

# FPIC in the current international context

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**The Center for International  
Environmental Law**

# Overview

A. Legal basis

B. International application to  
REDD

C. Operationalizing FPIC

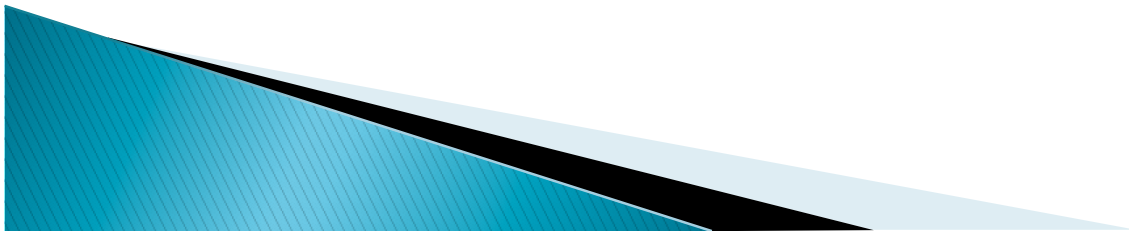
# Legal Basis

- ▶ Rights-based
- ▶ International Instruments
- ▶ Underlying obligations

# FPIC is rights-based

- ▶ Self-determination
- ▶ Lands, territories and natural resources
- ▶ Culture
- ▶ Freedom from racial discrimination
- ▶ Life and livelihoods.

No universal definition



# Elements of FPIC

- *Free should imply no coercion, intimidation or manipulation;*
- *Prior should imply consent has been sought sufficiently in advance of any authorization or commencement of activities and respect time requirements of indigenous consultation/consensus processes;*
- *Informed – should imply that information is provided that covers (at least) the following aspects:*
  - a. The nature, size, pace, reversibility and scope of any proposed project or activity;
  - b. The reason/s or purpose of the project and/or activity;
  - c. The duration of the above;
  - d. The locality of areas that will be affected;
  - e. A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit sharing in a context that respects the precautionary principle;
  - f. Personnel likely to be involved in the execution of the proposed project (including Indigenous Peoples, private sector staff, research institutions, government employees and others) »
  - g. Procedures that the project may entail.

# Elements of FPIC

## *Consent*

Consultation and participation are crucial components of a consent process. Consultation should be undertaken in good faith. The parties should establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect in good faith, and full and equitable participation.

Consultation requires time and an effective system for communicating among interest holders. Indigenous Peoples should be able to participate through their own freely chosen representatives and customary or other institutions. The inclusion of a gender perspective and the participation of indigenous women is essential, as well as participation of children and youth as appropriate. This process may include the option of withholding consent. Consent to any agreement should be interpreted as Indigenous Peoples have reasonably understood it.

# Rights-based approach: key instruments related to FPIC

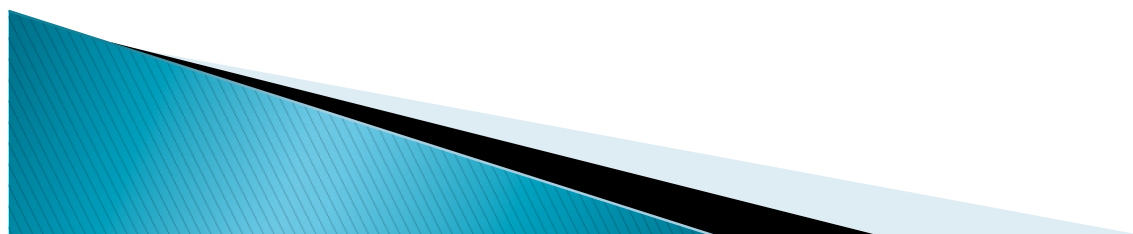
- ▶ United Nations Declaration on the Rights of Indigenous Peoples
- ▶ Universal Declaration on Human Rights
- ▶ International Covenant on Economic, Social and Cultural Rights
- ▶ International Covenant on Civil and Political Rights
- ▶ International Convention on the Elimination of All Forms of Racial Discrimination
- ▶ ILO Convention 169
- ▶ Convention on the Protection and Promotion of the Diversity of Cultural Expressions
- ▶ Convention on Biological Diversity





# Selected international instruments relevant to FPIC

Country	Univ. Decl. on Human Rights <sup>1</sup>	Intl. Covenant on Econ., Social & Cultural Rights	Intl. Covenant on Civil & Political Rights	Int. Conv. on the Elim. of Racial Discr.	Conv. on Biological Diversity	ILO Conv. 169	UN Decl on the Rights of Indigenous Peoples	World Cultural & Natural Heritage Conv.	Conv. on Safeguard. of Intangible Cultural Heritage	Conv. on Prot. & Prom. of Cultural Diversity	Conv. on the Rights of the Child	Conv. on the Elim. Discr. Against Women
<b>Cambodia</b>	Applies	Party	Party	Party	Party	X	Voted in Favor	Party	Party	Party	Party	Party
<b>Democratic Republic of the Congo</b>	Applies	Party	Party	Party	Party	X	Voted in Favor	Party	X	X	Party	Party
<b>Indonesia</b>	Applies	Party	Party	Party	Party	X	Voted in Favor	Party	Party	X	Party	Party
<b>Nepal</b>	Applies	Party	Party	Party	Party	Party	Voted in Favor	Party	X	X	Party	Party
<b>Papua New Guinea</b>	Applies	Party	Party	Party	Party	X	Not Present	Party	Party	X	Party	Party
<b>Paraguay</b>	Applies (Voted in favor)	Party	Party	Party	Party	Party	Voted in Favor	Party	Party	Party	Party	Party
<b>Tanzania</b>	Applies	Party	Party	Party	Party	X	Voted in Favor	Party	X	X	Party	Party
<b>Vietnam</b>	Applies	Party	Party	Party	Party	X	Voted in Favor	Party	Party	Party	Party	Party
<b>Zambia</b>	Applies	Party	Party	Party	Party	X	Voted in Favor	Party	Party	X	Party	Party





# Select obligations relevant to REDD and FPIC

Right	Univ. Decl. on Human Rights	Int. Cov. on Econ., Soc. & Cult. Rights	Int. Cov. On Civ. & Pol. Rights	Int. Conv. on the Elim. of Racial Discr.	Conv. On Biological Diversity	ILO Conv. 169	UN Decl on the Rights of Indig. Peoples	Conv. On the Safeguard. of Int. Cult. Heritage	Univ. Decl. on Cult. Diversity	Conv. On the Prot. And Prom. Of Cult. Diversity	Conv. On the Rights of the Child	Conv. on the Elim. Discr. Against Women
<b>Decision-Making, Consent, Access to Information, Participation</b>	Art. 21.1, 21.2, 21.3	Art. 13.1	Art. 14.1, 25(a)-(c )	Art. 5(c)	Art. 10 (c)-(d)	Art. 6.1(a)-(b), 7.1, 7.3, 12, 15.1, 16.2, 17.2, 33.1, 33.2 (a)-(d)	Art. 5, 10, 11.2, 18, 19, 23, 28.1, 32.2	Art. 15	Art. 6, 12	Art. 9(a)-(c ), 11	Art. 12.1	Art. 14.2 (a), 14.2(f)
<b>Property, Lands, Territories, and Natural Resources</b>	Art. 12, 13.2, 17.1 17.2		Art. 12.1	Art. 5.1(d)	Art. 8(j), 10(c)-(e)	Art. 13, 14, 15, 16.1-16.5	Art. 2(b), 10, 25, 26.1.1, 26.1.2, 29.1					Art. 14.2, 15.2-15.4
<b>Self-Determination</b>	Art. 3, 33.1	Art. 1.1, 1.3	Art. 1.1			Art. 7.1	Art. 3					
<b>Non-Discrimination</b>	Art. 1, 2, 7	Art. 2.2, 26, 27	Art. 2.1	Art. 1.1, 2.1, 2.1(c )		Art. 3.1	Art. 2		Art. 4	Art. 2.3		
<b>Culture</b>	Art. 27.1	Art. 15.1(a)			Art. 10(c)	Art. 5	Art. 11.1, 15.1, 34	Art. 11(a), 12, 13(a), 13(b), 13 (d)(iii)	Art. 3, 5, 7, 9, 11, 12(a)	Art. 1, 2.2, 5.2, 8.2	Art. 29.1 (c)-(d)	
<b>Life, Livelihood/ Adequate Standard of Living and Health</b>	Art. 3, 25.1	Art. 1.2, 11.1, 11.2 a-b, 12.1, 12.2 a-d	Art. 1.2, 6.1	Art. 5.1(e)	Art. 8(j)	Art. 7.2, 25	Art. 7, 21.1, 24.2				Art. 6.1, 6.1, 24.1, 27.1	Art. 14.2 (h)
<b>Religion ,Sacred Sites</b>	Art. 18		Art. 18.1, 18.3, 27	Art. 5.1(d)		Art. 5(a)	Art. 12.1, 12.2				Art. 14.1	
<b>Right to Work</b>		Art. 6.1, 7 (a)-(d)		Art. 5.1(e)		Art. 5.1(a)-(c )	Art. 20.1, 20.2					Art. 14.2 (e)
<b>Healthy Environment &amp; Sust. Development</b>					Art. 6(a)-(b), 8(e), 8 (j), 10	Art. 7.2, 7.4, 30.1	Art. 29.2			Art. 2.5, 2.6, 13	Art. 29.1 (e)	Art. 14.2 (a)
<b>Access to Remedies</b>	Art. 8		Art. 2.3	Art. 6			Art. 11.2					
<b>Access to Justice</b>	Art. 6, 7		Art. 16	Art. 5.1(a)			Art. 11.2, 32.3, 40				Art. 12.2	

# UNDRIP and FPIC

- ▶ **Article 10:** no relocation without FPIC
- ▶ **Article 11** requires jointly agreed (State–indigenous peoples) procedures for restitution for property taken without FPIC
- ▶ **Article 19** requires consultation and cooperation in good faith through indigenous representative institutions in order to obtain FPIC **before adopting and implementing legislative or administrative measures that may affect them;**
- ▶ **Article 28** affirms the right to redress for lands “confiscated, taken, occupied, used or damaged” without FPIC
- ▶ **Article 32:** duty to consult and cooperate **prior to the approval of any project affecting indigenous lands or territories and other resources.**



# FPIC in international courts

## ▶ Americas: Saramaka

- ▶ State awarded concessions on tribal land
- ▶ Consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement.
- ▶ Must both accept and disseminate information, constant communication between the parties.

## ▶ Africa: Endorois

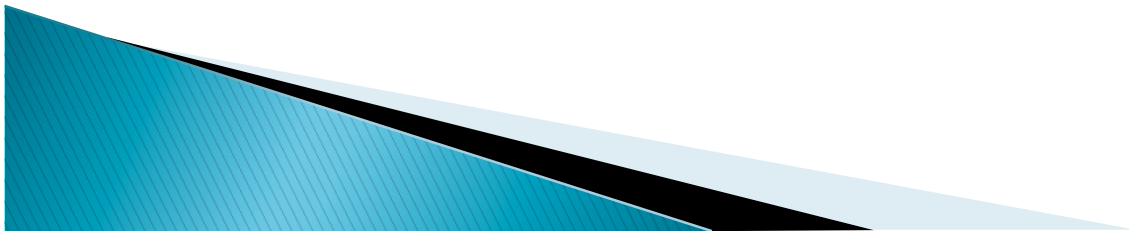
- ▶ State designated indigenous land as a game reserve
- ▶ Applied UNDRIP and FPIC
- ▶ Affirmed right to culture
- ▶ FPIC requires full and accurate information on the nature and consequences of the process
- ▶ “Informed” includes notification of adverse consequences, including no right to return

# International Application in the forest context: REDD

» UN Agencies/UN-REDD  
Beyond the UN system

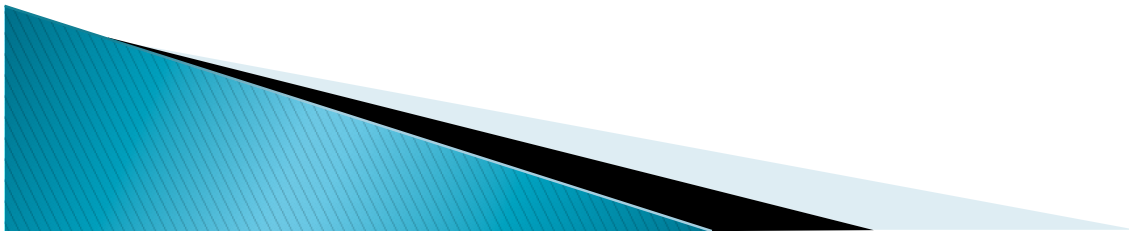
# UN System: application of FPIC

- ▶ Secretary General: mandate to apply rights-based approach
- ▶ UNDRIP: article 42
- ▶ UNDG Guidelines: Applies FPIC to decisions taken involving indigenous peoples' lifestyles, traditional lands and territories, cultural integrity.



# Implementation of FPIC

- ▶ UN-REDD: requires FPIC
- ▶ Voluntary standards: CCBA
- ▶ World Bank/IFC: consultation versus consent
- ▶ UNFCCC: draft REDD language



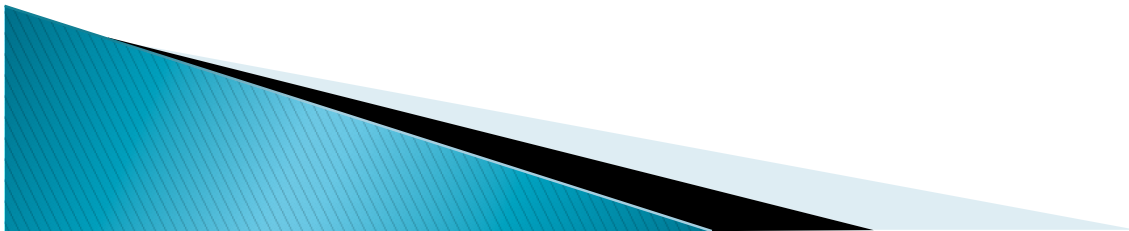
# Operationalizing FPIC

» UNREDD: experiences  
and reflections



# UN-REDD Operational Guidance

- ▶ Applies FPIC and rights-based approach.
- ▶ Applies UNDRIP
- ▶ Applies UNDG guidelines



# UNDG guidelines: example of application to UNREDD

Example of UNGD guidelines interpreting UNDRIP: The prospecting of natural resources on indigenous land should not be granted if the activity hinders indigenous peoples to continue to use and/or benefit from these areas where FPIC has not been obtained.

No decisions **directly related to rights and interests** taken without **informed consent** in matters related to indigenous peoples' lifestyles, traditional lands and territories, cultural integrity.



# Regional workshops

## ▶ Vietnam

- ▶ Focus on UNDRIP
- ▶ No boilerplate:  
Respect community process
- ▶ Respect right to culture
- ▶ Grievance mechanism necessary to resolve conflicts

## ▶ Panama

- ▶ Focus on collective rights
- ▶ Frustration with systematic rights violations
- ▶ Respect right to self-determination
- ▶ Consultation v consent