

Break out group questions

1. What should be the role of Government in ensuring a sound basis for respect of right to FPIC? (legal, institutional, oversight) **Mubariq Ahmad (Group 1)**
 - **VIP Room**
2. How should communities represent themselves and build consensus. (communities are not homogenous) **James Mayers (Group 2)**
 - **Press Conference Area (Opposite restaurant)**
3. What are the responsibilities of companies to respect and secure right to FPIC? **Taufiq Alimi (Group 3)**
 - **Ballroom**
4. What must be done when communities are divided because of many/ majority of the people are settlers? **Amity Doolittle**
 - **Ballroom**

Note of Discussion Group 1: Government

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Group Members:

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Objectives

What is the government role?

- To respect and ensure implementation of FPIC

Components:

Role: community and IP+ rights, how to be respected and enforce

Scope of regulation: FPIC implementation, rules of local FPIC system (customary and internal community process). How do we bring the issues of IPs and other segments of community.

Major Issues

- Keberpihakan – the government should take side for the improvement of well beings for community
- Ensuring FPIC prior to land use licensing in the legal system: mandatory!
- Transparency and burden of implementation
- Two caveats: avoid over regulation and elite capture (cooptation).
- Need mechanism from identification community's rights through all of the stages toward recognition.

Major Issues

- IPs, other components of community and impact areas
- As interim basis of FPIC implementation for now, may use the existing EIA/SIA process

Stages towards FPIC implementation

1. Identify and define the rights of the community over land and natural resources
2. Establish Registration system (of the rights)
3. Establish Verification system
4. Recognition mechanism and certification of rights
5. Monitor and ensure enforcement

Role of Government (recommendation how to get there)

- Within the law, it should be included relationship between community rights and licensing of land use and natural resources.
- Need to build supporting sub-system to implement FPIC (notably: capacity building, accreditation of professionals, organization structure)
- Transparency and Accountability mechanism

Harmonization of laws and regulations related to FPIC implementation

1. Explore links and corporation with other relevant institutions and sectoral laws
2. Taking into account inconsistency of laws and enforcement between Central Govt and Regions and across sectors

Breakout session Group 2

The Forests Dialogue

Free Prior Informed Consent

October 14th, 2010

How should communities represent themselves and build consensus?

- Must keep in mind>>> communities may be heterogenous
- Context>>>
- Pre conditions and compliments/other ways to proceed
- Roles of others
- Tensions, dilemmas

Impressions

- Recognize FPIC is about decision making>> ongoing decision making>>related to how decisions are made in the communities
- Different decision making depending on different stakeholders, some institutionalized;
- Need to recognize what community structures exist prior for any kind of decision making, and build upon that rather than making another structure for FPIC

- FPIC as a moral (respect) issue, beginning by introducing ourselves, for example
- In the case of Indonesia, there is no need legally to consult with local people because government owns resources; companies are not obliged to talk to people.

How do communities represent themselves?

- Traditional institutions
- Local political bodies
- Need to look at how they consider heterogeneity and inclusiveness relating to:
 - Gender
 - Classes
 - Existence of minorities
 - Need to recognize competing decision making structures

- Need to look at different approaches>

- Communities with customary structure
- Communities lacking these structures

Need to have internal discussions among communities for guidance on appropriate ways to appoint representatives/negotiators; these processes may best be facilitated by government not by companies; in case of weak situation of govt, may be a role for NGOs

Customary systems

- Need better understanding of the institutional setting, the cultural setting needed, but sometimes it's difficult to distinguish between the customary system and the non-traditional one.
- To participate in a customary system, have to be able to interact with multiple, outside actors>>new conditions for customary systems
- Customary systems are dynamic
- New Zealand example: equilibrium between

Outside pressures

- There is big pressure worldwide that can have impact on FPIC (corporate responsibility, for example)
- NGO role > mapping
- Respect to local decisions: sometimes traditional institutions or local decisions do not get respected due to biases held by outsiders (for example, decision of the communities of dealing with younger, literate leaders vs. elders) this is a consequence of romanticized vision of indigenous peoples.

Addressing FPIC

- Rights should become benefits for stakeholders
 - What rights are the stakeholders claiming?
 - What is the status of these rights?
 - What is the consensus within stakeholders?
 - What are the benefits the communities are looking for based on these rights?>>big role of company
 - What is the level of awareness within communities of their rights?
 - Is there recognition of these rights at a local level?
 - *Rights should be recognized ultimately at constitutional level>>aspire to constitutional reform*

FPIC toolkit

- Companies do not have social maps of communities in order to understand who is representative of communities.
- Need for tools for FPIC for companies
- Efforts should be made to have communities make decisions>>need for specific pilot projects in this regard
- Need for legalization of local tools, which should be approved by communities. Key adaptation for recognition.
 - Need to generate instrument of accountability and feedback mechanisms within communities>>this is

Who implements FPIC?

- If companies want to implement FPIC they will have lots of problems.
- The main issue is how can we find a decision making mechanism for communicating. It would be different in places with a strong customary system and others that not.
- Independent assessment of readiness from communities for FPIC; capacity can be facilitated by government. The problem is how to operationalize this role.
- Who will do that work? (identifying legitimate leaders, land rights, etc).Communities can't on their own.>>government? >>doesn't happen in real life
- There is no simple answer about it
- Need to take into account that there might be different interests about consensus making within communities.

Need to recognize that FPIC is complex

- FPIC can be misunderstood >>
- Don't use FPIC if what is needed is basic consensus building

Group 3

What are the responsibilities of companies to respect and secure rights to FPIC

Leader: Taufiq Alimi

Why companies would or should apply FPIC?

- Legally required
- Normative or ethical reasons
- Market-driven reasons (e.g., consumer requirements)
- Practicalities: common ground, avoid conflict

Fact is most companies don't apply FPIC, so what pressures can be brought to bear on them?

- Demand side pressure from suppliers
- Investment pressure
- NGO pressure: direct or indirect
- Peer pressure from other companies: progressive platforms, benchmarking, etc.

How to scale up or mainstream FPIC?

- Must be seen as a process to build critical mass (lead companies, sector, certification, regulation)
- Government regulation is ultimate goal, but government is also major obstacle.
- REDD+ funds could help overcome resistance.

How should the 'I' be achieved in FPIC

- Good faith negotiations, but company is biased
- NGOs
- Government
- All sources, in fact, are biased so communities need to leverage multiple sources of information.

Group 4

- **What must be done when communities are divided because of many/majority of the people are settlers?**

- Community dynamics in Indonesia are complex
 - Hundreds of clans
 - Transmigrants
 - Economic migrants
 - Conflict migrants

- Multiple system of land rights
 - Low pusaka—inherited lands
 - High pusaka—communal property
 - Individual rights
- Each system has different requirements in terms of who's consent is required
 - An individual
 - Entire community
- In most cases there will be conflicts in community

- Recognition of settler's specific rights in decision making process will vary from village to village
- Key point to consider is
 - Settler may have rights in communities that differ from long term residents
 - May have collective rights in customary land
 - May have individual rights land given by government
 - Private right has different negotiation process than collective right

What is the role of NGO in FPIC process?

- What would communities like to see from NGOs
 - Communities expect NGO could help them, communities could share their feeling with NGO, instead of to government (communities feed up complaining to govt.), express aspirations.

- BUT...NGOs often have an agendas/interest?
What do communities members think of this problem?
 - Communities could not fight by themselves or face the company and government
 - Soon Ulayat will be weaken or lost totally.
 - Need capacity building
 - Literacy

What would companies like to see from NGOS

- Companies see NGO as two types:
 - Campaigner NGO, they only live with issues
 - It is foolish to try and work with them
 - Others try to solve the problem.
 - But, decision left to the communities, NGO only as a mediator (neutral).
 - Could doing capacity building e.g., community mapping