

The Forests Dialogue
Free, Prior, and Informed Consent
New Haven, CT April 13-14 2010

Break-out Group 1

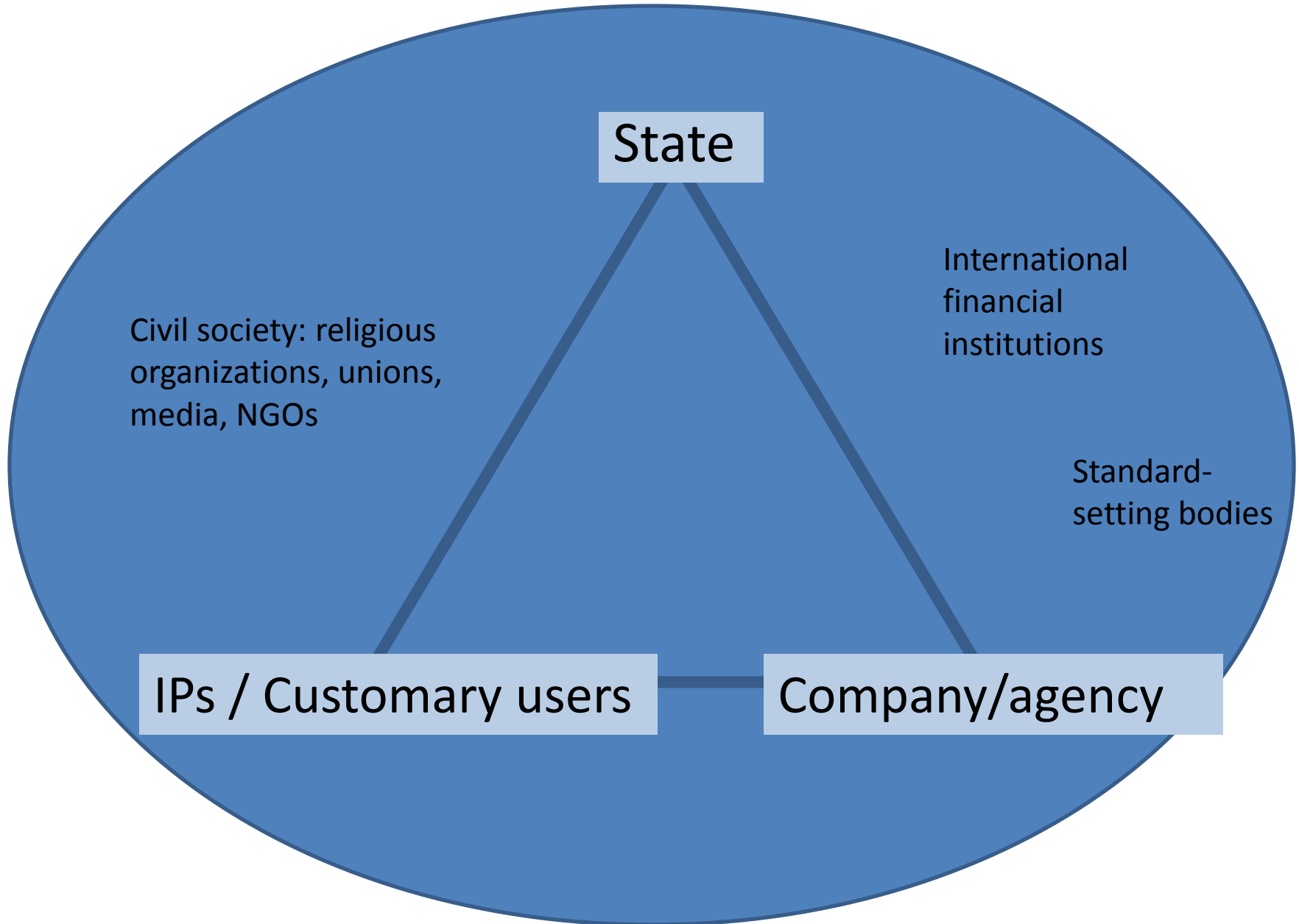
1. Who needs to play what role in FPIC?
2. FPIC over what?
3. How to give FPIC strength?

Working Group #1

Who needs to play what role?

- 3 main parties (in situations involving non-State actors):
 - Government
 - Indigenous peoples/local communities
 - Forest company (or other non-State actor)
- Each has roles:
 - State: set FPIC standard (framework developed with IPOs, others)
 - IP/LC: represent/decide effectively & inclusively
 - FC, others: capacity to support/implement process
 - Terms of any “delegation” of State’s obligation to secure FPIC must be well-defined/agreed

Who can guarantee FPIC?



“Spirit of FPIC”

- Process to develop mutually-beneficial **agreements** and **partnerships** – respecting rights and addressing power imbalances
- Not entirely “win-win” – but for an agreement to result each must feel they get more than they lose

FPIC over what?

(In what contexts most important?)

- Most closely related to customary land rights, implemented where lands/territories/resources may be affected
- By whose definition? (where communities have land claims that have not been settled)
- What about broader contexts?
 - Upstream-downstream
 - Policy levels
- In some of these contexts the relevant standard may be full/effective participation (on par with others)

FPIC over what?

- Changes over time
 - Standards are changing – FPIC
 - Situation in landscapes is changing – demographic change, in-migration
- Agreements made today may need to adapt to changing circumstances
- FPIC requirements can help secure situation of IP/LC in relation to in-migration, other pressures over time

What will give FPIC strength?

- If it provides assurances/gives confidence to parties that main concerns will be met, results in mutual benefits
- Effective community-level processes, including women
- Land tenure/resource rights
- Mapping
- Capacity-building, communication, info-sharing
- Codification/guidelines/clear standards
- Regulation and recourse mechanisms
- Inclusion in standards/certification schemes
- Inclusion in social impact assessments

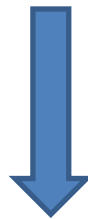
Working Group 2

Scope of FPIC

- Who has right to FPIC?
- Rights should be the same as any property owner.
- Who needs to be informed vs who consents!

Indigenous Peoples  Local Communities

Collective Rights and Consent



Individual (or sub-group) Consent – e.g. Women

Who needs to play what role in FPIC I

- Major actors
 - Govts – Central – Provincial – Local
 - Government agencies (law enforcement / judiciary/ forest dept/ extension)
 - Ips (customary leaders)
 - Local Communities / workers / other land owners (customary leaders)
 - CBOs such as FUGs etc
 - Multilaterals
 - Investment Orgs (carbon cowboys)
 - NGOS – (esp ENGOs)
 - Higher level federations
 - Academia
 - Foundations
 - Women
 - Politicians
 - Religious leaders
 - Media

Who needs to play what role in FPIC II

- Simplify to
 - Local communities – rights holders
 - Govt
 - NGOs / Civil Society
 - Private Sector
 - Others

FPIC over what?

A typology of different situations?

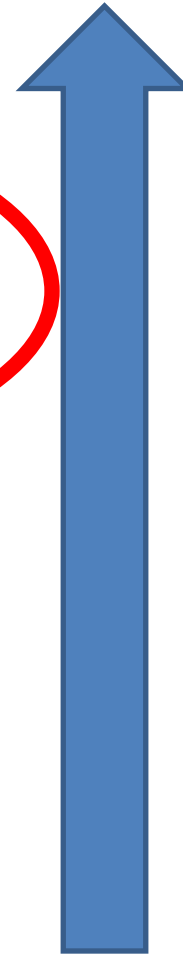
- No FPIC blue-print - cannot be reduced to box ticking
- A typology would help to define clear rules of the game and firm outcomes for FPIC under certain situations
- It might also help clarify roles and responsibilities in FPIC processes (in any event this is key!)
- Elements required to define a typology
 - Rights – substantive
 - Right – procedures
 - Rule of law
 - Capacity
 - Level of social organisation

FPIC over what?

- Policy / Law / Institutions

Note UN-REDD asked to deal at this level of because Govt not respecting affected people – eg Indonesia / Panama

- National planning
- Activities / Projects
- Land and Territories
- Natural Resources & Trees
- Livelihoods



Practical difficulty increases

FPIC over what?

- How does the consent provision actually work at national policy level (and how to avoid limiting the privilege of engagement to certain groups)
- Eg – in Costa Rica – roundtable established which would serve as FPIC mechanism for PA.s

How to give FPIC strength?

- PRINCIPLES AND CAPACITY
 - Recognise that there is an issue that needs addressing
 - Invest in building trust and confidence
 - Commitment to respect, engagement and willingness to work with community nominated representatives
 - Acceptance of FPIC principles and customary rights
 - Capacity of Govt – potentially a key factor but are we right to assume that old habits can change???
 - Capacity building of the companies
 - Skills of negotiation of communities

How to give FPIC strength

- **BROADER MACRO CONDITIONS**
 - Building on idea that FPIC is not a blue-print - ensure that the right entry point is identified based on the specific context and the issues / challenges to be addressed
 - OR – start where it is less problematic (is this feasible?)
 - The entity that should be interested in investing in FPIC is the government as it might help clarify the situation.

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Break-out Group 3

1. Who needs to play what role in FPIC?
2. FPIC over what?
3. How to give FPIC strength?

Working Group 3

1. Who needs to play what role in FPIC?

Who has the right to FPIC – Indigenous Peoples plus who?

- ***Moral imperative*** - FPIC came out of the Indigenous Peoples movement but, because it is 'right', it should apply to others too – those who also need to retrieve and secure their land and resource rights
- ***Key notions about who has the right*** – Indigenous Peoples plus others who are 'recognised' as 'resource dependent' and with 'collective identity' on a customary basis (only sometimes do they have 'recognised' rights)
- ***But care needed with definitions:***
 - 'Communities' never easy to define and e.g. some 'IP groups' have only existed since the 1960s
 - Urge to define may mask moral imperative;
 - Hold on to the spirit of FPIC – to provide the platform to manage resources sustainably by addressing wider questions of power

IPs and others with collective identity

- Need to be able to *shape the terms* of the FPIC dialogue
- Recognise that Indigenous Peoples and others are *diverse* (and often internally diverse) – some resist all engagement on investment, resist commoditisation of their environment, others keen to explore economic opportunities and prospects of getting greater security over their resources

Government agencies

- Promotion of principles or *a standard*
- *Appropriate delegation* to investors/companies and Indigenous Peoples/others
- Government *responsibility* not to shift their responsibility on to others! (e.g. schools and other vital social provision)

Investors/companies

- ***Weigh up the risks and benefits*** to an investment
- Install some ***principles***: land must not be put at risk; people before profit
- Companies may ***help engagement*** amongst others e.g. communities and governments
- Identify risks and how to reduce or manage them, particularly ***social risks*** (e.g. certification typically under-explores social issues – not providing adequate safety of indigenous interests compared with environmental and economic issues)
- FPIC is not achieved when you have started addressing social issues – but when you have ***addressed social issues***

'Fourth parties'

- ***Foster mutual understanding***: company may be looking at a business contract, while local groups may be looking for wider opportunity, security etc – may be talking past each other
- ***Good advocates not risk makers***:
 - Lawyers for the different parties
 - Intermediary institutions for e.g. Indigenous Peoples groups to deal with UNREDD
 - Independent sources of information, honest brokers, social entrepreneurs
 - Capacity builders
 - Verifiers
 - Key promoters and discourse shapers of FPIC (e.g. Norwegian Climate and Forest Initiative, UN-REDD has begun exploring FPIC in Vietnam and Indonesia)
 - Funders - need investment safeguards, investment certainty
- ***Costs of fourth parties*** – critical issue for replication

2. Over what is FPIC needed?

FPIC applies:

- ***For every investment or initiative on Indigenous Peoples/others lands*** – likely to be called on particularly where there may be a net resource change

Land and resources over which FPIC applies

- ***‘That for which negotiation is required’*** – ‘the issues’ over which a forest needs negotiation – revealed through interaction (‘bio-cultural encounter’ is one approach)
- ***Self-determination*** may be stimulated by this or may run in parallel
- ***FPIC must not be a substitute for land tenure***, must not divert from it

3. How to give FPIC strength?

Strengthened understanding

- ***Common understanding*** amongst parties is hard won but critical
- ***Recognise very different experience bases***: Philippines – have tried FPIC everywhere, with problems; Africa – starting from little experience; Panama – good basis for FPIC (because has always been there)
- Recognise the many possible parameters of an FPIC process – and ***clarify boundaries early on***, including what constitutes consent – how ‘deep’, and whether one-off agreement or iterative process?
- ***Change or reduce the roles of some*** – e.g. sometimes government needs to pull back (e.g. in REDD), often the corrupt and bad need to be rooted out – map the downsides, the losers and likely resistors, anticipate actions needed to manage them

Critical actions in each FPIC case

- ***Insistence on FPIC*** by Indigenous Peoples, companies, REDD programmes...
- ***Recognise long-existing bases for FPIC*** – e.g. Waitangi treaty in NZ – authority to Maori - never recognised by government.
- ***Key fourth party roles***: independent advice/observation, including legal
- ***Options analysis*** on the land /resources by independents (without this, information usually comes from a single source e.g. investors or conservation organisations – giving usually only one ‘offer’ rather than various options. Typically e.g. Smallholder production options)
- ***Engagement processes that recognise different vulnerabilities*** – some groups will need more support than other groups
- ***Wide understanding*** – amongst those on the frontline, notably workers and local groups
- ***Accountability mechanisms*** – built in from the start, including monitoring and reporting
- ***Recourse mechanisms*** – explored and strengthened
- ***Avoid forcing inappropriate models*** – e.g. Incorporated Land Groups in PNG when local people already have tenure

Internationally

- ***Shared examples***, mapping efforts and networks – developing databases
- ***Links and networks between studies***, theses, sources of insight information (most work so far amongst lawyers – other fields yet to bloom), bring things out of academia
- ***Insistence on FPIC***, including much greater recognition and ratification of UNDRIP and related conventions
- ***Funding for FPIC***
- ***International network building*** and links between networks