In the Declaration, the definition of the peasant also includes:

- “Any person engaged in artisanal or small-scale agriculture, crop planting, livestock raising, pastoralism, fishing, forestry, hunting or gathering, and handicrafts related to agriculture or a related occupation in a rural area. It also applies to dependent family members of peasants”
- “Indigenous peoples and local communities working on the land, transhumant, nomadic and semi-nomadic communities, and the landless engaged in the above-mentioned activities”, and
- “Hired workers, including all migrant workers regardless of their migration status, and seasonal workers, on plantations, agricultural farms, forests and farms in aquaculture and in agro-industrial enterprises.”

The ASEAN CT Guidelines describe Indigenous Peoples and local communities throughout Southeast Asia as sharing the following characteristics:

- They have a profound connection to their land, viewing forested landscapes holistically. This perspective integrates spirituality, life, culture, and all living and non-living elements of an ecosystem. It includes the relationships, interconnections, and value systems within and between ecosystems, making it highly relevant to CT.
- They have traditionally relied on their customary land areas for their livelihoods and cultural integrity, with little to no protection of those rights under national law.
- They are engaged in traditional occupations such as farming, fisheries, and forestry, particularly in harvesting, gathering, and selling non-timber forest products (NTFPs).
- They generally practice rotational agriculture, commonly known as swidden agriculture.

They also share the common experience of having no complete documentation of the extent of customary land tenure areas where they exercise their rights as rightsholders.

The acronym IPLC as a collective reference to Indigenous Peoples and local communities, has recently faced criticisms. In response, the abbreviation

⁸ See [UN Declaration on the rights of peasants.pdf](#)

“IPs and LCs” has been proposed. This new term aims to highlight the distinct nature of Indigenous Peoples, whose rights are protected by UNDRIP. These rights include self-determination, which includes the freedom to determine their political status.

C. Customary Tenure Systems (CTS)

As defined under the ASEAN CT Guidelines, CT is a set of rules, practices, and norms developed over time by one or more communities that govern the allocation, use, access, exclusion, and transfer of land, forests, fisheries, and other natural resources.

The FAO defines CT as the rules and norms that govern a community’s use of natural resources like forests, land, and fisheries.

Within a forested landscape, various areas can fall under a single CT. These areas include forests, shifting cultivation or rotational farming areas, mangroves, pastures, orchards, individual agricultural plots, bodies of water, boundary areas, burial sites, and worship areas.

In terms of scale, CTS are complex. They involve nested systems of land rights governed by the notion of collective stewardship of their territory. These can include collective, communal, and individual tenure systems, often with many overlapping land management and land use systems.

CTS are also diverse, dynamic, adaptive. They are rarely defined and often reflect the country’s cultural and ethnic diversity (ASEAN, 2022).

CTS comprise:

1. The varied lands and resources within and around the community’s territory.
2. The community depends on these lands and resources for their livelihoods and well-being, both individually and collectively
3. The community’s informal institutional authority through which decisions are made and implemented, and disputes are arbitrated regarding resource access, control, management, and use (Springate-Baginski & Kamoon, 2021).

Community-level CTS defines and regulates the local possession, access, use, and transfer of lands and resources in and around a community by its members. This is primarily for their own use, following self-governance traditions, and expressing their cultural knowledge and understanding (Springate-Baginski & Kamoon, 2021).

Box 1. Qualities of Customary Tenure Systems (CTS)

Meaningful. CTS embodies people's relationships with land and natural resources, which they depend on for their livelihoods, culture, and well-being. CTS holds particular significance for communities in forest mosaic landscapes. These communities rely on various resources for their livelihoods, and CTS provides flexibility, encourages innovation, and upholds local legitimacy (Springate-Baginski & Kamoon, 2021).

Social. CTS are social systems, involving both individual and collective parcels across many types of land uses (Campbell, 2021).

These systems are typically informed by local notions of kinship, generational descent, and broader social definitions of the roles and rights of individuals and groups within the community (FAO, 2016).

CTS are interlinked with customary law and customary governance systems. The rules and institutions are known, recognized, accepted, enforced, and endorsed by community members as their obligatory rules of conduct.

Diverse. CTS often reflect the country's cultural and ethnic diversity (Mekong Region Land Governance, 2021). They vary based on geographic location, resource base, population, history, social organization, livelihoods, and extent of market integration. Within a CTS, different rightsholders exist, as various people have different kinds and levels of rights (Allaverdian et al., 2017). Additionally, there are different types of rights over a particular resource.

Complex. As with the formal tenure system, CTS covers a "bundle of rights" involving different rights for various resources. These may include the right to own, the right to enter, the right to use, the right to make decisions, the right to benefit from the use of resources, the right to transfer, and the right to fair compensation.

In the context of legal pluralism, CTS rights also overlap with legal rights based on State (statutory) law, which also has different systems for recognizing the bundle of rights over land and other resources therein.

Typically, consultations regarding development projects and land-use policies predominantly involve individuals with legal rights established by statutory laws. Unfortunately, those with CT are frequently sidelined from FPIC processes due to unchecked assumptions about IPs and LCs. These assumptions may relate to their culture, identity, rights, capacity for sustainable resource management, notions about the future, and governance.

Layered. CTS involve nested land rights systems, including collective, communal, and individual tenure systems. In practice, these different tenure categories often have overlapping land management and land-use systems.

Around the world, the status of recognition for CT varies. They may be formally recognized and given legal force through ratified international treaties, national constitutions, statutory law, and local ordinances. Alternatively, it may be informal, meaning it is practiced without state recognition (FAO, 2016).

The ASEAN CT Guidelines emphasizes that CT extends to Indigenous Peoples and local communities, such as farmers, peasants, fishers, and forest-dependent communities. This also includes individuals within these groups, such as women, men, and youth who engage in customary practices over land and natural resources.

In the ASEAN context, recognizing the rights of IPs and LCs is especially critical in countries where Indigenous Peoples' rights are yet to be fully recognized, or in areas where, despite recognition of indigenous rights, the peoples themselves have not been acknowledged as Indigenous Communities under existing laws and policies.

In the region, recognizing CTS for IPs and LCs is complicated by historical land administration policies from colonial periods. Because of this unique historical experience in each country, land contexts are localized, and there is no common model or approach to promoting the recognition of CT, unlike in social forestry.

The recognition of CT for IPs and LCs presents several implications, including:

- 1. Localized Approaches:** The lack of a common model necessitates tailoring approaches to recognizing CT to each community's specific context. This requires an in-depth understanding of the unique social,

cultural, environmental, and economic factors influencing land use and tenure in each locality.

2. **Complexity and Diversity:** The diversity of land contexts requires flexible and adaptable policies and programs. A one-size-fits-all approach would be ineffective, and there must be room for innovative and context-specific solutions that are developed in collaboration with IPs and LCs.
3. **Resource-Intensive:** Developing localized approaches can be resource-intensive, requiring significant time, effort, and expertise to understand and address the distinct needs and practices of each community. This process may involve extensive consultations, field studies, and continuous engagement with the communities.
4. **Legal and Institutional Frameworks:** The absence of a common model suggests that national and local governments need to develop legal and institutional frameworks capable of accommodating diverse tenure systems. This can be challenging in regions with existing centralized land governance systems that may struggle to integrate customary practices.
5. **Capacity Building:** Recognizing and promoting CT in localized contexts necessitates capacity building for both communities and institutions. IPs and LCs need support to articulate and defend their customary practices, while governmental and non-governmental organizations require training to understand and respect these practices in policy and program implementation.
6. **Equity and Inclusion:** Ensuring that the rights of all individuals within communities, including women, men, and youth, are respected within the framework of CT is crucial. This requires specific measures to address intra-community dynamics and ensure that marginalized groups are not excluded from tenure recognition processes.
7. **Sustainability and Conflict Resolution:** Localized approaches must consider the sustainability of land and resource use practices and include mechanisms for resolving conflicts that may arise from overlapping claims or changes in land use.

The implications of the ASEAN CT Guidelines' stance on localized recognition of CT highlight the need for context-specific, inclusive, and flexible approaches that honor the diversity of IPs and LCs. Additionally, they emphasize the importance of recognizing and respecting country specific laws where rights to CT and FPIC are specific to Indigenous Peoples (e.g., the Philippines).

Effective recognition of CT requires a deep commitment to understanding and supporting the unique ways these communities interact with their land and resources.

D. Forested landscapes

Forested landscapes, primarily composed of forests but encompassing other land types and uses beyond official definitions, serve various forest functions (Faure, 2021). These landscapes embody spirituality, life, culture, and the biotic and abiotic components within an ecosystem, encapsulating intricate relationships, interconnections, and value systems both between and within ecosystems.

Within the CTS framework, forested landscapes encompass rivers, watersheds, mangrove forests, dynamic food systems, and the diverse cultural values and relationships attributed to specific locations by Indigenous Peoples and local communities (FAO, 2021).

E. Free, Prior, and Informed Consent

Most of the literature that has been written on FPIC has been in the context of Indigenous Peoples' rights.

FPIC, based on this body of literature, is both a right and a set of principles. It defines the processes and mechanisms specifically applicable to Indigenous Peoples in exercising their collective rights to self-determination and the associated rights derived from their territories, as recognized in the UNDRIP. It has been described as having the following elements (See Table 1):

Table 1. Elements in the definition of FPIC

Term	Definition	Sources
Free	<p>It involves an independent decision-making process, allowing individuals or communities to make choices autonomously.</p> <p>Consent is given voluntarily without coercion, intimidation, or manipulation, ensuring that decisions are made freely and without external pressure.</p>	<p>(Colchester & Ferrari, 2007; AIPP & IWGIA, 2012; Office of the United Nations High Commissioner for Human Rights, 2013; Asia Indigenous Peoples Pact, 2014; Colchester, 2007; FAO, 2016)</p>

Term	Definition	Sources
Free (continuation)	<p>Indigenous Peoples are provided with the freedom to make decisions at their own pace, using their preferred methods and languages, in an iterative manner, and in accordance with their own norms and customary laws.</p> <p>Freedom includes having the time, space, and opportunity to conduct internal and collective decision-making processes without interference from external entities.</p> <p>The process is self-directed by the community, with rightsholders determining the process, timeline, decision-making structure, location, language, and formats for decision-making processes, emphasizing autonomy and self-governance.</p>	<p>(Colchester & Ferrari, 2007; AIPP & IWGIA, 2012; Office of the United Nations High Commissioner for Human Rights, 2013; Asia Indigenous Peoples Pact, 2014; Colchester, 2007; FAO, 2016)</p>
Prior	<p>Decision-making for any project is done before its implementation.</p> <p>Consent is sought well in advance of authorization or commencement of activities, with due consideration given to the time requirements of Indigenous consultation and consensus processes.</p> <p>Indigenous Peoples are afforded the opportunity to access, comprehend, analyze, and assess proposed project activities in line with their own customary decision-making processes.</p> <p>The duration of this period is contingent upon the decision-making processes of the Indigenous People's community.</p>	<p>(AIPP and IWGIA, 2012; Office of the United Nations High Commissioner for Human Rights, 2013; FAO, 2016)</p>

Term	Definition	Sources
Informed	<p>The information provided for decision-making is complete, pertinent, impartial, and conveyed in easily understandable language. Moreover, Indigenous Peoples are granted access to legal and technical experts should they require assistance in making well-informed decisions.</p> <p>This information encompasses various facets, including the nature, scale, pace, reversibility, and scope of any proposed project or activity.</p> <p>It also encompasses the project's objectives and duration, its geographic footprint, an initial evaluation of its potential economic, social, cultural, and environmental impacts—comprising risks—and the personnel and procedures associated with its execution.</p> <p>The information must adhere to specific criteria:</p> <ul style="list-style-type: none"> • Complete, discussing both the positive and negative impacts of the project, and their risks. IPs may refuse negotiation until satisfied that complete information has been provided. • Accessibility, clarity, consistency, accuracy, transparency, completeness and comprehensiveness are essential, with presentations in the local language and culturally appropriate formats. • Objectivity is crucial, covering both the positive and negative potential impacts of proposed activities and the consequences of consenting or withholding consent. • Delivery by culturally sensitive personnel, in suitable venues, and with ample time for comprehension and verification. • Continuous provision throughout the FPIC process to foster local communication and decision-making processes. 	<p>(Colchester & Ferrari, 2007; Hill et al., 2010; Office of the United Nations High Commissioner for Human Rights, 2013; FAO, 2016)</p>

Consent	The collective decision reached by the Indigenous Peoples through the customary decision-making processes of the affected communities includes the option of withholding consent.	(FAO, 2016; Institute for Human Rights and Business [IHRB], 2022)
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Distinguishing consent from consultation

Consultation differs from consent. Consultation involves gathering or expressing views and opinions for consideration when making a decision (AIPP and IWGIA, 2012). Consent, on the other hand, represents the outcome of an independent and collective decision-making process regarding a specific proposal or action (AIPP and IWGIA, 2012). Both consultation and participation play pivotal roles in the consent process.

Consent should be sought, determined, or denied, in accordance with the distinct formal or informal political-administrative dynamics of each community. Indigenous Peoples should be able to participate through their freely chosen representatives (AIPP and IWGIA, 2012).

Moreover, FPIC is not a form of “stakeholder consultation.” In the FPIC process, Indigenous Peoples, as customary land tenure rightsholders, are decision-makers who exercise freedom and autonomy over their lands and territories (IHRB, 2022). FPIC and the right to self-determination entail collective rights that underscore collective decision-making, wherein consent is granted by the Indigenous community as a whole, rather than as individuals (IHRB, 2022).

V. The Right of Indigenous Peoples and Local Communities Practicing Customary Tenure Systems to Free and Prior Informed Consent

The right to FPIC emanates from the right to self-determination, which is enshrined in the UN Declaration on Human Rights and the International Covenant on Civil and Political Rights. In addition, the International Covenant on Economic, Social, and Cultural Rights, declares that:

“All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development” (Article 1).

The right to FPIC is also derived from the UN Declaration on the Right to Development, which stipulates that the human person is the central subject of development and should be the active participant and beneficiary of the right to development.

FPIC is both an expression of and a mechanism for realizing the right to self-determination. It articulates that the human person is indeed the central subject of development.

FPIC is a specific right of Indigenous Peoples recognized in the UNDRIP. It emanates from their right to the lands, territories, and resources that they have traditionally owned, occupied, or otherwise used or acquired. This right includes their right to own, use, develop, and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those they have otherwise acquired (Article 26). Additionally, it encompasses their right to determine and develop priorities and strategies for the development or use of their lands, territories, and other resources therein (Article 32).

Besides the UNDRIP, the normative framework for FPIC includes international instruments such as the International Covenant on the Elimination of All Forms of Discrimination General Recommendation No. 23 issued in 1997,

the UN Convention on Economic and Social and Cultural Rights Committee on Economic, Social, and Cultural Rights General Comment 21, the CBD and the Nagoya Protocol, and the ILO Convention 169.

Table 2. Different Policy Frameworks on FPIC

Policy Frameworks	Highlights
<p>The International Covenant on the Elimination of All Forms of Discrimination General, Recommendation No. 23 (1997)</p>	<p>Members of IPs have equal rights with respect to effective participation in public life, and no decisions directly relating to their rights and interests should be made without their informed consent.</p> <p>IPs have the right to restitution when they have been deprived of their lands and territories traditionally owned, inhabited, or used without their free and informed consent. Only when the return of the lands and territories is not possible for factual reasons should the right to restitution be substituted by the right to fair and prompt compensation. Such compensation should take the form of lands and territories as much as possible.</p>
<p>The UN Convention on Economic and Social and Cultural Rights Committee on Economic, Social and Cultural Rights, General Comment No. 21</p>	<p>The principle of FPIC for IPs shall be respected in all matters covered by their specific rights.</p>
<p>UNDRIP</p>	<p>FPIC is a pre-requisite for “the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources” (Article 32.2).</p> <p>FPIC is also required for: relocation; use and removal of cultural, intellectual, religious, and spiritual property; adopting and implementing legislative and administrative measures; and storage and disposal of hazardous materials in ancestral lands and territories.</p>

Policy Frameworks	Highlights
<p>UNDRIP (continuation)</p>	<p>IPs also have the right to seek redress for lands, territories, and resources they have traditionally owned, occupied, or used, which have been confiscated, taken, occupied, used, or damaged without their free, prior, and informed consent.⁹</p>
<p>ILO Convention 169</p>	<p>Indigenous or Tribal Peoples have the right to decide their own priorities for the development process. They shall “participate in formulating, implementing, and evaluating plans and programmes for national and regional development which may affect them directly” (Article 7).</p> <p>Upholds the primacy of the consultation process.¹⁰ All consultations “shall be undertaken, in good faith and in a form appropriate to the circumstances, to achieve agreement or consent to the proposed measures.” (Article 6.2)</p> <p>FPIC is required when relocation is deemed necessary as an exceptional measure.</p>

The Convention on Biological Diversity, and its succeeding related agreements and frameworks extend the rights to FPIC, not only to Indigenous Peoples but also to local communities.

While FPIC was not explicitly mentioned in the United Nations Framework Convention on Climate Change (UNFCCC) Cancun Agreements or its Appendix containing the safeguards, it was indirectly referred to as a requirement for REDD+ activities. This reference relates to the knowledge and rights of IPs and LCs, through the mention of the UN General Assembly’s adoption of UNDRIP, which sets the framework for FPIC (FAO, UNDP, and UNEP, 2012).^{11,12}

The UN Declaration on the Rights of Peasants on the other hand upholds Indigenous peoples right to FPIC, but recognizes, respects, protects, and promotes the rights of peasants to participate in decision-making processes.

9 Right to redress may include restitution or, when this is not possible, just, fair and equitable compensation (Article 28).
 10 “Governments shall: (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them” (Article 6.1).
 11 See https://www.un-redd.org/sites/default/files/2021-09/FPIC%20Lessons%20Learned_Final_En%20%28694915%29.pdf
 12 In 2013, the UN REDD+ Programme released the final working draft of Guidelines on Free, Prior, and Informed Consent (FPIC), with the understanding that updates would be made periodically. These updates would reflect the application of the guidelines, increased information and experience regarding FPIC, and ongoing input and feedback from various stakeholders, including governments, indigenous peoples, forest-dependent communities, practitioners, experts, partners, and colleagues.

Table 2. Different Policy Frameworks on FPIC (continuation)

Policy Frameworks	Highlights
Convention on Biological Diversity	<p>IPs and LCs providing access to genetic resources and associated traditional knowledge and practices shall have prior informed consent. The FPIC process is compulsory.</p>
Nagoya Protocol	<p>Notes the UNDRIP and affirms that nothing in the Protocol shall be construed as diminishing or extinguishing the existing rights of Indigenous and local communities (Preamble).</p> <p>Mandates that States parties, in accordance with domestic law, must:</p> <ul style="list-style-type: none"> • Ensure prior informed consent or approval and involvement of Indigenous and local communities for access to genetic resources where they have the established right to grant access (Article 6.2). • Take appropriate measures to ensure that traditional knowledge associated with genetic resources held by these communities is accessed with their prior informed consent or approval and involvement, and that mutually agreed terms are established (Article 7).
Kunming-Montreal Global Biodiversity Framework	<p>The Framework explicitly states:</p> <ul style="list-style-type: none"> • Its implementation must guarantee the respect, documentation, and preservation of the rights, knowledge (including traditional knowledge related to biodiversity), innovations, worldviews, values, and practices of IPS and LCs, with their free, prior, and informed consent. • FPIC includes their full and effective participation in decision-making processes, in alignment with relevant national laws, international instruments such as the UNDRIP, and human rights law. • Nothing in the Framework should be interpreted as diminishing or extinguishing the current or future rights of Indigenous peoples (Section C 7a).

Policy Frameworks	Highlights
<p>Conference of the Parties Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010</p>	<p>Activities related to reducing emissions from deforestation, reducing emissions from forest degradation, conserving forest carbon stocks, sustainably managing forests, and enhancing forest carbon stocks should be implemented with safeguards (Paragraphs 69 and 70).</p> <p>Developing countries should address the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations, and safeguards when creating and implementing their national strategies or action plans. This should be done with the full and effective participation of relevant stakeholders, including IPs and LCs (Paragraph 72).</p> <p>Safeguards that shall be promoted and supported include:</p> <ul style="list-style-type: none"> • Respect for the knowledge and rights of IPs and LCs, taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the UNDRIP (Appendix 12c). • The full and effective participation of relevant stakeholders, particularly IPs and LCs (Appendix 12d).
<p>UN Declaration on the Rights of Peasants</p>	<p>The UN Declaration on the Rights of Peasants mandates that States, without disregarding specific legislation on Indigenous Peoples, shall consult peasants and rural workers through their representative institutions before making decisions that affect them. This includes adopting and implementing legislation, policies, and international agreements. States must engage with these communities in good faith, seek their support, and respond to their contributions, considering existing power imbalances. The declaration ensures active, free, effective, meaningful, and informed participation of individuals and groups in decision-making processes.</p>

The recognition of FPIC as a right in various international instruments and protocols underscores its significance as the highest form of safeguard for the right to self-determination over lands, resources, and development. Recent frameworks and agreements affirm and protect the rights of Indigenous Peoples enshrined in the UNDRIP, while also extending FPIC to local communities.

VI. The ASEAN Guidelines in Customary Land Tenure in Forested Landscapes and the right of IPs and LCs to FPIC

The ASEAN CT Guidelines, while voluntary, provide guiding principles for recognizing customary land tenure in forested areas based on shared experiences and understanding of IPs and LCs' land, forest, and natural resource tenure.¹³ These principles establish the foundation and core elements of customary land tenure recognition in the region.

The right to FPIC is integral to recognizing, respecting, protecting, and promoting the rights to customary land tenure. In the AMS's context, it is entangled with other rights, namely:

- The right to local and cultural diversity in CTS;
- The right to traditional livelihoods and livelihood development;
- The right to equitable and sustainable involvement of women;
- The right to secure legal recognition of CTS;
- The right to equitable involvement and meaningful participation of IPs and LCs in land and resource use planning and decision-making;
- The right to equitably benefit from CTS;
- The right to resolve conflicts; and
- The right to institutional and operational support for the protection, formalization, recognition, enforcement, and monitoring of CT with adaptive and multi-stakeholder approaches.

¹³ The Guidelines is intended to be applicable to all countries. The terms 'customary tenure systems,' 'recognition,' 'local communities,' and 'Indigenous Peoples' will be defined based on various national contexts, consistent with the framework set by these Guidelines and international human rights treaties.

The ASEAN CT Guidelines recognize that the right to FPIC applies to both Indigenous Peoples and local communities. This right involves IPs and LCs' self-determination and collective decision-making within their CT systems based on freely available, accurate, and unbiased information. FPIC has been identified as a mechanism and process by which States and sub-national governments can uphold IPs and LCs' rights to freely determine their economic, social, and cultural development aspirations and priorities. The ASEAN CT Guidelines emphasize that FPIC aligns with sustainable national development goals and stress the need for special procedural attention and necessary skills to provide accurate and unbiased information on project risks and benefits in culturally accessible forms. Additionally, they urge all AMS to develop national FPIC guidelines collaboratively, ensuring the full participation of IPs and LCs, and to implement policies in line with the UN Voluntary Guidelines on Tenure Governance and REDD+ Cancun Safeguards.

VII. Practicing FPIC within Customary Tenure Systems

In line with the recommendation to develop national guidelines for FPIC and implement policies considering the UN Voluntary Guidelines on the Governance of Tenure and REDD+ Cancun Safeguards, AMS should establish structures and mechanisms, with technical and financial support, to facilitate the recognition of CT and enable FPIC processes in forested landscapes.

There should be a systematic program for mass education on the ASEAN CT Guidelines and the FPIC Guidelines that will be developed for IPs and LCs who hold CT rights (CT rightsholders).

State actors at the national, regional, and local levels should undergo capacity development to deepen their understanding of IPs and LCs' cultural characteristics, power dynamics, and CTS. This training should also cover International Human Rights law and conventions, the UNDRIP, the ASEAN CT Guidelines, and other relevant frameworks and guidelines. The objective is to equip these actors with the knowledge and skills necessary to recognize, promote, and support the diverse ways of life of IPs and LCs, who exercise varying degrees of autonomy and the right to self-determination. Furthermore, they should be trained to recognize, protect, and promote CTS in forested landscapes, understand property rights, and exercise autonomy and self-determination within specific contexts.

The FPIC process within CTS will vary according to the specific local context. It is not feasible to generalize tenurial arrangements for unique communities of IPs and LCs on a national scale. Understanding these systems and their changes is only possible within each specific community, where governance systems and FPIC protocols are based on community institutions, customary law on land tenure and resource rights, and participation in decision-making processes.

The structures and mechanisms established by the AMS will incorporate safeguards against potential interference or influence by Project Proponents on IPs and LCs during the entire FPIC process.

The cost of the FPIC process, which will be shouldered by the proponent, will be determined by the relevant government office. The cost determination will

be fair and based on the extent of the area covered. Payment for the team will be made through the concerned government office.

Table 3. Process Flow of Practicing FPIC within Customary Tenure Systems

PROCESS	OUTPUTS
A. Project Initiation in CTS	
<p>1. Establish the FPIC Team, composed of the concerned government agency, IPs and LCs, civil society organizations (CSOs), and academia.</p>	<p>Identified FPIC Team is capacitated on cultural sensitivity, CTS, the ASEAN CT Guidelines, and other relevant international laws, guidelines, and frameworks on human rights, as well as FPIC and safeguards to prevent potential interference or influence by Project Proponents during the FPIC process.</p>
<p>2. Conduct an FPIC Team meeting with the Project Proponents.</p>	<p>The Project Design and Project Impact are presented to the FPIC Team and the Project Proponents are oriented on the FPIC process.</p>
<p>3. Identify the CT rightsholders in the area and gather information on the CTS.</p>	<p>CT rightsholders in the proposed project site are identified, and their roles in decision-making processes are clarified. The rights of IPs and LCs, and peasant community members who are CT rightsholders are mapped. Safeguards to ensure the right to FPIC are discussed.</p>

4. Document and analyze each CTS's leadership and governance structure and processes to understand their composition, decision-making processes, and dynamics.

The CTS leadership structure, governance system, customary law in property rights, decision-making processes, and conflict resolution methods relating to CT with government and business are documented to inform the co-design of the FPIC process.

Data gathering through Participatory Rural Appraisal (PRA) methods and approaches will yield the following outputs:

1. Community maps that visually represent the CT rightsholders' important features of their CTS, including the identification of CT rightsholders and their entitlements in the area.
2. Historical transects that identify significant events in the CTS, including the entry of migrants, schools, government projects, and businesses in the area, and how these events have influenced the physical, social, economic, political, and cultural practices.
3. Livelihood analysis that will provide an overview of gendered access to and use of resources in forested landscapes for livelihoods.
4. Documentation of place names, the resources within, how they are managed, and the list of CT rightsholders in the area.

5. Document and analyze the specific local context of each collective CTS with their respective CT rightsholders.

<p>5. (Continued) Document and analyze the specific local context of each collective CTS with their respective CT rightsholders.</p>	<ol style="list-style-type: none"> 5. Land and tenure analysis on customary rights, statutory rights, and mapping of bundle of rights in CTS. 6. Survey of the CT rightsholders within the CTS who should participate in the FPIC process. 7. Local CTS level data on the leadership and governance structures and decision-making processes.
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B. Developing a Process to Seek Free, Prior and Informed Consent in the Context of the CTS

<p>1. Co-design the FPIC process with the CT rightsholders.</p>	<p>A co-designed, CTS-specific, rights-based FPIC process and protocol for seeking informed consent, based on data gathered during the Project Initiation Phase.</p>
<p>2. Prepare an Inclusive and Participatory Communication and CT rightsholders' Engagement Plan.</p>	<p>A comprehensive Inclusive and Participatory Community and CT Rightsholders' Engagement Plan that ensures meaningful participation of IP and LC rightsholders in the FPIC process.</p>
<p>3. Agree with the processes and timeframe of consultations that respect CT rightsholders customary decision-making processes to reach consent.</p>	<p>Agreements on iterative processes, mechanisms, and timeframes for consensus-building.</p>

<p>4. Community decision-making</p>	<p>A free, prior, and informed decision on the proposed project within their CTS, whether consent or non- consent, made by CT rightsholders free from coercion, intimidation, and manipulation.</p>
<p>5. Inform the Project Proponents of the decision.</p>	<p>Project Proponents are informed of the CT rightsholders' decision, whether consent is given or withheld.</p>

C. Project Implementation, Monitoring, and Evaluation

<p>1. Enter into a project Memorandum of Agreement (MOA)</p>	<p>A Memorandum of Agreement (MOA) is entered into between CT rightsholders, Project Proponents, and the government. This MOA recognizes, respects, and promotes human rights in general, and the rights to CT and self-determination, in particular. The agreement is based on applicable international legal frameworks, guidelines, and principles concerning Indigenous rights, customary rights, and business and human rights, including the ASEAN CT Guidelines.</p>
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2. Monitor and evaluate the Project

Project implementation, its impacts throughout the project cycle, and outcomes—including both intended and unintended consequences—are monitored by the government and Project Proponents. This monitoring aims to enhance effectiveness, inform decisions regarding the project and future endeavors, and provide CT rightsholders with the necessary information to decide whether to pursue the project or withdraw consent.

3. Terms for withdrawal of consent

CT rightsholders retain the right to withdraw consent at any point if the negotiated terms are not respected or breached, or if human rights violations occur.

4. Independent verification mechanisms

An independent verification process and mechanism, conducted by a third-party contractor, is established and supported by the appropriate authority to validate whether consent to the project has been obtained in accordance with the FPIC principles at all stages of the FPIC process.

A. PROJECT INITIATION IN CTS

- 1. Upon initiation of the project, the government will establish the FPIC, comprising of representatives from the government, IPs and LCs, CSOs, and the academe.**

The FPIC Team plays a critical role in the entire FPIC process. They will:

- Discuss with the proponents the critical data needed for the initiation of the FPIC process
- Identify the CT rightsholders
- Understand the local CTS context
- Co-design the FPIC process with the affected communities
- Implement the FPIC process
- Facilitate the preparation of the MOA, if the Project is given consent to proceed
- Conduct project implementation, monitoring, and evaluation if the project is given consent to proceed

During the Project Initiation Phase, the FPIC Team will identify the IPs and LCs who are CT rightsholders, gather information useful for designing and implementing a context-specific FPIC process, assist CT rightsholders in creating their own FPIC protocol, and support them in making informed decisions about the proposed project. Safeguards will be implemented to ensure that the information collected is not used by Project Proponents to unduly influence the decision-making processes of the CT rightsholders.

The FPIC Team may engage a third-party professional documenter or documentation team to ensure high-quality, timely, complete, and unbiased documentation of the entire FPIC process.

The FPIC Team and the documenter/s will undergo orientation on cultural sensitivity, CTS, the ASEAN CT Guidelines, and other relevant international laws, guidelines, and frameworks on human rights, as well as FPIC and safeguards to prevent potential interference or influence by Project Proponents during the FPIC process.

It must be underscored that not any staff of the Project Proponents will be part of the FPIC Team.

2. The FPIC Team will meet with project proponents to gain an overview of the project, its sites and impact areas, and to discuss the FPIC process.

During this meeting, the Project Proponents are required to present and discuss the following:

- The nature, size, and scope of the proposed project or activity, with overlaid maps of all the project components and their impact areas on forested landscapes and CTS
- The general and specific objectives, implementation plans, budget, outcomes and impacts of the project or activity, and the source of funding, if applicable
- The duration, locality, and scale of the project
- The demographic characteristics of the impact areas, including identified CT rightsholders
- An assessment of:
 - Cumulative economic, social, cultural, environmental, and human rights impacts, both positive and negative, in various phases of the project
 - Impacts on CTS, both positive and negative, in various phases of the project
 - Potential risks in various phases of the project
 - Consequences of giving and withholding consent
 - Fair and equitable benefit-sharing mechanisms

It must be underscored that, aside from the Project Description, Project Proponents will submit and discuss the overlay of the map of the entire project, including all the project components, topographic maps, forest maps, land use maps, watershed maps, biodiversity maps, hazard maps, climate maps, political maps, and CT maps to provide an overall picture of the proposed project and its impact areas.

The Project Proponents will also submit and discuss demographic information on the proposed project sites, including a thorough discussion on IPs and LCs who will be affected by the project and how they will be affected. They will also submit the CT rightsholders they have identified.

Maps and their descriptive information provide the geographic context of the place where the project will be implemented, while demographic data provide a general characteristic of the population living in and depending on the project area.

The FPIC Team will have the map evaluated by a third-party expert to assess its completeness and overall quality. The Project Proponents may be required to submit the specific maps used. The FPIC Team will discuss the FPIC process and the protocols on the conduct of the FPIC.

The FPIC meeting will be conducted either at the concerned government office mandated to conduct FPIC or at a neutral location acceptable to all parties.

3. The FPIC Team will identify the members of the community who hold CT in the area affected by the proposed project and gather information on the local Customary Tenure System.

Based on the initial meeting with the Project Proponents, the FPIC Team will identify CT rightsholders to ensure their inclusion and participation in decision-making processes.

Box 2. Identifying the CT Rightsholders in the Proposed Project Area (Some reference questions for Key Informant Interview or Focus Group Discussion)

1. Who are the CT owners in the area?
 - Can women hold CT rights?
 - At what age and under what circumstance did they obtain their rights?
2. What constitutes their ownership? What does ownership over customary areas include?
3. Who owns the resources within the areas covered by their CT?
4. What are their rights?
5. How did they obtain their rights over the area?
6. How has CT evolved over time, and what are the factors that brought about these changes?
7. How are collective CT areas governed?
 - What are the different IPs and LCs governance structures?
 - Who are the leaders?
 - What is the scope of their authority and the boundaries of the areas that they govern?
 - How do the leaders from different CT areas relate with each other?

8. If a development project enters their area and seeks for their Free and Prior Informed Consent,
 - What is the role of Indigenous Peoples CT rightsholders, and what are their rights to participate?
 - What is the role of local community CT rightsholders, and what are their rights to participate?
 - What is the role of peasant community members, and what are their rights to participate?
9. What safeguards will be put in place to ensure that the rights of IPs to FPIC will not be undermined?
10. As forested landscapes exist in the continuum, who are the CT rightsholders outside the proposed project areas but will be affected by the project?

Identifying CT rightsholders may be done through meetings, interviews, and/or focus group discussions (FGDs) with the following possible sources:

- self-governance entities
- clans
- community-based organizations
- national or regional confederations, councils, and organizations
- research from universities and research institutions
- documentation by CSOs
- concerned government agencies
- voluntary registries set up by government and/or civil societies

These meetings should achieve the following objectives:

1. Identify the CT rightsholders, clarify the CT areas over which they hold rights, specify the nature of these rights, and identify the means by which they obtained them;
2. Clarify if the concept of land tenure over customary land tenure in an area includes resource tenure;
3. Provide an overview of the leadership and governance structures of the CT areas;
4. Identify the changes in CTS over the years;
5. Identify the non-CT rightsholders who have a stake in the proposed project area and their rights; and
6. Identify the CT rightsholders in the areas contiguous to the project sites that may be impacted by the proposed project.

All these pieces of information are important for the next steps of the FPIC process.

Before proceeding with the interview, it is important for the FPIC Team to explain the intent and purpose of data collection, as well as the safeguards in place to prevent its misuse. This explanation should be provided in a language and format that stakeholders can easily understand.

It is also crucial for the FPIC Team to recognize that Indigenous Peoples are diverse and heterogeneous, characterized by various factors such as sex, gender, age, kinship, roles, statuses, geographic contiguity, interests, property rights, access to and control over politico-economic power, services, and symbols (Bennagen, 1979, as cited in Hilario, 2004). This diversity underscores the importance of asking probing questions along these lines to ensure adequate representation and inclusion, especially with marginalized CTS, based on the cited factors. Similarly, local communities are also not homogenous formations and are also divided along these same lines.

Local CT concepts and practices, as well as divisions within communities, and the heterogeneity of the needs and interests of actors, influence the balance of power and political dynamics. This in turn, impacts representation in decision-making processes (Gatmaytan, 2007). The FPIC Team must be aware of these power dynamics and ensure that even the most marginalized individuals who hold CT over forested landscapes can exercise their rights to autonomy and self-determination in decision-making regarding their CTS as part of the collective.

Finally, in the context of forest landscapes and CTS, identification of the CT rightsholders will not be limited to the target area where the project will be implemented. The functions and services of forest landscapes to the communities that depend on them go beyond the boundaries of the forests. The inclusion of the CT rightsholders outside the project area but within the impact area will be one of the decision points in co-designing context-specific FPIC processes.

4. Document and analyze each CTS' leadership and governance structure and processes to understand their composition, decision-making processes, and dynamics.

CT rightsholders' leadership and governance differ across CTS due to variations in societal appreciation for customary laws, procedures, structures, and responses to local socioeconomic and political changes and outcomes in

governance. Many CT rightsholders' governance structures and mechanisms are still present and function with varying degrees of autonomy in relation to the national government. Some of these are clan-based, while some are community-based groups. Some may be organized into trans-local groups and federations.

It is important collaborate with the CT rightsholders to gain an understanding of their governance structures and appreciate their self-governance mechanisms. These insights should inform the co-design of the FPIC process.

By utilizing initial data, approach the leaders initially identified and conduct key informant interviews (KIIs) and/or FGDs.

Box 3. Understanding CT rightsholders' IPs and LCs' Governance Structures and Mechanisms (Some reference questions for KII Key Informant Interviews and FGDs Focus Group Discussions)

1. Who are the leaders in the CTS?
2. Who selected them?
3. How were they selected?
4. What are the sources, bases, and foundations of their authority?
5. What are their roles and responsibilities?
6. How do they make decisions over their CT?
7. How do they arbitrate conflicts in their community?
 - Who makes the decisions?
 - What are the rights and roles of CT owners?
 - What are the rights and roles of CT resource users?
 - What are the rights and roles of women in decision-making processes and in carrying out decisions?
 - What are the rights and roles of the youth in decision-making processes and in carrying out decisions?
8. What customary laws and property rights laws are applied?
9. How do they conduct transactions, negotiate and settle conflicts, and bargain for concessions with other villages on issues relating to CT?
 - Who makes the decisions?
 - What are the rights and roles of CT owners?
 - What are the rights and roles of CT resource users?

- What are the rights and roles of women in these processes?
 - What are the rights and roles of the youth in these processes?
 - What factors are considered and given value in decision-making processes?
 - What are their non-negotiables in these processes?
10. How do they conduct transactions, negotiate and settle conflicts, and bargain for concessions with the government and businesses on issues relating to CT?
- Who makes the decisions?
 - What are the rights and roles of the CT owners?
 - What are the rights and roles of CT resource users?
 - What are the rights and roles of women?
 - What are the rights and roles of the youth?
 - What is the role of non-CT rightsholders in decision-making processes?
 - What factors are considered and given value in decision-making processes?
 - What are their non-negotiables in these processes?

5. Document and analyze the specific local context of each collective CTS with their respective CT rightsholders.

Various tools are available to assist the FPIC Team document and analyze the specific CTS and their changes. One such tool is the PRA method.

PRA methods, developed by Robert Chambers in the 1990s, are particularly useful for mapping CTS. PRA encompasses a range of approaches and methods that “enable local people to share, enhance, and analyze their knowledge of life and conditions, and to plan, act, maintain and evaluate” (Chambers, 1996).

PRA, with its highly visual nature, has proven effective in encouraging local participation and generating data from the community’s perspective in an easily understandable manner.

Key PRA methods essential for documenting CTS include historical transects, community maps, and livelihood analysis.

To incorporate a gender-sensitive approach in the project area, it is advisable to conduct activities separately for men and women.

a. Community Mapping. To identify the CT rightsholders whose consent must be sought and how the project will potentially affect them, participatory community mapping must be conducted.

Mapping enables CT rightsholders to visually and geographically represent the community, including physical features, land use, biodiversity, and social dynamics. It also facilitates the identification of CT rightsholders and their entitlements in the area.

Below are the steps for preparing and developing a community map:

1. Have both male and female participants draw separate maps to gain gender-specific insights and broaden perspectives.
2. Organize participants into three generations: elders, middle-aged individuals, and youth. This division provides insights into the community's spatial transformation over time.
3. Engage participants in a group discussion to collectively choose the features of the maps they wish to emphasize and establish a general time frame for map creation. It is crucial to emphasize that these maps will be utilized for the FPIC process. Participants should be made aware that while maps can empower decision-making, highlighting certain features may also increase vulnerability (Bennagen, 1979, as cited in Leonen, 2007). Therefore, they should exercise their self-determination when selecting which features to highlight.
4. Allow each group to present and discuss their respective maps with the community.

Box 4. Community Maps

Social: Houses, schools, places of worship, village centers, water systems, and other infrastructures.

Landforms, bodies of water, and shoreline features: Hills, mountains, plains, valleys, caves, rivers, creeks, streams, lakes, bays, peninsulas, and seas.

Land use: Settlement area, water sources, gardens, farmland, shifting cultivation area, areas for non-timber forest products,

gathering, hunting grounds, grazing areas, near-shore fisheries, sacred forests, spiritually protected areas, cemeteries, non-spiritual communal protected areas, burial grounds, land with communal/ clan temples, shrines, pagodas, places of worship, conserved areas, no-go zones, etc.

Tenure map: Land and resources that are formally recognized under statutory rights, and land and water that are recognized by customary rights.

For each land and resource drawn, identify the rightsholders, the legal status of the resource under State (statutory law) and customary law. This information is necessary to identify which resource has formal and/or informal claims over it, and who are the rightsholders.

Biodiversity: Areas with abundant biological species and their relative abundance that are important to the community, key biological indicator (bioindicator), or group of species whose function, population, or status can reveal the qualitative status of the environment.

Areas for protection: Areas that are conserved and protected by the customary rightsholders from activities for various reasons meaningful to them.

b. Historical Transects. This tool identifies and briefly describes the significant events that have occurred in the community, influencing the physical, social, economic, political, and cultural practices in the area.

Below are the steps for preparing a historical transect:

1. Divide the participants into two groups – male and female.
2. Ask each group to list and discuss the following:
 - a. What are the significant events considered by the community, and when did these take place?
 - b. How did these events affect and impact their ways of life in general?
 - c. How did these events affect their CT, in particular?

- d. What do they think about these impacts?
 - e. Why?
3. Allow each group to present their discussion findings to the community and engage in further discussion.

Box 5. Examples of Significant Community Events

- Establishment of the village
- Arrival of migrant settlers
- Entry of schools
- Entry of various government projects
- Introduction of new livelihood activities
- Pandemic

c. Livelihood Analysis. Livelihood analysis examines the activities undertaken by women and men to sustain themselves and generate income, as well as their access to resources. This simple livelihood analysis aims to identify the livelihoods of the community members.

Table 4. Sample template for a Livelihood Analysis matrix

Resource	
Resource-dependent livelihood activity	
When is it conducted?	
Who in the household participates?	
Average annual income generated?	
Problems, issues, and challenges encountered?	
Opportunities identified?	

d. Documentation of Place Names. Place names have been argued to be “concrete elements of traditional knowledge that can integrate biotic, non-biotic, and human elements of the landscape and order them into geographically defined, operational basic units” (Boillat et al., 2013). They provide insights into IPs and LCs’ cultural understanding of the geographic space.

Table 5. Sample template for Documentation of Place Names

Place Names	
Stories	
Resources in the area that are important for the community	
How are the places and the resources within managed?	
Names of Customary rightsholders in the Area	

The discussion on the importance of the resource should encompass the significance to their community’s survival, development, protection, and sustainability, especially in the context of climate change.

e. Land and Resource Tenure Analysis. It is important to understand the CT rightsholders’ construction of tenure. For this analysis, the community will identify all the land and resources within their area, ascertain their associated rights, and map out the bundle of rights associated with them. Gender dimensions should always be considered in the analysis to ensure that women’s perspectives are integrated into decision-making processes.

Table 6a. Template for Land and Resource Tenure Analysis (Customary Rights)

Land or Resource Type	Customary Rights				
	What rights can one have over the land/resource	Who can have rights?	How are rights obtained?	What are the rights of CT owners?	What are the rights of non-owners?

Table 6b. Template for Land and Resource Tenure Analysis (Statutory Rights)

Land or Resource Type	Customary Rights				
	What rights can one have over the land/resource	Who can have rights?	How are rights obtained?	What are the rights of CT owners?	What are the rights of non-owners?

g. Deepen knowledge of CT governance structures and their implications on the FPIC process. KIIs and/or FGDs should be conducted to identify the decision-making structures and processes on CT at various levels and their implications on representation and participation in the FPIC process.

Box 6. CT Leadership and Governance Structures and the Implications on the FPIC Process

1. Who makes decisions regarding CTS at the household level?
 - a. What is the role of men?
 - b. What is the role of women?
 - c. What roles do the youth play?
2. How do they make decisions?
3. How are decisions involving CT made at the village or trans-local levels?
 - a. Who makes the decisions involving CT at the village or trans-local levels?
 - b. How are decisions made at these levels?
 - c. What are the roles of the Indigenous Peoples CT rightsholders, and how do they participate?
 - d. What are the roles of the local community CT rightsholders, and how do they participate?
 - e. What are the roles of peasants and how do they participate?
 - f. Can women CT rightsholders participate?
 - If yes, what is the nature of their participation?
 - If not, why not?
 - g. How are individual and household-level decisions ensured at the village and trans-local levels?
 - h. Are there cases when individual CT rightsholders feel excluded and undermined in the decision-making processes?
 - How can issues of exclusions be addressed to ensure inclusion?
4. How are conflicts resolved?
 - a. Household level
 - a. Village level
 - a. Trans-local level

5. If there is a potential development project entering the CT, who should be involved in the FPIC process?
 - a. What are the roles of Indigenous Peoples CT rightsholders?
 - b. What are the roles of local community CT rightsholders?
 - c. How can the inclusion of CT rightsholders be supported and sustained?
 - d. How can their needs and interests be recognized, protected, and promoted?
 - e. What are the roles of peasants?
 - f. As CT in forested landscapes exists in a continuum, how should CT rightsholders who are not part of the Project area but will be affected by the proposed Project be addressed?
 - g. What roles shall non-CT rightsholders play?
 - h. What roles should government actors play?
 - i. What roles should the project proponents play?
 - j. What roles should CSOs play?
5. If the FPIC process for the project were to be co-designed with the CT rightsholders in the community, how would you want it to be conducted?
 - a. What are the community decision-making processes that should be upheld?
 - b. What customary law needs to be observed?
 - c. What principles of engagement do they want to follow?

Altogether, the information collected during the Project Initiation Phase will be used to inform the design of the FPIC process. It will also be used by the CT rightsholders to prepare their protocol for FPIC and aid them in decision-making processes.

If the Project receives consent from the CT rightsholders, this information should additionally guide the design of the Project, including safeguards, mitigation measures, equitable benefit-sharing mechanisms, and project monitoring and evaluation.

The AMS should implement safeguards to prevent Project Proponents from using the information gathered during this period to unduly influence the decision-making processes of the CT rightsholders.

B. DEVELOPING A PROCESS TO SEEK FREE, PRIOR, AND INFORMED CONSENT IN THE CONTEXT OF CTS

1. Co-designing the FPIC process with the CT rightsholders.

Based on the data gathered during the Project Initiation Phase, the FPIC Team, along with representatives identified by the CT rightsholders, will co-design the FPIC process. This process will occur at the level of each collective CTS.

The design will be guided by the ASEAN CT Guidelines and international frameworks on Indigenous Peoples' rights, and informed by data gathered during the Project Initiation Phase. This data includes information on the CTS, CT rightsholders, their rights over CTS and resources, customary law and decision-making processes, principles of FPIC engagement, and identified protocols.

CT rightsholders will communicate their FPIC protocol, which sets out how they wish any FPIC engagement to proceed within their CTS.

The designed process should be agreed upon and affirmed by the CT rightsholders within the CTS or their duly selected representatives.

At this point in the process, the CT rightsholders, based on their evolving capacity, may request the help of the FPIC Team or identify a support group of their choice. This support can help with documenting meeting or consultation proceedings, interpretation, translation, clarification, or elaboration of matters discussed. Such assistance will ensure that the project and any subsequent agreements are not disadvantageous to the CT rightsholders.

The identified support group will be considered a member of the CTS' FPIC Team; however, their role will be limited to technical support, and they will not interfere with the CTS' exercise of self-determination in making decisions regarding the project.

2. Preparation of an Inclusive and Participatory Communication and CT rightsholders' Engagement Plan.

The Inclusive and Participatory Community and Communication and CT rightsholders' Engagement Plan (the Plan) will be designed with IPs and LCs CT rightsholders as their intended audience.

The Plan will underscore that the right to FPIC is central to the right to self-determination of IPs over land and resources, as enshrined in the UNDRIP. It is a process where IPs participate as equals and make decisions about their lands and territories (IHRB, 2022).

For local communities holding CT rights, it is important to communicate that FPIC is one of the safeguards to protect their rights over CT.

CT rightsholders are the decision-makers in the process and have the final say regarding the project, including the right to say no at any point during the FPIC process. This messaging aims to foster trust and ensure their meaningful participation in the FPIC process.

The FPIC Team will carry out iterative consultations through which complete project information is delivered transparently. They should also be in the local language and culturally appropriate formats.

The FPIC Team will communicate the highlights of the PRA activities, KIIS, and FGDs, explaining how they were used in the design of the FPIC process, and how they can be used to aid in community decision-making processes.

The FPIC Team will also ensure that the Project Information that the Project proponents present and discuss is complete, accurate, objective, transparent, and consistent.

Box 7. Project Information that will be Communicated

- Nature, size, and scope of the proposed project or activity with overlaid maps of all the project components and its impact areas on forested landscapes and CTS
- General and specific objectives, implementation plans, budget, outcomes, and impacts of the project and/or activity, and the source of funding in some cases
- Duration, locality, and scale of the project
- Assessment of:
 - ▶ cumulative economic, social, cultural, environmental, and human rights impacts, both positive and negative in various phases of the Project;
 - ▶ impacts on CTS, both positive and negative, in various phases of the Project;

- ▶ potential risks in various phases of the Project;
- ▶ consequences of giving and withholding consent; and
- ▶ fair and equitable benefit-sharing mechanisms
- Full and clear disclosure of the information based on levels of IPs and LCs CT rightsholders understanding
- Involvement of personnel in the execution of the proposed project (Indigenous peoples, private sector staff, research institutions, government employees, and others)

All Communication and CT Rightsholders' Engagement Activities should be conducted in venues within communities where CT rightsholders are comfortable and feel safe.

Information dissemination on the Project should not be a one-shot deal. Instead, it should be given on an iterative, ongoing, and continuous basis throughout the FPIC process.

All communication materials will emphasize that CT rightsholders will have time and space to consult and verify information with third-party experts.

Lastly, all communication materials will underscore that affected IPs and LCs have the right to give consent or withhold consent to the project, and this decision will be respected.

3. Agree on the processes, mechanisms, and timeframe of consultations that respect CT rightsholders' customary decision-making processes to reach consensus on the Project.

CT rightsholders will define their mechanisms and processes for internal decision-making to arrive at consent or non-consent. The process will be in accordance with their customary practices of discussion, decision-making processes, and consensus-building. The process will also allow for iteration until consensus is built.

When customary laws and institutions exclude the interests of marginalized groups, the FPIC Team will engage with the concerned IPs and LCs to determine how decisions should be made to ensure that the collective rights, needs, interests, and aspirations of the community are represented without causing inequality, social exclusion, or conflict (Colchester & Ferrari, 2007). The FPIC Team will also engage the

concerned IPs and LCs on how to make the process accountable to the members of the communities (Colchester & Ferrari, 2007).

While the timeframe should not be predefined and rushed, CT rightsholders will provide the FPIC Team and the proponents with a timeframe that is enough to conduct an inclusive, extensive, and iterative discussion and deliberation on the project and its impacts on their lives and their futures. The timeframe should be mutually agreed upon and recognized by both parties.

The negotiation proceedings will be documented and verified as true and correct by the participants or their duly selected representatives. Copies will be made available to all parties.

The CT rightsholders have the right to privacy and the protection of their identities, ensuring this information cannot be used against them.

4. Community decision-making

Recognizing CT rightsholders' autonomy and right to self-determination, community decision-making will be conducted by the CT rightsholders in the process and manner they identify. This process will be recognized by the FPIC Team, the government, and the Project Proponents.

Based on their evolving capacity, CT rightsholders may ask for the help of the FPIC Team or support groups of their choice to facilitate and document meeting or consultation proceedings, interpretation, translation, clarification, or elaboration of discussed matters. This ensures that the project and any subsequent agreements are not disadvantageous to the CT rightsholders.

Decision-making will be conducted at an appropriate time and in an suitable environment for all members of the CT rightsholders. These processes will be free from coercion, including the imposition of timelines. Any limit in decision-making set by another stakeholder constitutes coercion. Should any stakeholder, including AMS, force a timeline, it will result in the automatic rejection of the proposed project.

All forms of automatic approvals are a violation of the right to self-determination, regardless of the proposed project's timeline.

For transparency, the meeting will be documented in a language and form understandable to all participants. The documentation will include

notes on the process, the issues raised, and the decisions made, with the provision that the community has the right to decide what is permissible to document for sensitive issues. The documentation will be attested to as true and correct by the participants or their duly selected representatives. The documenter may be a community member, a member of the FPIC Team requested by the CT rightsholders or a member of a support group of the CT rightsholders' choice identified during the Co-design Phase, provided that the documenter does not influence the community's self-determined decision-making processes. Project Proponents, or any representative thereof, or any member of the FPIC Team will not be allowed to participate in the consensus-building of the CT rightsholders or interfere in any manner in their decision-making processes.

Conflict resolution will follow the process outlined by the CT rightsholders. However, if necessary, they may seek assistance from the FPIC Team, utilizing culturally sensitive tools and documented appropriate procedures for conflict resolution.

If the project is given consent with conditions, the issues and concerns that need to be addressed will be documented for discussion during eventual negotiations and meetings for the signing of a memorandum of agreement on project implementation and benefit sharing.

CT rightsholders will stop the process if they feel that the independence of decision-making is undermined or if there are instances of coercion, intimidation, or manipulation.

Furthermore, CT rightsholders, the government, the Project Proponents, and CSOs will consider the issues of militarization, violence, and human rights in the proposed project area. In the context of FPIC, violence is significant (Gatmaytan, 2013). Studies have found an "assertive link between land ownership, defense of territory, and violence" vis-à-vis the implementation of development projects (Ateneo Institute of Anthropology and Ateneo Tropics, 2013). The project will be stopped and withdrawn if there is any violation of the FPIC process or the human rights of CT rightsholders.

5. Inform the Project Proponents of the decision.

The community's decision, whether to give or withhold consent to the proposed project, should be communicated formally to the Project Proponents. The Project Proponent should respect the community's

decision. The community's decision, whether to give or withhold consent to the proposed project, will be communicated formally to the Project Proponents.

The Project Proponent will respect the community's decision if the decision is non-consent.

In case of non-consent, the CT rightsholders will be assisted in issuing a written resolution or declaration of non-consent, which is approved by its leader/s or authorized representative/s.

C. PROJECT IMPLEMENTATION, MONITORING, AND EVALUATION

1. Entering into Project MOA

If CT rightsholders decide to engage with the Project in the exercise of their self-determination, they should be empowered to level off their understanding of the Project and its implementation. They should be able to initiate and negotiate a MOA that recognizes, respects, and promotes their human rights in general and rights to CT and right to self-determination in particular. This MOA should be based on applicable international legal frameworks, guidelines and principles on Indigenous rights, customary rights, business and human rights, including the ASEAN CT Guidelines.

The government FPIC Team should provide CT rightsholders through their duly selected leaders and/or representatives comprehensive education on relevant international legal human rights frameworks, guidelines, and principles. This will enable them to determine the terms, conditions, and operational rules for the design, implementation, monitoring, and evaluation of the Project within their CT. This understanding will empower them to negotiate as rightsholder holders with the Project Proponents before entering into any agreements. The CT rightsholders also have the right to seek capacity-building measures from CSOs.

CT rightsholders will need to discuss and decide using their customary modes of decision-making the non-negotiables that they will bring to the negotiating table with the Project Proponents on the following issues:

1. The Indigenous Peoples exercise the rights to self-determination and autonomy, as enshrined in UNDRIP, and local community CT

- rightsholders exercise their rights in the proposed project area during the entire project cycle
2. Men and women CT rightsholders' equitable involvement, meaningful, and sustainable participation in the Project design, implementation, monitoring and evaluation, and financial resources for these processes
 3. The impact of the Project's implementation on the recognition, protection, and promotion of the CT rightsholders bundle of rights over their CTS, especially the forms that contribute to food and livelihood security, traditional conservation practices, and sustainability and how they will be mitigated, including how the Project or its components will be redesigned to avoid the negative impacts altogether
 4. The environmental, social, and human rights impact of the Project and how they will be mitigated
 5. The guarantee for the recognition, protection, and promotion of human rights, the remedies of the CT rightsholders, including the establishment of effective and appropriate operational State and non-state, and independent grievance mechanisms, including ensuring the parties' participation in these mechanisms
 6. Equitable benefit-sharing schemes
 7. Conflict resolution processes
 8. Expected Codes of Conduct of the Project Proponents
 9. Representation and roles of CSOs and support groups in Project monitoring and evaluation, grievance mechanisms that will be established, and conflict resolution mechanisms that will be followed
 10. Conditions under which the consent process can be renegotiated or re-initiated and terms for withdrawal of consent

The MOA will also include the responsibilities of the parties involved, the effectivity and/or duration of the MOA, and the timeline for the delivery or performance of the obligations of the parties, especially the Project Proponents.

It is important that agreements and negotiations leading to the IP and LC CT rightsholders' consent are documented in a written contract, drafted and signed by all parties. They have the right to seek support and counsel from paralegals, lawyers, technical experts, and other advocates when drafting and finalizing the formal contract with investors and/or government officials.

Entering into the MOA, like all decision-making processes, will not be rushed and will be free from coercion, intimidation, and manipulation.

For transparency and accountability to all CT rightsholders, their leaders and/or representatives will present and consult the contents of the draft MOA with the CT rightsholders before finalizing the agreement.

The signed MOA will be communicated to the CT rightsholders in a language and manner understandable to them.

Box 8. Access to Remedy Provisions in the UN Guiding Principles on Business and Human Rights

Access to effective remedy is a fundamental aspect of the UN Guiding Principles on Business and Human Rights (UNGPs). These principles urge States to prevent, investigate, punish, and rectify human rights abuses caused by businesses within their jurisdiction. They also emphasize that businesses should acknowledge and address any adverse impacts they cause or contribute to. Moreover, the UNGPs stress the importance of ensuring that those affected have access to effective remedies.

Remedies can encompass various substantive measures, all aimed at addressing or rectifying any human rights violations that have taken place. These measures may involve apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (including criminal or administrative penalties such as fines). Additionally, remedies may entail preventive measures, such as injunctions or assurances of non-repetition, to avert further harm. It is crucial that procedures for providing remedies are impartial, safeguarded against corruption, and shielded from political or other influences that could impact the outcome.

The UNGPs outline three main types of mechanisms to provide access to effective remedy for human rights abuses related to business: state-based judicial mechanisms, state-based non-judicial grievance mechanisms, and non-state-based grievance mechanisms.

Grievance is “a perceived injustice evoking an individual’s or a group’s sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities.”

Grievance Mechanism is “any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.”

The guidelines emphasize that to guarantee access to remedy for human rights abuses linked to business activities, it is essential for States to promote public awareness and comprehension of these mechanisms.

This includes explaining how they can be accessed, as well as any available support, whether financial or expert, to facilitate this process.

Grievance mechanisms should be effective, addressing grievances promptly and remediating directly.

Principle 31 of the Guidelines provide the effectiveness criteria for non-judicial grievance mechanisms. These criteria serve as a reference point for designing, revising, or evaluating a non-judicial grievance mechanism to ensure its effectiveness in practice.

Box 9. Effectiveness Criteria for Non-judicial Grievance Mechanisms

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes
- Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face barriers to access
- Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation

- **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice, and expertise necessary to engage in a grievance process on fair, informed, and respectful terms
- **Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake
- **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognized human rights
- **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms

Operational-level mechanisms should also be:

- **Based on engagement and dialogue:** consulting the stakeholder groups for whose use they are intended on their design and performance and focusing on dialogue as the means to address and resolve grievances.

2. Monitoring and evaluation of the project

Monitoring and evaluation of the Project is a joint responsibility of the government, the Project Proponents, the CT rightsholders, and the CSO.

Monitoring involves continuously and systematically tracking information relevant to project implementation and its impacts throughout the project cycle.

Evaluation entails methodically collecting and analyzing information about the characteristics and outcomes of the project, including both intended and unintended consequences. This analysis is a basis for making judgments to enhance effectiveness and inform decisions regarding the Project and future endeavors. They should also inform CT rightsholders whether to pursue the Project or withdraw consent.

The CT rightsholders' roles in monitoring the Project implementation will be recognized, respected, promoted, and supported.

Box 10. Critical Elements of a Project Monitoring Plan¹⁴

- Who will be doing the monitoring? Ideally trained and paid community members, supported by impartial, independent technical professionals.
- How frequently should monitoring occur? Request daily, weekly, or monthly monitoring of potential environmental pollution and other risk factors that may endanger the community.
- What aspects will be monitored? Specific parameters such as soil, air, and water quality; plant species diversity and wildlife population count; financial transactions in community accounts; progress metrics for infrastructure development, among others.
- How will monitoring results be communicated to the company, all community members, and other stakeholders?
- Where will monitoring data be stored? Establish a secure data storage system to prevent loss and ensure long-term accessibility. Consider options for making the data publicly available, if appropriate. Address any other data management issues specific to the community's needs and values.

CT rightsholders' inputs are vital in designing monitoring and evaluation indicators. They will be involved in developing monitoring and evaluation approaches, including inclusive and participatory methods, to enable them to monitor projects affecting them and make decisions on how the project should proceed. Their participation in monitoring and evaluating projects within their CTS will be guaranteed, with CT rightsholders having the right to select their representatives for the project's monitoring and evaluation team. The participation of IPs and LCs CT rightsholders in project monitoring and evaluation will be supported with appropriate technical and financial resources.

Monitoring and evaluation will encompass and go beyond assessing the positive impacts and opportunities, as well as how both parties comply with the agreements outlined in the MOA, including the risks and how they are being mitigated. They will also examine the human rights impact of the project, and how these are addressed and remedied. The effectiveness of the established grievance mechanisms will also be monitored and evaluated.

¹⁴ See https://static1.squarespace.com/static/62cd7860272be4335685de88/t/650b105c830dca28a4ee35ff/1695223916300/FPIC+guide+sm_compressed.pdf

Monitoring and evaluation will also address new and emerging issues that were not considered beforehand but should be promptly addressed.

The findings of monitoring and evaluation activities will be shared with CT rightsholders regularly and in culturally appropriate formats. Information, communication, and education of monitoring and evaluation results will have appropriate funding and technical support.

Under certain circumstances, it must be acknowledged that a project will not proceed and/or engagement will cease if affected CT rightsholders decide not to continue with the project.

3. Terms for Withdrawal of Consent

Consent relies on both parties being satisfied with their relationship, making it critical to sustain this relationship throughout the project cycle. CT rightsholders have the right to withdraw consent at any point if the negotiated terms are not respected or are breached. The right to withdraw consent is supported by international human rights frameworks. They also have the right to withdraw consent if their human rights are violated, or if violence develops and escalates as a result of project implementation.

- **Breach of Terms:** If the terms of an agreement are violated, CT rightsholders have the right to withdraw consent. This is consistent with contract principles and the need for mutual respect in agreements.
- **Human Rights Violations:** Withdrawal of consent is justified if human rights are violated, including instances of violence.

This is aligned with numerous human rights treaties and conventions, including the International Covenant on Civil and Political Rights, which protects the right to life, security, and freedom from torture and inhuman treatment.

Once consent is withdrawn, project activities should immediately stop until either reparations are made and consent is re-established, or the breach is formalized and activities are permanently halted.

- **Reparations and Consent Re-establishment:** This aligns with principles of restorative justice, recognizing the need to address harms and re-establish mutual consent.

- **Permanent Halt in Case of Breach:** If breaches are formalized and consent is not re-established, the permanent cessation of activities respects the sovereignty and self-determination of CT rightsholders.

The withdrawal of consent will be formally communicated by the concerned CT rightsholders to the appropriate structure and using the mechanism that the AMS will establish.

AMS have an obligation to safeguard the rights and well-being of CT rightsholders from any potential backlash resulting from the withdrawal of their consent.

4. Independent Verification Provisions

The AMS will establish and support a genuinely independent verification process and mechanism to validate if consent to the project has been obtained according to the FPIC principles at all stages of the FPIC process. This will require an independent third-party contractor, rather than the Project Proponent itself, to ensure impartiality and credibility, which is crucial for maintaining trust between CT rightsholders, the Project Proponent, and other stakeholders.

An independent verification process aligns with international best practices and standards for transparency and accountability. Independent verification mechanisms will be embedded in legal frameworks, regulations, or project agreements beginning in the Project Initiation Phase to ensure compliance and oversight.

The independent third-party contractor will develop and monitor the standards, which serve as a framework to ensure best practices in seeking FPIC are followed and complied with. The standards defining the key concepts, criteria, and associated indicators for verifying consent must be transparent and developed through a participatory process beginning the Project Initiation Phase and finalized before the co-designing of the FPIC process begins. These standards can be stipulated in the Project's operational guidelines or contractual obligations with the Project Proponents.

The standards will be discussed with all parties. Ensuring that these standards are discussed with all parties before conducting the FPIC process is crucial for legal and procedural transparency. This step is essential for informed consent and can be included as a mandatory part of the FPIC process.

Aside from establishing a legal framework, the success of independent verification processes and mechanisms also depends on operational factors such as the availability of competent independent bodies, funding for the verification process, and the willingness of all parties to engage in and respect the process. AMS will ensure that there are appropriate technical and financial resources for the capacity building of independent bodies, allocation of adequate funding for the conduct of independent verification processes, and efforts to campaign for the support of all parties.

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