

The Forests Dialogue (TFD)

Field Dialogue on Free, Prior, and Informed Consent

Gary Dunning
Executive Director
The Forests Dialogue

12-15 October 2010
Pekanbaru, Indonesia





Welcome to TFDs FPIC Dialogue

Meeting Co-Chairs

- Marcus Colchester
- Minnie Degawan
- James Griffiths
- Avi Mahaningtyas





Dialogue Sponsors

- Kemitraan
- Forests People Program (FPP)
- Scale Up
- Climate and Land Use Alliance

Local Support

- Kemitraan
- Scale Up
- FPP





Founding

- 1999
- Civil Society and Private Sector Leaders

Purpose

Core Values

Mission

Structure

- Steering Committee
- Secretariat

TFD's Purpose, Values and Mission

Purpose

- TFD was created to support sustainable forest management, conserve global forests and improve local livelihoods by giving all people a voice in the use of their forest resources

Core Values

- Forest related conflict harms forests and stakeholders
- Dialogue, engagement, inclusion is a key means for all stakeholders to have a say on what happens in/on/to their forests
- Sustainable Forest Management and conservation
- Trust, shared learning and dialogue build sustainable, collaborative solutions

Mission

- To address significant obstacles to sustainable forest management through a constructive dialogue process among all key stakeholders.
- TFD's approach is based on mutual trust, enhanced understanding and commitment to change.
- TFDs dialogues are designed to build relationships and to spur collaborative action on the highest priority issues facing the world's forests





Founding

- 1999
- Civil Society and Private Sector Leaders

Purpose

Core Values

Mission

Structure

- Steering Committee
- Secretariat



TFD Initiatives

Priority SFM Issues

- Free, Prior, and Informed Consent
- Forests and Climate
- Investing in Locally Controlled Forestry
- Forests & Poverty Reduction and Rural Livelihoods
- Intensively Managed Planted Forests
- Illegal Logging and Forest Governance
- Forests and Biodiversity Conservation
- Forest Certification



How TFD's Initiatives Work



Dialogue Phase

- **Scoping Dialogue**
- Experiential Field Dialogue
- Wrap-Up Workshop

Outputs

- Co-Chairs Summaries
- TFD Reviews
- Commissioned Papers
- Consensus-based recommendations /guides/ suggestions.

Outcomes

- Trust among leaders
- Next Phase of Engagement
- Meetings with decision makers
- Coalitions
- Impact on policy





Participants Pact

TFD operates under the
Chatham House Rule

"Participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed".





Participants Pact

Spirit of Participation

- Active Listening
- Constructive, solution oriented Interventions
- Participate as individual
- Help define and own the outcomes



Initiative Objectives

- Share understanding of the basis for FPIC among varied stakeholders including indigenous peoples, forestry companies, development agencies and relevant government bodies;
- Examine and learn lessons from concrete situations where consent-based approaches have been, or are being, used;
- Make mutually agreeable recommendations for how application of FPIC approach can benefit affected parties.



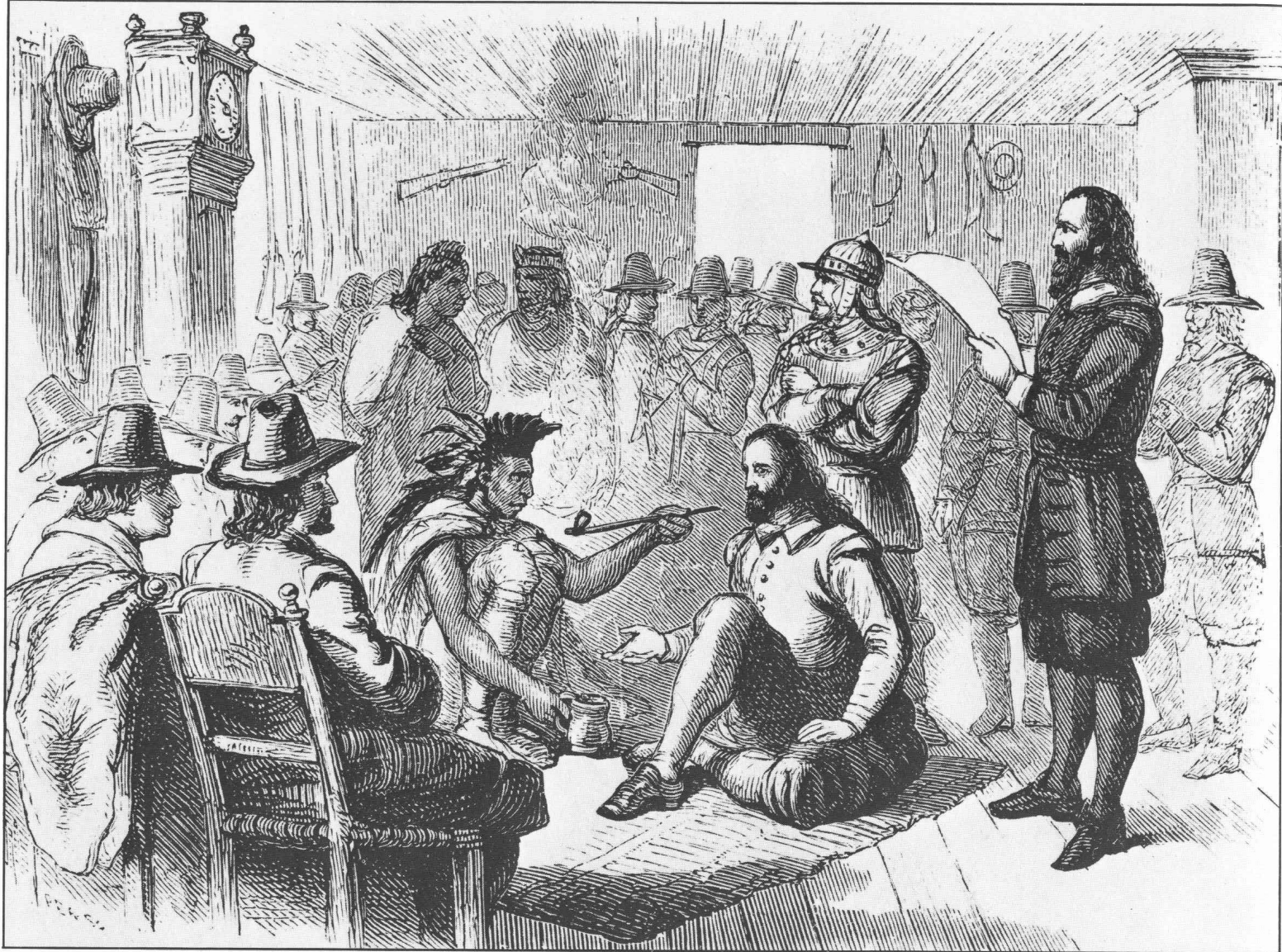
Free, Prior and Informed Consent: the basics

Summary of Scoping Paper and Scoping Meeting by
Marcus Colchester, Director
Forest Peoples Programme
The Forests Dialogue
Pekanbaru, 14th October 2010

What does FPIC consist of ?

- Right to say ‘yes’ or ‘no’ to proposed developments on peoples’ lands
- **Consent** which is determined in conformity with or with respect for peoples’ cultures, customary systems and practices
- According to people’s own **representative** organisations/ institutions
- Without coercion or duress (**‘Free’**)
- Before the initiation of activities (**‘Prior’**)
- After the complete sharing of available information on the proposed activities and their implications, according to an agreed process and with adequate time (**‘Informed’**)

FPIC: a new concept ?



Why FPIC?

- It's the law
- It's best practice (certification, REDD)
- It's good for communities (they get control)
- It builds trust
- It reduces conflict
- That's good for business: beyond image to actual gains (even respecting 'no' can help you go where you are wanted)

UN Declaration on the Rights of Indigenous Peoples

- **Article 3:** Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- **Article 4:** Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Key rights in the UN Declaration

- Rights to the land, territories and natural resources customarily owned, occupied or otherwise used by them
- Control what happens on their lands
- Represent themselves through their own institutions
- Exercise their customary law
- All of above within framework of State, international human rights and respecting rights of individuals.

Is FPIC a right of 'veto'?

- Does this mean that IPs can reject private sector development plans on their lands. As a general rule: yes.
- Does this mean that IPs can overrule the State?
- Not exactly, the jurisprudence clarifies that in 'exceptional circumstances' and where there are 'compelling reasons', the State may push ahead but should still allow people to express their views through an FPIC approach.
- In such cases, however, the State must then satisfy a number of additional requirements:
 - It must acquire lands and pay due reparations through due process previously established by law
 - Show that the intervention is 'necessary'
 - Show that the cost (to the people) is 'proportional' to the benefit being sought
 - Must be 'with the aim of achieving a legitimate objective in a democratic society'
 - Should not 'endanger their very survival as a people'
- Simply invoking the national interest is not enough.

Conflict: costly for companies



Repression: costly for people

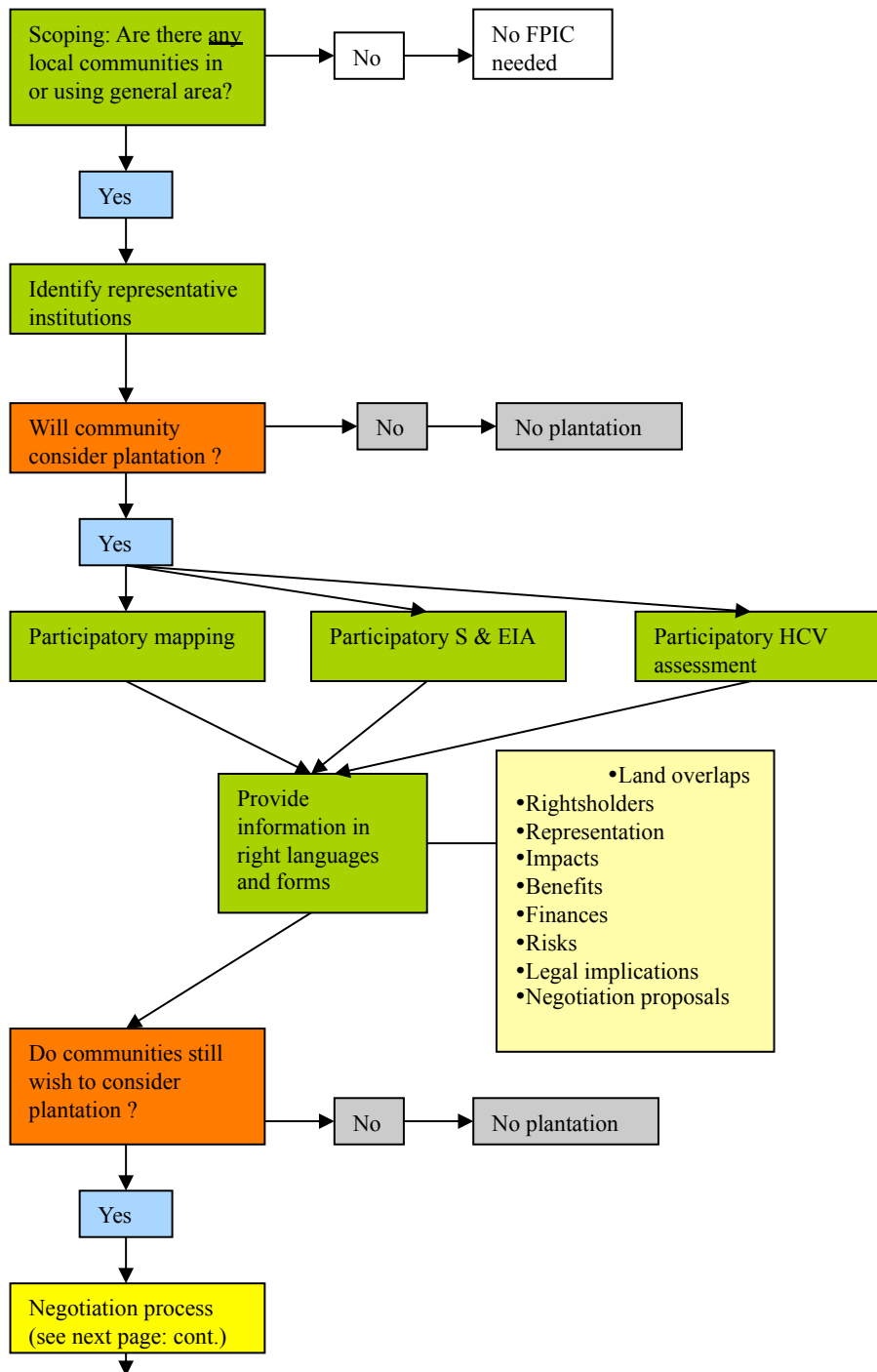


Key challenges and best practice

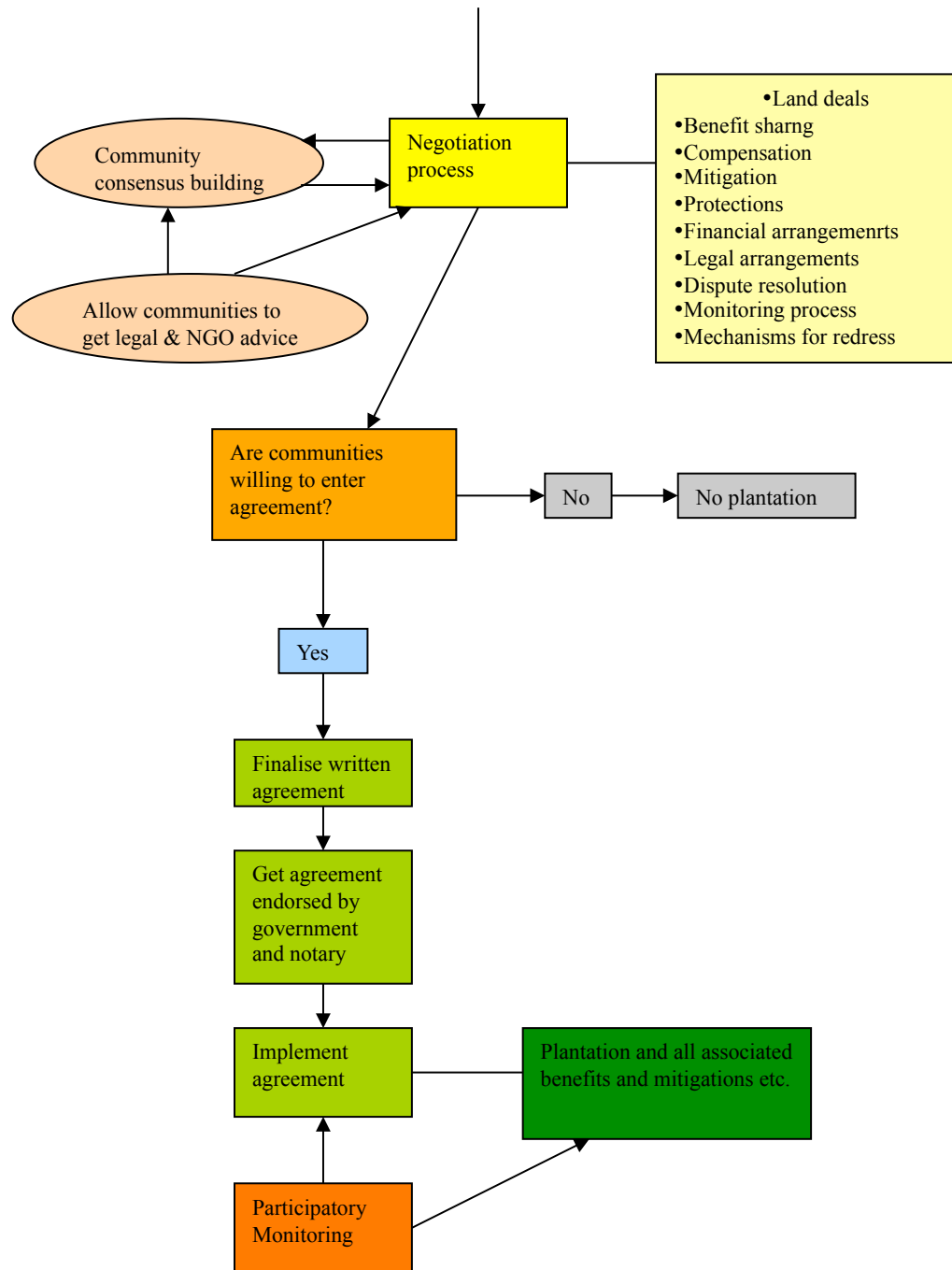
- FPIC over what
- Who represents
- How achieve consensus
- What process to reach it
- How ensure viable result
- What is 'consent'
- How make it binding and effective
- Participatory mapping
- Self chosen representatives
- Inclusive processes
- Accommodate custom
- Build relationship not just signed document
- Not a 'one-off' but a process of iterative engagement
- Legalise and get government to endorse build in participatory M&E

Other challenges

- Capacity building
- Providing independent counsel but local control
- Need for recourse mechanisms
- Unclear role of the State: State is most needed exactly where it has proven most deficient, but you don't want to impose a deficient State
- Clear guidance but avoid prescription



Iterative processes



Today's Program

Wednesday 13 Oct

8:00 Opening and Welcome Address

TFD and FPIC

– Gary Dunning and Marcus Colchester

FPIC in the current international context

– Kriten Hite

Background Paper

– Patrick Anderson

10:00 Stakeholder Perspectives

12:00 Lunch

13:00 Co-Chairs' key conclusions of day 1 and 2

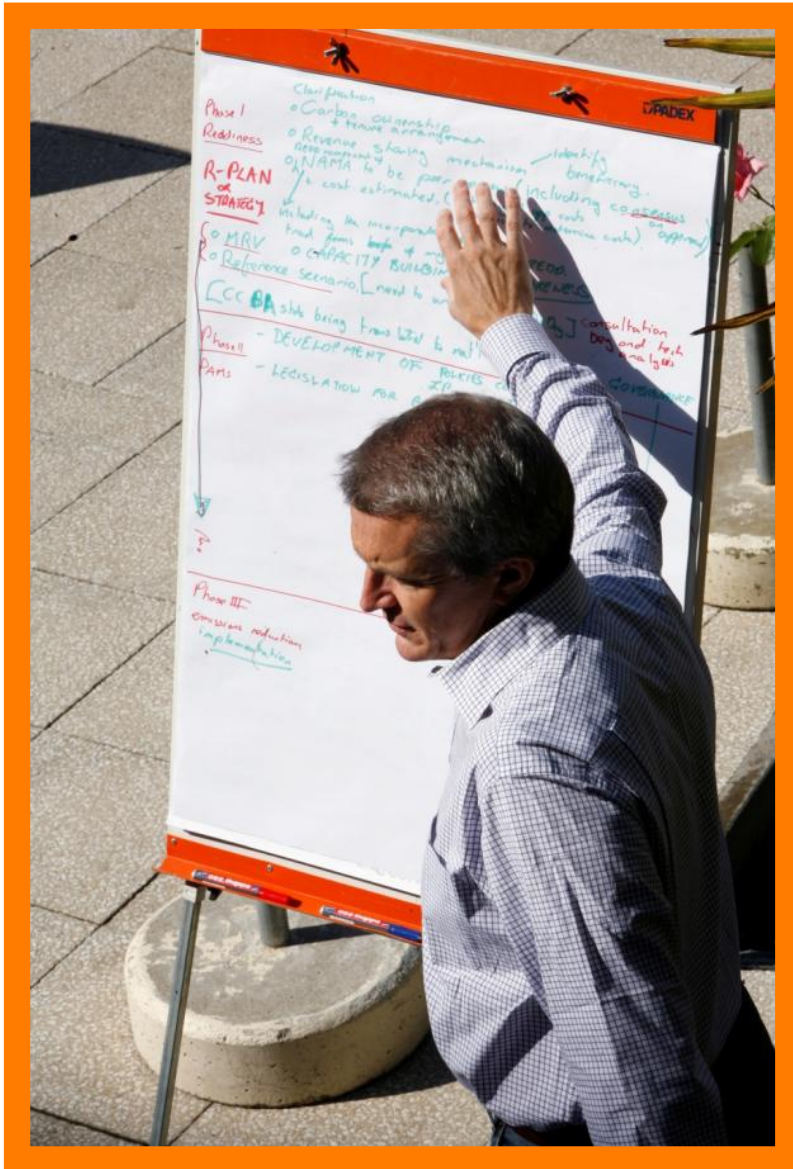
13:30 Breakout group session 1: Potential prerequisites for a successful FPIC process

15:30 Break

15:45 Breakout group reports and plenary discussion

17:00 Adjourn for the day

19:00 Reception with the Governor of Riau, followed by a group dinner





Thank You!

TFD Documents and Publications

Available electronically in English (y español) at:
www.theforestsdialogue.org

The Forests Dialogue Secretariat
Yale University
New Haven, CT, USA

+1 203 432 5966

info@theforestsdialogue.org
www.theforestsdialogue.org

