

REPORT



Making a world of difference
in small-scale gold mining.

A GEF Initiative

Agreements and Engagement with Rightsholders in Artisanal and Small-scale Gold Mining: Moving from Common Approaches toward Best Practice

November 2023

Supported by



Led by



Table of Contents

EXECUTIVE SUMMARY	4
Chapter 1: Common Approaches to Community Engagement and Agreements	8
Overview.....	9
Agreement with Community Leader(s) or Landowners.....	9
Broad(er) Community Consultation and Benefit.....	10
Ongoing Consultation and Grievance Mechanisms.....	11
Chapter 2: Free, Prior & Informed Consent In Practice	16
STEP 1: Understand the Context	18
Key Insights: Establishing Context	
STEP 2: Initiate Outreach to Request Engagement	19
Key Insights: Initiating Outreach	
STEP 3A: Share Information.....	20
STEP 3B: Address Concerns, Identify Options, Keep Sharing Information.....	21
Key Insights: Sharing Information.....	
STEP 4: Seek Consent & Develop an Agreement.....	23
Key Insights: Seeking Consent.....	
Conclusion.....	24
Annex 1: Existing Requirements	25
1.1 FPIC requirements in mining regulations and legislation	26
1.2 FPIC in existing responsible environmental and social standards of development agencies and financial institutions.....	42
1.3 FPIC in responsible sourcing standards of private sector entities related to the gold industry.....	57
Annex 2: FPIC Implementation Tools.....	61
SUMMARY TABLE: FPIC TOOLS OVERVIEW	77



AUTHORS

- (Main Report) Taylor Kennedy, Director of Organizational Impact and Senior Expert, Sustainable Resources, [RESOLVE, tkennedy@resolve.ngo](mailto:tkennedy@resolve.ngo)
- (Annexes): Julia Keenan, Research Fellow, [The University of Queensland, j.keenan@smi.uq.edu.au](mailto:j.keenan@smi.uq.edu.au)

RESOLVE

For over a decade, RESOLVE's Sustainable Resources program has led interventions to address key barriers in responsible artisanal minerals through catalytic, self-sustaining solutions. These solutions are designed to reflect the needs and values of stakeholders across the value chain, and to safeguard human rights within supply chains and in the communities where minerals are developed. In 2012, RESOLVE founded the FPIC Solutions Dialogue, a multi-sector initiative to develop practical guidance to successful implementation of FPIC in community processes at extractive sector projects (see [The Practice of FPIC: Insights from The FPIC Solutions Dialogue](#), 2021). RESOLVE also has particular experience with the artisanal minerals sector, facilitating development and demonstration of solutions to acute risks in supply chains, reducing barriers to market entry, and supporting market awareness of responsible sourcing through (co)-leadership roles in collaborative efforts like the [Public-Private Alliance for Responsible Minerals Trade](#), [Scalable Trade in Artisanal Gold](#), [Responsible Artisanal Gold Solutions Forum](#), the development of the [CRAFT code](#), and early demonstration projects like [Solutions for Hope](#).



The Centre for Social Responsibility in Mining (CSRSM). CSRSM is part of the Sustainable Minerals Institute (SMI), at the University of Queensland (UQ), in Australia. CSRSM is the largest social research center in the world dedicated to building knowledge about the challenges and changes brought about by resource extraction and natural resource development. With an extensive track record of investigating the social, cultural, economic, and political challenges that occur when change is brought about by mineral resource extraction and use, CSRSM contributes to change through independent research, teaching, mentoring, and by convening in multi-stakeholder dialogue processes. CSRSM works to understand the range of issues facing communities and rights holders, including Indigenous Peoples, in mining contexts. CSRSM focuses on issues relating to agreement negotiation and governance, cultural heritage protection, resettlement and livelihood restoration, participatory environmental monitoring, gender and development, and inclusive engagement.

ACKNOWLEDGMENTS

The authors are grateful to Susan Keane and Mona Avalos at NRDC for their vision and guidance throughout this process. We also sincerely thank our interviewees and colleagues at Alliance for Responsible Mining, IMPACT, Pact, planetGOLD Philippines, and Solidaridad for generously sharing their time and experience to inform the findings and recommendations in this report. Finally, we are appreciative for the comments and suggestions from the planetGOLD country project staff and the Secretariat of the Minamata Convention on Mercury which have improved the report.

EXECUTIVE SUMMARY

Access to finance and formal markets is imperative to the improvement of artisanal and small-scale gold production. In order to gain the attention of formal markets and investors, mining entities need to provide verification that their produced gold meets relevant environmental and social standards. The [planetGOLD Criteria for Environmentally and Socially Responsible Operations](#) were designed to support and encourage planetGOLD programme participants to meet these responsible sourcing requirements as well as the environmental and social safeguards required of projects funded by the Global Environment Facility (GEF).

Recognized as a branched version of the Code of Risk-mitigation for ASM Engaging in Formal Trade (CRAFT), the planetGOLD Criteria are composed of three additional requirements: (1) Eliminating mercury in the mining process; (2) Respecting and protecting the rights of Indigenous Peoples; and (3) Minimizing impact on biodiversity.

This report provides guidance for planetGOLD artisanal and small-scale gold mining (ASGM) entities to conform with that of the second criterion listed. This criterion requires ASGM entities to consult with and seek free, prior, and informed consent (FPIC) from any Indigenous or tribal community whose rights or lands may be impacted. The planetGOLD programme acknowledges the right of Indigenous and tribal communities to withhold consent and where situations may not involve Indigenous Peoples, the programme stresses the practice of inclusion with ongoing community consultation and agreement-making.

This document is composed of two chapters, a conclusion, and two annexes:

Chapter 1: Common Approaches to Community Engagement and Agreements, characterizes common ASM practices relating to engagement with communities (regardless of whether they are Indigenous or non-Indigenous). These common practices range from less frequent engagements such as: agreements with community leaders and broader consultations, to a continuous relationship with ongoing engagement and grievance mechanisms. A true FPIC process will incorporate elements from each of these approaches, beginning with initial engagement with community leaders to initiate a broader consultation process, and establishing ongoing mechanisms for understanding and resolving concerns, even after formal consent is given.

Chapter 2: Free, Prior & Informed Consent in Practice, provides a brief introduction on Free, Prior and Informed Consent and ASM and recommends steps to follow through key stages of FPIC in artisanal and small-scale environments experiences: (1) understand the context; (2) initiate outreach to request engagement; (3) share information and address concerns, identify options, continue sharing information; and (4) seek consent and

develop an agreement. The two planetGOLD Guyana case studies provided in Chapter 1 offer insights that inform the recommendations mentioned here.

The Conclusion offers three important reasons to integrate a commitment to secure FPIC from Indigenous communities: (1) it is the right thing to do, (2) it will be a growing expectation and requirement, and (3) it can yield benefits to the miners and their communities.

Annex 1: Existing Requirements reviews existing FPIC-related law and policy in a variety of contexts to assess current or possible applicability to ASM. Sections within this Annex include: (1.1) FPIC requirements in mining regulations and legislation; (1.2) FPIC in existing responsible environmental and social standards of development agencies and financial institutions (this section also provides definitions of *Indigenous* as defined by certain organizations), and (1.3) FPIC in responsible sourcing standards of private sector entities related to the gold industry.

Annex 2: FPIC Implementation Tools presents certain guidance documents created by several organizations on how to approach implementation of FPIC/C at the project level. The table at the conclusion of Annex 2 provides an overview of these tools and offers additional available guidance tools.

Objectives and Methods

This report offers recommendations and resources to inform efforts by artisanal and small-scale miners (and organizations working with them) to engage with Indigenous Peoples¹ and to secure consent for ASM and related activities. This report also offers a broader analysis of the spectrum of stakeholder engagement, consultation, and consent, with the hope that this wider view will help to shed light on opportunities for progressive improvement in this space.

To arrive at the included recommendations, research was conducted to illustrate the current landscape of policy and practice in this sphere, including:

- Analyzing existing relevant legal and policy framework requirements in international policy and in countries of relevance to the planetGOLD programme;
- Understanding requirements and shifting perspectives relating to FPIC by industry, development agencies, and financial institutions;
- Reviewing existing tools from a variety of sectors to identify those which might be valuable to ASM or supporting organizations in implementing FPIC; and
- Scanning current practices of ASM in engaging Indigenous communities and other rightsholders and stakeholders, to identify case studies.

¹ Please refer to Annex 1: Section 1.2 for a list of definitions of *Indigenous* as provided by a variety of agencies.

The analysis began with desk-based review of relevant reports, journals, databases, legal repositories, grey literature, policies, and standards. Published commentary by a range of Indigenous representative bodies was also reviewed. As FPIC legislation that explicitly speaks to ASM obligations is limited, the research took a broad approach, seeking to understand how FPIC policies and tools for large scale mining or other sectors may apply to ASM.

To gain further understanding of the current landscape relating to ASM and FPIC, the researchers interviewed representatives and reviewed presentations from a number of organizations that support artisanal and small-scale miners to improve due diligence, health and safety, as well as social and environmental performance.² The research identified only two case studies of FPIC applied in ASM environments (as described in Chapter 1 below); here, too, a broader approach was taken to identify the spectrum of current practices by ASM to engage with affected communities, including Indigenous rights holders.

Finally, the authors also considered experience and insights from over a decade of work engaging with large-scale mining companies to improve the implementation of free, prior, and informed consent with Indigenous communities.

Structure

Chapter 1 of this document characterizes common ASM practices for community engagement, that are relevant to FPIC. While we found only a few examples of the application of the full FPIC process by ASM entities, it is very common for miners to seek some kind of agreement with local communities (regardless of whether they are Indigenous or non-Indigenous). These approaches fall across a spectrum, from transactional agreements with a single community representative or landowner, to broader community engagement and ongoing dialogue through grievance mechanisms, to formal processes seeking FPIC.

Chapter 2 recommends best practices and provides guidance for implementing free, prior, and informed consent processes in the ASM setting. These recommendations are pulled from the research results (detailed in Annex 1), as well as from an understanding of growing expectations for improved community engagement practices in artisanal and small-scale environments. This guidance is illustrated using a case study from Guyana, in a project led by the Alliance for Responsible Mining (ARM).

² Interviews included individuals from the Alliance for Responsible Mining, IMPACT, Pact, and Solidaridad working in a variety of geographies. A public presentation by the planetGOLD Philippines which presented a case study on community consent was also reviewed.

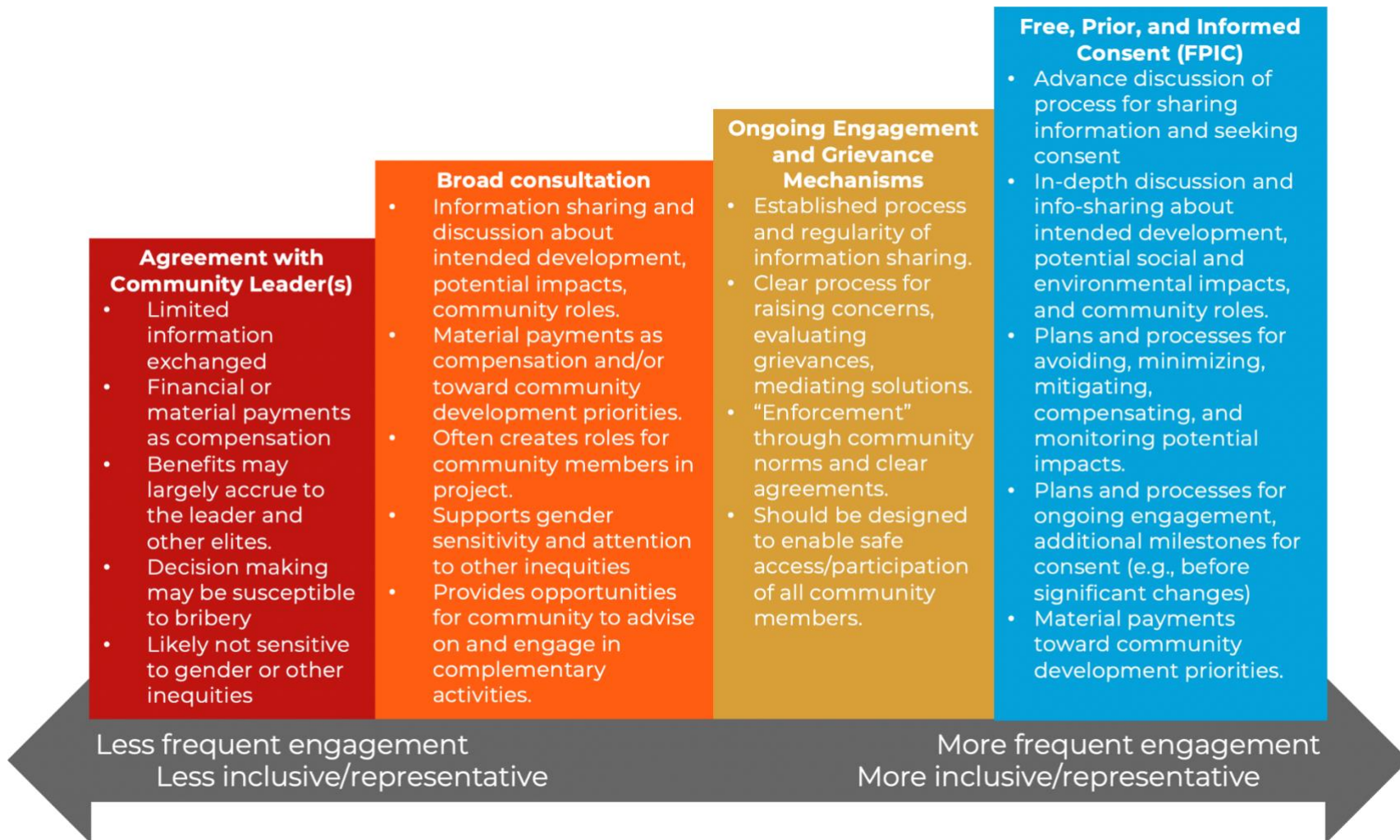
Annex 1 summarizes the research on existing FPIC-related policy in three parts:

- 1.1 provides a review and summary of existing FPIC legislation in nine countries where planetGOLD operates under phase 1 of the programme: Burkina Faso, Colombia, Ecuador, Guyana, Indonesia, Kenya, Mongolia, Peru, and Philippines. This review of national-level law and policy revealed a complex and evolving state-of-play with respect to recognition of Indigenous Peoples' rights, their right to FPIC on their territories, and the management of ASM. Although ASM is conducted on the lands of Indigenous Peoples in many countries, this is not often clearly formalized in legislative frameworks.
- 1.2 summarizes requirements relating to FPIC in policies and standards of ten development agencies and financial institutions, chosen for their engagement with activities impacting Indigenous Peoples. Analysis in this section includes distinctions between requirements of *consultation* vs. *consent (FPIC/C)*; which policy instruments (e.g., UNDRIP, ILO 169, etc.) are cited; triggers for FPIC requirements; whether the right to withhold consent is considered; and how 'Indigenous' is defined.
- 1.3 explores FPIC requirements in responsible sourcing standards for the gold industry, including industry associations (e.g., World Gold Council; London Bullion Market Association); corporations; voluntary certification initiatives (e.g., IRMA, Fairmined, etc.); and civil society and miner cooperatives (e.g., Mosi-oa-Tunya Declaration). Although the topics of ASM and FPIC were both discussed by most organizations, sometimes in detail, FPIC was not applied in the context of ASM in these standards.

Alongside FPIC/C's development in law and policy, several organizations have considered how to approach implementing FPIC/C at the project level. Annex 1 presents brief summaries of some of the tools and guidance documents that have been developed in the last decade for this purpose. Each guidance is tailored for different sectors and audiences, but together can provide useful insights for how FPIC/C might be approached in ASM. The reader can also find a summary table of the FPIC guide overview in Annex 2.

Chapter 1: Common Approaches to Community Engagement and Agreements

Figure 1. Typology of Common Approaches to Stakeholder Engagement and Agreement-Making in ASGM.



Overview

This chapter offers an analysis of the spectrum of stakeholder engagement, consultation, and consent, with the hope that this wider view will help to shed light on opportunities for progressive improvement in this space. As mentioned above, it is very common for miners to seek some kind of agreement with local communities (regardless of whether they are Indigenous or non-Indigenous). These approaches fall across a spectrum, from transactional agreements with a single community representative or landowner, to broader community engagement and ongoing dialogue through grievance mechanisms, to formal processes seeking FPIC. Key elements of each approach are presented in Figure 1, above, and described in more detail in the narrative below.

In the interest of more clearly illustrating the full concept of FPIC, the discussion below offers notes on how each of the first three approaches differs from full FPIC. While none of these approaches are a substitute for FPIC, a true FPIC process will incorporate elements from each of these approaches, beginning with initial engagement with community leaders to initiate a broader consultation process, and establishing ongoing mechanisms for understanding and resolving concerns, even after formal consent is given.

Agreement with Community Leader(s) or Landowners

In many of the cases shared by interviewees, stakeholder engagement by ASM is usually reactive rather than proactive and is typically limited to a one-time compensation agreement negotiated with a village chief or landowner.³ For instance, in Ghana, to operate legally, ASM operations must secure a mining license in order to have mineral rights. This is received after publishing an announcement of where the mining license would be awarded, to ensure that those with surface rights are aware. However, surface rights still belong to the landowner, which may be a traditional authority. While mineral rights supersede surface rights, nonetheless, to operate legally, the owner of mineral rights are required to reach an agreement with the landowner to purchase or lease the land. If a third party possesses or is currently leasing the surface rights, miners must additionally reach an agreement to compensate them (e.g., compensating a cocoa farmer for the loss of any trees planted on the area to be mined.)

FPIC Notes: While this approach results in some compensation for the land owner and surface rights owner, the priority of minerals rights over surface rights does not give traditional owners or users a meaningful ability to say ‘no.’ This approach also fails to understand, avoid, and mitigate impacts to human rights that may be recognized in

³ In some cases, the traditional authority may negotiate an agreement for ongoing payments based on volume or percentage of minerals produced.

international law which do not appear in local law (e.g., rights relating to cultural, economic, and social development, including Indigenous rights). Finally, negotiations with a single person or small group are – at best – unlikely to maximize benefit to all community members and – at worst – likely to accrue benefit only to a few at the expense of impact to community members with less power. Women and Indigenous peoples in particular are commonly under-represented in positions of authority, leadership, and governance.

Displacement tends to be permanent.

According to practitioners working in the Democratic Republic of the Congo (DRC), Ghana, and Tanzania, surface rights holders in these countries often perceive that they have very little ability to say ‘no’, as minerals rights are given priority over surface rights. In Ghana, if a cocoa farmer does not agree to compensation offered by a miner, the traditional chief may be asked to mediate. They may use a national benchmark or rates determined by Large Scale Mining companies as a benchmark to determine the rate to be paid per cocoa tree that will be removed.

Further, even though minerals licenses are issued only for a period of time and sometimes include environmental performance conditions, reclamation requirements are rarely enforced in practice. Land is often left with chemical remnants and many pits, which can result in accidental deaths and loss of animals due to falls or drowning where the pits have filled with water. Therefore, farmers and landowners typically do not expect that they will be able to return to the land they are vacating.

Broad(er) Community Consultation and Benefit

In some cases, some ASM cooperatives have made efforts to support community development, such as through contributions toward local hospitals, purchases of health equipment, building a classroom for a local school, or supporting connectivity to the electrical grid. Anecdotes from Tanzania include mining cooperatives who have purchased a small ambulance and periodically provide transportation for community members to hospitals; in other cases, the cooperatives have paid school fees on behalf of poor families in the community. These contributions have been designed in **consultation with traditional leaders and broader community members** about what they need. Such approaches appear to be mostly⁴ limited to mechanized, small-scale miners with plans for a longer-term, high-yield concession. Where such mines are perceived to be lucrative,

⁴ In Tanzania, miners must contribute to community development, though there is not a specified amount.

communities may seek to ensure that they are contributing to community development and may even initiate protests or block roads to demand contributions. Employment of community members is a common benefit offered by cooperatives, who may agree to prioritize employment of locals.

While ASM cooperatives do not commonly have a community relations staff or appointee, there may be regular consultation with communities due to the fact that miners are often local community members themselves. Therefore, miner associations are de facto commonly present at regular community meetings where issues relating to the mine might be raised and addressed alongside other community business.

FPIC Notes: Broad community consultation and benefit is an important – but not sufficient – part of FPIC. Such consultation should be planned to seek input from all sectors of society – including women, youth, and other potentially marginalized groups – in an appropriate and accessible way that allows their views to be shared safely. It should ensure that communities whose rights may be impacted receive all relevant information about potential impacts and have the time and resources needed to understand and consider the information, ask questions, and discuss concerns and options for addressing them. Where the rights of Indigenous peoples may be impacted, such communities must then have the right to give or withhold consent for the project. In many contexts, Indigenous peoples are marginalized within the broader community and relative to neighboring communities, and thus risk being overlooked through a community-wide lens.

Ongoing Consultation and Grievance Mechanisms

Grievance mechanisms do not appear to be a formal part of many agreements between ASM and communities, though some of the more organized cooperatives may have a mechanism for resolving small disputes. However, many interviewees referenced external mechanisms, such as seeking mediation by a traditional authority, or bringing the case before a local monitoring committee, tasked with monitoring and mitigating risks related to specific mineral supply chains. If these approaches are not successful, grievances can be escalated to local, regional, and national legal systems, though responsiveness by governments is frequently limited.

FPIC Notes: Grievance mechanisms are also an important – but not sufficient – part of maintaining FPIC. They must be designed so that they are safely accessible by all sectors of society – including women, youth, and other potentially marginalized groups. They must be routinely monitored, and must reliably follow up to seek information, address, and appropriately⁵ communicate about issues identified and their resolution.

⁵ This may vary depending on the nature of the complaint. Transparency is the best principle where possible, but where transparency may create a risk of retaliation or other harm, the resolution should be shared with the initiator of the claim.

In the DRC, local monitoring committees are frequently set up by NGOs or supply chain due diligence schemes to address issues relating to minerals development “inside and outside of the fence.” They are often chaired by the local community with many different local stakeholders participating. Civil society representatives, churches, women’s associations, and others can be nominated to serve.

Such committees typically meet regularly – for example, a monthly committee meeting with quarterly meetings involving broader representatives of local communities. Monitoring committees are frequently built on the idea of consensus, though an elected chair and vice chair might have a formal vote.

At each meeting, issues and concerns are raised, and verifiable information is shared. The committee will reach a recommendation on a way forward, including gathering of additional information, reparation/compensation for any harms, or other actions, as well as agreed timelines. Although these forums have no legal responsibility, they rely on a sense of accountability to community from local stakeholders. And if their recommendations go unheeded, typically there are individuals on the committee who have their own legal power (such as a traditional leader) or who can escalate an issue to district, provincial, or state authorities.

These committees may be set up to monitor a particular project or may be set up as a quasi-governance mechanism for a region (e.g., ‘comité de suivi’). The latter also include state services, local authorities, mining cooperatives, and others. However, as they are frequently funded by donors, they may ebb and flow in terms of how frequently they meet and how well they operate.

In either case, although there is representation of different stakeholder groups, these groups can still be exclusionary, e.g., by failing to include Indigenous communities, when there is a strong gender imbalance, if women are less influential or able to speak freely than their male counterparts, when participants have vast discrepancies in technical knowledge, etc.

Free, Prior, and Informed Consent

It appears very uncommon for ASM to initiate formal processes to seek FPIC from Indigenous communities. Where the research found cases of FPIC, it was when an NGO sought consent for a project – typically one to improve social and environmental outcomes – at a site where ASM was already taking place. The research did not find evidence of consultation initiated by an ASM cooperative without support from an NGO.

In these examples, the consent process was for the improvement of an ongoing mining project (rather than the initial mining). In either circumstance, there may be cases in which an Indigenous community, once consulted:

- determines that they wish to make substantial changes to where, how, and when mining occurs; how the community is involved (e.g., in monitoring or even employment); or any compensation or benefit arrangements;
- determines that they do not wish mining to commence or continue at all;
- determines that they wish to explore partnerships with other cooperatives or entities.

FPIC Example: Philippines.⁶ The planetGOLD Philippines project (implemented by the United Nations Environment Programme and the United Nations Industrial Development Organization and executed by the Artisanal Gold Council) is one of eight country projects included in the first phase of the planetGOLD programme. The area of intervention has a history of ASM, supported by some because it offers economic opportunity – as well as a history of opposition to the sector because of environmental concerns. In this case, the planetGOLD Philippines project supported an FPIC process with 10 Indigenous communities relating to the installation of a mercury-free processing system, as well as a downstream tailings storage facility. Consultation sessions covered topics such as: the formalization process; opportunities relating to access to finance and markets; technology that would improve gold recovery and income; and communications. Discussions especially focused on the mineral processing technology which would use cyanide and glycine. Communities raised concerns about the potential impacts of these chemicals on people, agriculture, and culture, and asked questions about plans for monitoring river water quality, as well as the accuracy of these methods. Additionally, there were discussions about economic concerns and opportunities for additional income generating activities for the miners and their communities, including how the mercury-free processing system would change income, and who would eventually own the processing system. It was agreed that the miners would eventually own the system if they followed specified operating protocols and complied with local and national regulations.

The six northern communities where the mining would take place were ultimately supportive of the proposal and provided a formal resolution of support to the Municipal Council. However, the four communities from the eastern areas– who would be impacted from the tailings facility – were concerned about the use of cyanide and potential impacts to water sources, as well as ownership of the facility and alternative livelihoods generation. The planetGOLD Philippines project then conducted additional consultations with these communities to further understand their concerns and to seek to address them.

⁶ This example is drawn from a presentation by Sarah Aviado, planetGOLD Philippines, on April 28, 2022, to the planetGOLD 2022 Virtual Global Forum on Artisanal and Small-Scale Gold Mining (see <https://www.planetgold.org/2022-global-forum-artisanal-small-scale-gold-mining>). It is supplemented with additional information shared on the June 2022 planetGOLD Programme Advisory Group meeting.

Ultimately two of the impacted communities did not agree to the installation of the mercury-free processing system. Therefore, the project instead elected to work with the small-scale mining communities to improve their existing gravimetric system through better comminution and grinding practices, as well as improved management and processing of the gravimetric tailings.

FPIC Examples: Guyana. The research found two examples regarding the application of FPIC principles within the context of ASGM-focused projects in Guyana.

In a unique circumstance, the Karrau Village Council initiated outreach to Conservation International Guyana (CI-Guyana), after learning of CI-Guyana's Responsible Mining Initiative. As part of CI-Guyana's engagement with the Karrau Village to support the development of a ten-year Village Sustainability Plan, the council requested to “partner on projects that will empower its people while planning in a responsible and sustainable manner.” Following the [Guidelines for Following FPIC for Indigenous Peoples](#), a meeting was held with the Karrau Village Council to inform the project elements, including the schedule of activities for implementation.

The Karrau Village Council convened a series of meetings with villagers to gather information about existing resources and usage, to articulate a shared vision, and a plan to implement that vision. The Council then presented the plan at another meeting for villager approval. Following this approval, the Council then submitted its village plan, along with minutes of a full Village General Meeting, to the Ministry of Amerindian Affairs in January of 2023. The plan included the establishment of a demonstration site to educate artisanal miners from Karrau and surrounding areas on mercury-free mining equipment while also offering miners an economic opportunity. The Karrau Village Council also signed an agreement with CI-Guyana providing their consent for CI-Guyana to engage in the development of this demonstration site and associated production of mercury-free gold.

The recently approved 5-year CI-Guyana project, Indigenous Peoples and Responsible Mining (IPRM) funded by the Norwegian Agency for Development Cooperation (NORAD), focuses on livelihoods for Indigenous communities. With this 5-year CI-Guyana project only in its first year of implementation, this provides not only continuity with respect to the planetGOLD Environmental and Social Standards but also the practice of application of mercury-free technologies.

Another example occurred when the Alliance for Responsible Mining (ARM) sought free, prior, and informed consent from two Amerindian communities to implement a project introducing cleaner technology at a nearby site where active artisanal and small-scale mining was already taking place. In Guyana, project proponents of any engagement with Amerindian title lands should solicit a meeting with the Toshao (village leader or captain). With permission from the Toshao, proponents may then conduct introductory meetings

with the village council and progress to meeting with the full village and initiating an agreement process seeking consent for the proposed project and related activities. Details of how ARM implemented this process appear in the next section, to illustrate steps in the FPIC process.

These two case studies yielded a number of insights that inform the recommendations presented in Chapter 2.

Chapter 2: Free, Prior & Informed Consent In Practice

The concept of ‘free, prior, and informed consent,’ or FPIC, is one of the key considerations relevant to those undertaking any sort of activity impacting Indigenous Peoples and their land. Though the underlying concept has long existed, FPIC gained new prominence in 2007 with the adoption the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). While most of the attention to date has been focused on large-footprint government or private sector development activities, Indigenous groups continue to call for FPIC to be applied broadly in their legal and customary territories.

Attention on FPIC in artisanal and small-scale mining (ASM)⁷ is relatively new. Given that large scale producers have very frequently failed to fully implement FPIC (with little penalty), it is not the objective of this report to hold ASM miners – who do not have access to the legal, financial, and other resources available to large scale producers –to a higher standard. At the same time, Indigenous rights are *human rights* and therefore must be respected. FPIC is a safeguard derived from Indigenous peoples’ rights to self-determination, which includes the right to self-government, right to culture, and collective rights to their territories and resources.

It is also important to acknowledge that there is no universally accepted definition of FPIC⁸, or for a number of related concepts, such as consultation, engagement, veto rights, good faith negotiation, social license to operate, and so on. Many actors have taken different positions on these concepts in their “FPIC” policies. This report describes planetGOLD’s view of FPIC below and reiterates that this is the expectation for planetGOLD projects. However, this report also offers a broader analysis of the spectrum of stakeholder engagement, consultation, and consent, with the hope that this context will help to clarify opportunities for progressive improvement in this space.

FPIC can be understood both as a process and an outcome. The U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP) requires an *outcome* of consent in several – but not all – instances. Consent is required in cases requiring the relocation of Indigenous peoples, when hazardous waste material would be stored on Indigenous lands and territories, and for projects *affecting* Indigenous lands or territories and other resources, such as food and water sources. UNDRIP especially indicates that Indigenous peoples should be consulted with the objective of seeking free and informed consent prior to [State] approval of any

⁷ Although the planetGOLD programme focuses on artisanal and small-scale gold mining, this research included consideration of artisanal and small-scale mining generally (not only gold).

⁸ For more in depth discussion of FPIC, we recommend the following:

Kennedy, T., Martin, T., Lee, M., 2021. The Practice of FPIC: Insights from the FPIC Solutions Dialogue, RESOLVE. (see [planetGOLD Website: FPIC Resources](#)).

project affecting lands, territories, and other resources, “particularly in connection with the development, utilization, or *exploitation of mineral, water or other resources.*”⁹

FPIC is also a process, and Indigenous Peoples have the right to be consulted about projects which *may affect their rights*, including rights to land, water, cultural heritage, and livelihoods. This process must ensure these communities receive accessible and objective information about all aspects of the project that will or could potentially affect them, their lives, or their environment.

In many cases, communities may have existing protocols which describe the process by which they would like to be consulted and to reach any decision to give or withhold consent. **Any process must be designed in consultation with the community and be culturally appropriate.** It should additionally support the broad and safe inclusion of all within the community, free from any coercion by the State, by community elites, the mining cooperative, or other actors.

For communities, the essential value and power of FPIC is not just in consultation, but it is in the ability to give or withhold consent. Indigenous communities must have the ability to say ‘no’ (or ‘yes with conditions’).

FPIC is not a tick-box exercise, and it is important to consider “the spirit of FPIC” rather than the “letter of the law”. For the purposes of this work, we understand the “spirit of FPIC” as follows:

FPIC means that community decisions about prospective development are:

- **FREE** from coercion and manipulation by third parties such as governments, companies, political parties, and NGOs; also free from manipulation by “elites” within the community; inclusive, accessible processes are critical.
- Made **PRIOR** to the commencement of the activities being decided upon. Communities must also be given the time they need to fully understand and consider options, and to reach a decision. (Unrealistic time constraints imposed by external parties is a form of coercion.)
- **INFORMED**, with communities receiving all the information they need in a manner that is trusted, accessible, and culturally appropriate.
- Premised on the community’s ability to give – or withhold – **CONSENT**

- adapted from Kennedy, T., Martin, T., Lee, M., 2021. *The Spirit of FPIC. RESOLVE.*
<https://fpicdialogue.org/the-spirit-of-fpic/>

⁹ UNDRIP, Article 32. Section 2.

Finally, FPIC is not a one-time decision. Formal consent should be requested prior to the beginning of operations, but also prior to major changes to the project, and prior to closure of the project. Between those milestones, operating in the spirit of FPIC means maintaining that consent by engaging proactively and respectfully, in accordance with agreed protocols or processes, so communities are informed, their knowledge and preferences are incorporated into ongoing operations, and so any conflicts or grievances which arise are meaningfully addressed.

This chapter seeks to capture best practices for implementing FPIC processes throughout the life of the project. The chapter provides recommendations step-by-step through the key stages of FPIC, beginning with understanding the context and people with whom you will be working, to initiating a respectful dialogue, to information sharing and dialogue to collaboratively problem-solve, to reaching an agreement, and finally to implementing and monitoring the agreement. Details of the Alliance for Responsible Mining Guyana case study are provided alongside each step, to illustrate these steps in practice.¹⁰

STEP 1: Understand the Context

BEFORE any work commences, it is important to understand the social, political, and cultural context in which you seek to work.

- Identify which communities may be impacted by the project. This would include communities whose lands or resources may be utilized or impacted, those whose livelihoods may be affected, etc.

Guyana Case Study Illustration:

ARM reviewed the legal framework and cultural context to understand how to initiate engagement. They learned that they should first solicit a meeting with the Toshao (elected Indigenous leader responsible for chairing village council) and seek permission to conduct introductory meetings with the village council before further engagement with the full village. ARM also identified the specific Indigenous communities with claims to the land where the project was proposed.

As the project was also related to the mining activity and use of mercury, ARM also conducted desk research to gather information related to the sector, and how ASM is currently impacting those Indigenous communities. This supported identification of anticipated barriers and opportunities for discussion with the Toshao.

¹⁰ This case study was developed in partnership with Alliance for Responsible Mining for the purpose of this report.

Key Insights: Establishing Context

- FPIC is not legally required in all/many of these settings. Even where there are requirements, rightsholders may not be legally recognized. However, operating in the “spirit of FPIC” means considering where rights may exist but not be legally recognized. This is also highlighted in the CRAFT code in introducing the concept of legitimacy.
- For projects on or affecting Indigenous lands or resources, communities are RIGHTS holders, not just stakeholders. This perspective has implications for many aspects of planning community engagement and seeking input and decisions.
- Ask permission for everything, even to go to the field to ask questions of miners and/or community members.
- Seek to understand their cultures relating to decision-making: how any potentially impacted communities prefer to be consulted, and how they make decisions.

STEP 2: Initiate Outreach to Request Engagement

Follow any expected protocols for initiating outreach to a community, such as initial contact with a traditional leader to request permission to engage. Recognize that this should be a respectful request.

If permission is granted, follow up with appropriate introductions and begin collaboratively outlining a process that would support dialogue to share information and follow the community’s protocols for reaching a decision.

Consider options for ensuring that women and potentially marginalized groups inform the process and are included in it. In some cases, this may be as simple as providing childcare so that women can participate in meetings. In cases where women or other groups may not be able to speak freely or safely, it may be appropriate to find informal or small group opportunities to seek their input.¹¹

¹¹ For a more detailed discussion inclusivity considerations and examples, see “[Inclusivity and Gender](#)” within [The Practice of FPIC: Insights from the FPIC Solutions Dialogue](#), 2021. Kennedy, T., Martin, T., Lee, M., RESOLVE.

Guyana Case Study Illustration:

ARM met with Tosaos from two villages, requesting permission to present the proposed project to the broader community. After receiving verbal permission, ARM held a series of meetings from March – December 2021 with village councils and community members. In this case, the councils were evenly composed of men and women; all present at the general community meeting were permitted to vote.

Key Insights: Initiating Outreach

- Understand and respect the traditions and systems of the community (e.g., styles of meeting, languages spoken) to demonstrate respect.
- Like any community, Indigenous communities are not homogenous. Some groups and individuals will be differently impacted (e.g., women, youth). Consider power dynamics and how different groups are involved in decision making, and how they will benefit from or be impacted differently by the project.
- The CRAFT Code offers a range of topics to raise in discussions with the community to assess access and influence of different community groups. For instance, talking about childcare, women’s empowerment, or security conditions during this outreach process is key to identifying potentially marginalized groups in the community, as well as opportunities to enhance their inclusion in ongoing engagement.

STEP 3A: Share Information

Provide information about the intended project, potential impacts, and options for avoiding, minimizing, and mitigating negative impacts. Seek to understand what additional information community members may need to support their understanding, as well as the appropriate formats (written, verbal, and in what languages). Consider whether additional resources (technical experts, interpreters) may be needed to enable full comprehension of the potential impacts and options under discussion.

Information sharing should go in both directions and not feel transactional to community members. Seek input and ideas from community members to identify potential solutions to challenges, or to enhance the project using community knowledge or skills. As with designing the process, it is important to consider how women and other groups who may be marginalized are able to access and share information.

Guyana Case Study Illustration:

From March 2021 – December 2021, ARM held a series of meetings with village councils and community members. While seeking approval, ARM conducted several missions, using the CRAFT approach to identify and characterize risks, and to assess the current technical setup. This approach also enabled the team to make visible some practices that occur within the Indigenous community, allowing the community to provide improvement recommendations on their own existing mechanisms. Field observations and interviews supported a clear assessment of the existing situation and potential impacts relating to the selected mining operations. ARM then presented findings from the assessment to the village during general meetings; topics discussed included: legal considerations and legitimacy of ASGM operations; social and human rights risks and priorities; environmental protection and impacts; mercury use and sampling results; occupational health and safety (OHS) risks and priorities; grievance and accountability mechanisms; technical processes with sampling methods to be implemented; supply chain risks, due diligence processes, and key considerations relating to socioeconomic dynamics (e.g., fair transactions); and principles of engagement, prevention, protection and promotion of rights of ethnic and local people.

In between meetings, community members continued discussions amongst themselves, which would result in further questions or requests for information to be shared at subsequent meetings. The community used a variety of channels, including WhatsApp.

The assessment also informed proposed plans relating to improvements in mining techniques, OHS, social performance, traceability, mercury, organizational practices, human rights safeguards, gender equity, and legitimacy. These plans were submitted to the communities for consideration and again discussed during the village general meeting ahead of a vote.

STEP 3B: Address Concerns, Identify Options, Keep Sharing Information

It is critical to understand the FPIC process as an ongoing, iterative dialogue. In addition to sharing information, project proponents must be careful to seek out and listen to the needs, interests, preferences, and ambitions of the community; work to identify answers to their questions; and collaboratively explore alternative options to address community concerns.

Key Insights: Sharing Information

- Information sharing should flow in both directions. In addition to sharing information with the community, this is an opportunity to listen, to understand concerns, interests, and values; and to provide further information tailored to these that can support a constructive and trusting relationship. It may additionally be prudent to agree with communities how information that is shared, or key discussions, can be recorded and maintained for the community's records and ongoing access.”
- Part of building trust with communities is honoring their timelines. This may mean slowing down the pace during certain times of year, or when the community needs time to deliberate. Rushing the pace can severely undercut the relationship.
- Presenting information in local languages or dialects is also a sign of respect and builds confidence of communities in dialogue process.
- When presenting information that has not been decided, it's best to be honest that there is uncertainty. This helps to avoid inaccurate expectations and creates room for community members to offer ideas to improve project design which may reduce negative impacts or better link to the community's other needs and objectives.
- It is important to reduce complexity wherever possible. Communities will shut down when unfamiliar, highlight technical language appears. It may be helpful to practice conveying information in simple terms, even before the presentation to communities.

STEP 4: Seek Consent & Develop an Agreement

When the community is ready to decide, request a formal decision to give or withhold consent. If consent is given, work to develop an agreement or set of agreements formalizing the decision and associated commitments, including information such as:

- Impacts that will be monitored and mitigated, and how they will be compensated. The agreement should clarify how monitoring and mitigation will be resourced.
- Accountability and grievance mechanisms, such as monitoring in partnership with the community, and systems for flagging and addressing unmet commitments.
- Mechanisms for ongoing information sharing. This should also clarify processes to update these mechanisms as needed to reflect evolving needs of all stakeholders.
- Any benefit sharing or longer-term collaboration that is planned (e.g., community roles in part of the project).
- Anticipated milestones, including any milestones that will trigger additional decision making by the community.

Guyana Case Study Illustration:

The community meetings culminated in a community vote approving the project. The Toshao and Council then provided a formal letter as evidence of consent from the community to implement this project.

Key Insights: Seeking Consent

- FPIC includes asking permission at all stages – beginning with entering the field to speak with miners, engaging with community members, etc. It also includes seeking consent before any major changes to the project.
- Any agreed compensation should be documented for transparency and accountability purposes. Where compensation is provided to a traditional authority (as a community representative), it is a good practice to declare the amount to the broader community, to promote transparency and accountability, and to ensure that the payment is not seen as a bribe.

Conclusion

As noted very early in this report, attention on FPIC in ASM is relatively new, and large-scale producers have very frequently failed to get it right, with little penalty. Nevertheless, the ASM sector should be encouraged to integrate a commitment to securing FPIC from Indigenous communities for three reasons:

- **It is the right thing to do.** Indigenous rights are *human rights* and therefore should be respected.
- **It will be a growing expectation and requirement.** While legislation specific to artisanal mining and FPIC is sparse (see Annex 1), growing global attention to the rights of Indigenous Peoples is shifting expectations of the minerals sector as a whole. And as the sector is increasingly formalized, ASM will increasingly be expected to meet legal obligations relating to FPIC.
- **It can yield benefits to the miners and their communities.** Although it may be time-consuming, FPIC processes can offer valuable opportunities to build trust and clear lines of communication with local communities; to maximize benefits to local communities, including through partnerships that enhance outcomes for the community and the miners; to identify and solve potential problems before they appear; and to avoid conflict down the road.

While examples of ASM seeking FPIC are scarce, it is encouraging that miners commonly seek some kind of agreement with local communities, including Indigenous communities. As discussed above, these approaches fall across the spectrum, from transactional agreements with a single community representative or landowner, to broader community engagement and ongoing dialogue through grievance mechanisms, to formal processes seeking free, prior, and informed consent. A true FPIC process will require elements from each of these approaches, beginning with initial engagement with community leaders to initiate a broader consultation process, and with ongoing mechanisms for understanding and resolving concerns even after formal consent is given. Through this lens, there are many opportunities to learn from and build upon emerging good practices. The guidance and tools in this chapter , and the contextual analysis throughout this and other chapters of the report are intended to offer an initial path and vision for ASM, as well as the organizations and donors who support them, to support artisanal miners in moving from current practice toward a rights-based approach to community engagement, including FPIC where the rights of Indigenous communities would be impacted.

Annex 1: Existing Requirements

The concept of ‘free, prior, and informed consent’ (FPIC) is one of the key considerations relevant to those undertaking any sort of activity impacting Indigenous Peoples and their land. While most of the attention to date has been focused on large government or private sector development activities, Indigenous groups continue to call for FPIC to be applied broadly in their legal and customary territories. This report is an early-stage engagement with FPIC and its possible broader application to the artisanal and small-scale mining sector.

As background for considering how FPIC may be operationalized in ASM, this research first looked to existing FPIC-related law and policy in a variety of contexts to assess current or possible applicability to ASM.

- 1.1 provides a review and summary of existing FPIC legislation in nine countries where planetGOLD operates under phase 1 of the programme: Burkina Faso, Colombia, Ecuador, Guyana, Indonesia, Kenya, Mongolia, Peru, and Philippines. This review of national-level law and policy revealed a complex and evolving state-of-play with respect to recognition of Indigenous Peoples’ rights, their right to FPIC on their territories, and the management of ASM. Although ASM is conducted on the lands of Indigenous Peoples in many countries, this is not often clearly formalized in legislative frameworks.
- 1.2 summarizes requirements relating to FPIC in policies and standards of ten development agencies and financial institutions, chosen for their engagement with activities impacting Indigenous Peoples. Analysis in this section includes distinctions between requirements of consultation vs. consent (FPIC/C); which policy instruments (e.g., UNDRIP, ILO 169, etc.) are cited; triggers for FPIC requirements; whether the right to withhold consent is considered; and how ‘Indigenous’ is defined.
- 1.3 explores FPIC requirements in responsible sourcing standards for the gold industry, including industry associations (e.g., World Gold Council; London Bullion Market Association); corporations; voluntary certification initiatives (e.g., IRMA, Fairmined, etc.); and civil society and miner cooperatives (e.g., Mosi-oa-Tunya Declaration). Although the topics of ASM and FPIC were both discussed by most organizations, sometimes in detail, FPIC was not applied in the context of ASM in these standards.

1.1 FPIC requirements in mining regulations and legislation

This section provides a review and summary of the “state of play” of existing FPIC-relevant regulation and legislation in nine countries where planetGOLD operates in phase 1: Burkina Faso, Colombia, Ecuador, Guyana, Indonesia, Kenya, Mongolia, Peru, and Philippines.

It was first determined whether these States had ratified the major conventions on Indigenous Rights: the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Labour Organization’s Indigenous and Tribal Peoples Convention, 1989 (No. 169) – (ILO 169).¹²

Countries	UNDRIP	ILO 169
Burkina Faso	Yes	No
Colombia	Yes	Yes
Ecuador	Yes	Yes
Guyana	Yes	No
Indonesia	Yes	No
Kenya	Abstain	No
Mongolia	Yes	No
Peru	Yes	Yes
Philippines	Yes	No

Next, the research examined:

- Whether there is legal recognition of Indigenous Peoples, and
- Whether there are domestic law requirements for FPIC.

[How] Are Indigenous Peoples defined or legally recognized?

The ways that Indigenous Peoples are (or are not) recognized in domestic law sets the groundwork for understanding whether consultation and consent requirements are sufficient to meet the FPIC standard outlined in international law, where FPIC is understood as a mechanism for realizing Indigenous Peoples’ collective rights to self-determination and self-governance.

Countries	Domestic Recognition
Burkina Faso	No
Colombia	Yes
Ecuador	Yes
Guyana	Yes
Indonesia	Limited
Kenya	No
Mongolia	No/limited
Peru	Yes
Philippines	Yes

Legal recognition at a State level, while expanding, can sometimes be more restrictive than provided by UNDRIP, or entirely absent. For example, in Burkina Faso there is no legal recognition of Indigenous Peoples so one cannot depend upon the government for recognition of Indigenous territory upon which FPIC might apply. In Mongolia, while some pastoralist groups self-identify as Indigenous, they are not recognized as such by their governments. This in turn

¹² For details see the [FPIC implementation tools](#)

restricts the development of policies and programs that support Indigenous Peoples' specific rights and needs.

In other States, for instance in Ecuador and Peru, Indigenous Peoples are recognized State constitutions, ensuring that Indigenous Peoples' have the potential to pursue recourse in the court system. In Ecuador, FPIC is also established under the constitution; in Peru, however, there is a separate Act recognizing this right, the Prior Consultation Act (No.29785).

The following table provides further information about how and whether Indigenous Peoples are recognized in the countries where planetGOLD works in phase 1.

Burkina Faso	<p>The Peul and the Tuareg are the main Indigenous groups of Burkina Faso, but are not recognized by the State. The Constitution of Burkina Faso guarantees education and health for all, but as the Peul and the Tuareg are nomads, they can in practice only enjoy these rights to a very limited extent.¹³</p> <p>Burkina Faso voted in favor of the UNDRIP in 2007.</p>
Colombia	<p>The Government of Colombia adopted the UN Declaration on the Rights of Indigenous Peoples in 2009, after abstaining at the initial declaration in 2009. The Constitution of 1991 recognised the fundamental rights of Indigenous Peoples and ratified ILO Convention 169 as binding within domestic law.¹⁴</p> <p>Summary of Constitutional articles of recognition (summarized and translated by Felipe A Galvis Castro¹⁵):</p> <p>Article 7 establishes that ‘the State recognizes and protects ethnic and cultural diversity of the Colombian Nation’.</p> <p>Article 8 states that ‘it is the obligation of the State and its people to protect the cultural and natural wealth of the Nation’.</p> <p>Article 72 protects Colombian cultural heritage as expressions of the national identity.</p> <p>Article 329 recognizes indigenous communities as territorial entities that form a part of the state structure.</p> <p>(Approximately 30% of the land area of Colombia is Indigenous territory (<i>resguardos</i>). There are over 800 Indigenous territories.¹⁶)</p>
Ecuador	<p>Constitution of Ecuador (2008, amended 2021):¹⁷</p> <p>Article 57: <i>Indigenous communes, communities, peoples and nations are recognized and guaranteed, in conformity with the Constitution and human rights agreements, conventions, declarations and other international instruments, the following collective rights [...]</i></p>
Guyana	<p>The Government of Guyana recognizes and protects the rights of Amerindian communities to own, develop and control lands for which they have legal title. In addition, the Government has enacted legislation which recognizes</p>

¹³ <https://www.iwgia.org/en/burkina-faso/605-Indigenous-peoples-in-burkina-faso>

¹⁴ <https://www.iwgia.org/en/colombia.html>

¹⁵ https://www.academia.edu/38752510/Decision_SU_039_1997_Case_Colom

¹⁶ https://www.oecd.org/colombia/Asymmetric_decentralisation_Colombia.pdf

¹⁷ https://www.constituteproject.org/constitution/Ecuador_2011?lang=en#s390

	<p>the traditional rights of all Amerindian communities, both titled and untitled.¹⁸</p>
Indonesia	<p>While the Government of Indonesia argues that the concept of Indigenous Peoples as people having distinct rights does not apply in Indonesia as (almost) all citizens are Indigenous (excepting Chinese migrant descendants), the Government of Indonesia still recognizes 1,128 ethnic groups.</p> <p>Constitutionally¹⁹, the following is recognized: Articles 18 B-2: <i>The State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia and shall be regulated by law.</i></p> <p>Article 28 I-3: <i>The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilizations.</i></p> <p>Further, Indonesian law uses a range of terms to refer to communities that frequently self-identify as Indigenous. Terms include:</p> <p><i>komunitas adat terpencil</i> (meaning ‘geographically isolated customary communities’) <i>masyarakat adat</i> or <i>masyarakat hukum adat</i>, which mean ‘customary law societies’.²⁰</p> <p>A forest tenure formalisation process was announced in 2017. <i>Presidential Regulation No. 88 of 2017 on Land Tenure Settlements in Forest Areas</i> is intended to provide legal recognition for the customary societies.</p> <p>IWGIA²¹ has noted that there is implicit recognition of Indigenous Peoples’ right in legislation including: <i>“In more recent legislation, there is implicit recognition of some rights of Indigenous Peoples, where they are referred to as: Masyarakat Adat or Masyarakat Hukum Adat, including Act No. 5/1960 on Basic Agrarian Regulation, Act No. 39/1999 on Human Rights, and MPR Decree No. X/2001 on Agrarian Reform. Act No. 27/2007 on the Management of Coastal and Small Islands and Act No. 32/2010 on the Environment clearly use the term: Masyarakat Adat and use the working definition of AMAN. The Constitutional Court affirmed the constitutional rights of Indigenous Peoples to their land and territories in May 2013, including their collective rights to customary forests.”</i></p>

¹⁸ <https://rainforestfoundation.org/wp-content/uploads/APA-LTA-2021-FINAL-FOR-WEB.pdf>

¹⁹ https://www.constituteproject.org/constitution/Indonesia_2002.pdf?lang=en

²⁰ https://www.upr-info.org/sites/default/files/document/indonesia/session_27_-_may_2017/aman_upr27_idn_e_main.pdf

²¹ <https://www.iwgia.org/en/indonesia.html>

Kenya	While several groups of people, particularly hunter-gatherers and pastoralists, self-identify as Indigenous, Kenya does not specifically recognize them as Indigenous Peoples.
Mongolia	<p>Although Mongolia has no specific legal definition relating to Indigenous Peoples, pastoralist communities have sought international dispute resolution on the basis of violation of their rights as Indigenous Peoples in relation to large-scale mining.^{22, 23}</p> <p>The Constitution of Mongolia (1992)²⁴ states: Article 14.2: <i>No person may be discriminated on the basis of ethnic origin, language, race, age, sex, social origin or status, poverty, occupation or post, religion, opinion or education</i> Article 8.2: <i>The constitution also protects ethnic minorities’ right to practice their own culture and use their own language: “the right of national minorities of other tongues to use their native languages in education and communication and in the pursuit of cultural, artistic and scientific activities.”</i></p>
Peru	<p>The former Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous People²⁵ described Peru’s stance on Indigenous Peoples as: <i>“Peru is a constitutional multi-party republic. In the Peruvian legal system, the term “peasant community” (comunidad campesina) includes the Aymara, Quechua and Uro Indigenous communities of the Andean region, while the term “native communities” (comunidades nativas) covers the Indigenous Peoples of Peru’s Amazon region. The 1993 Constitution recognizes the legal personality of peasant and native communities and guarantees their autonomy in respect of their organization, community work, the use and free disposal of their land and with regard to economic and administrative matters.”</i></p> <p>The ILO Committee of Experts²⁶ observed that: <i>“The [Prior Consultation] Act included a definition of Indigenous Peoples that was consonant with that of Convention No. 169, and included the following elements: the characteristics of the Indigenous Peoples in terms of their social institutions, cultural patterns and customs which distinguished them from</i></p>

²² Pascale Hatcher & Jennifer Lander (2022) Searching for New Political Spaces: Negotiating Citizenship and Transnational Identities on Mongolia’s Mining Frontier, Journal of Contemporary Asia, DOI: [10.1080/00472336.2022.2032278](https://doi.org/10.1080/00472336.2022.2032278)

²³ Pascale Hatcher & Jennifer Lander (2022) Searching for New Political Spaces: Negotiating Citizenship and Transnational Identities on Mongolia’s Mining Frontier: With two of the world’s largest mining projects, Mongolia has become one of Asia’s key mineral producers in the past 20 years. Mongolian pastoralist communities living in the South Gobi region in the vicinity of large-scale mining operations have recently turned to transnational dispute resolution arenas to lodge their grievances and seek redress. Notably, these pastoralists have sought to trigger international grievance mechanisms on the basis of being Indigenous people, even though they are not recognised as such by their government.

²⁴ <https://www.adb.org/sites/default/files/project-documents/49430/49430-005-ippf-en.pdf>

²⁵ Anaya, J., (2014). Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people. The situation of Indigenous Peoples’ rights in Peru with regard the extractive industries. A/HRC/27/52/Add3.

²⁶ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:2556508

	<p><i>other sectors of the national community; their identity by virtue of their direct descent from the original populations that inhabited the national territory; and their awareness of being a group possessing an Indigenous or original identity.”</i></p>
Philippines	<p>In the Philippines, the rights of Indigenous cultural communities/Indigenous Peoples (ICC/IP) are constitutionally guaranteed under Article 2, section 22 of the 1987 Constitution.²⁷</p> <p>They are expanded on in the following act: The Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371)²⁸ Section 3 - Definition of Terms <i>h) Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) - refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-Indigenous religions and cultures, become historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as Indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-Indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains.</i></p>

Do requirements for FPIC exist in domestic law?

The research looked for FPIC requirements in two areas:

- for any development activity on Indigenous territories
- specifically for ASM.

Laws regarding Indigenous Peoples’ territories are another place where FPIC may be adopted, such as in Guyana, where non-village residents must obtain the consent of the village in order to conduct forestry or small- or medium-scale mining activities on titled village lands.

²⁷ https://aippnet.org/wp-content/uploads/2020/05/AIPP-Handbook-on-Extractive-Industries-and-FPIC-of-Indigenous-Peoples_web.pdf

²⁸ https://www.wipo.int/tk/en/databases/tklaws/articles/article_0017.html

ASM legislation deals with FPIC/C in a variety of ways. For example, some countries enable designation of community mining areas (Indonesia and the Philippines) or ASM/traditional activity permits (Ecuador) or designates areas where ASM may occur (“Special Use Land” in Mongolia). The formalization process in Colombia is notable for its consultation requirement, implemented by the National Authority of Environmental Licenses (ANLA). Few miners have the means or capacity to meet the requirements for these licenses, so uptake is limited. In the Philippines and Indonesia, local level governance processes have the potential to include Indigenous representation and advocate for FPIC or consultation.

The interaction of these facets of law and administration show where FPIC/C is embedded, or whether there is a potential trigger that could be extended to cover ASM activities on Indigenous lands or territories. It is important to recognize, however that the degree to which these laws and policies are upheld or effective is a complex dynamic that can vary within jurisdictions.

The following table provides a brief overview of the findings:

Countries	General FPIC or consultation (FPIC/C) requirements for activities on Indigenous Land	FPIC/C requirements specifically for ASM
Burkina Faso	N/A	N/A
Colombia	Yes, FPIC	Mixed
Ecuador	Yes, FPIC	No
Guyana	Yes, limited	Not specified
Indonesia	In principle only, no regulatory process	No, but local requirements may apply
Kenya	Limited	No
Mongolia	No Indigenous land recognized. Limited recognition of pastoralist use rights.	Consultation
Peru	Yes, FPIC	No
Philippines	Yes, FPIC	Local requirements may apply

More details are provided in the country summaries below.

Each summary is constructed from relevant literature from academic papers, policy reports and legal reviews. (A separate compendium of research materials is published on the [planetGOLD Website: FPIC Resources](#)). Summaries are presented by country, for the following categories:

Short Title	Description
General FPIC or consultation (FPIC/C) requirements for activities on Indigenous Land	In domestic law relating to legally or customarily recognized Indigenous Lands, what (if any) are the FPIC or consultation requirements?
FPIC/C requirements in ASM	In domestic law relating to formal/informal artisanal and small-scale mining, what (if any) are the FPIC or consultation requirements?

Colombia

General FPIC or consultation (FPIC/C) requirements for activities on Indigenous Land	<p>Article 330 of the Constitution states: <i>[t]he exploitation of natural resources in the indigenous territories shall be done without undermining the cultural, social and economic integrity of the indigenous communities. In the decisions adopted with respect to this exploitation, the Government shall promote the participation of representatives of the respective communities.</i></p> <p>Decree 1953 of 2014: This presidential decree enacted autonomous authority for Indigenous self-administration, particularly in relation to land use planning.²⁹ Implementation has been challenging due to regulatory gaps and administrative capacity.^{30,31}</p> <p>Constitutional Court decisions have played an important role in upholding the important actors for the implementation of the right to free, prior, informed <i>consultation</i> for Indigenous and Afro-descendant communities in Colombia.³²</p> <p>Three central points of jurisprudence: Inclusion of Afro-Descendant communities in FPIC guarantee The right to FPI consultation is both an administrative (i.e., executive branch) and a legislative duty. Recognizing that consultation with Indigenous communities involves ‘active and effective’ participation in decision-making (as per ILO169).³³</p>
--	---

²⁹ <https://www.iwgia.org/en/colombia.html>

³⁰ https://www.oecd.org/colombia/Asymmetric_decentralisation_Colombia.pdf

³¹ Decree 63 of 2018 resolved some regulatory gaps regarding Indigenous Peoples of the Amazonas region.

³² <https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/FPIC/GaravitoAndDiaz.pdf>

³³ https://www.academia.edu/38752510/Decision_SU_039_1997_Case_Colom

<p>FPIC/C requirements in ASM</p>	<p>Artisanal mining is considered a continuation of ancestral activity for many Indigenous and Afro-Colombian communities, and these communities may have a preferential right to obtain mining titles over mining deposits located within special reserve areas for indigenous peoples (zonas mineras indígenas) or Afro-Colombian communities (zonas mineras de comunidades negras), although the use of mechanized equipment is prohibited.^{34, 35}</p> <p>Other artisanal mining is required to conform to the same standards as large-scale mining, including approval of a Mine Operation Plan (PTO) and Environmental Impact Assessment (EIA), including FPIC (consulta previa).³⁶ Most artisanal miners, however, cannot meet the financial and technical challenges of acquiring these permits.</p>
-----------------------------------	--

Ecuador

<p>FPIC/C requirements for activities on Indigenous Land</p>	<p>Article 57 of the Constitution of Ecuador (2008, amended 2021)³⁷: [...]</p> <p>4. <i>To keep ownership, without subject to a statute of limitations, of their community lands, which shall be unalienable, immune from seizure and indivisible. These lands shall be exempt from paying fees or taxes.</i></p> <p>5. <i>To keep ownership of ancestral lands and territories and to obtain free awarding of these lands.</i></p> <p>6. <i>To participate in the use, usufruct, administration and conservation of natural renewable resources located on their lands.</i></p> <p>7. <i>To free prior informed consultation, within a reasonable period of time, on the plans and programs for prospecting, producing and marketing non-renewable resources located on their lands and which could have an environmental or cultural impact on them; to participate in the profits earned from these projects and to receive compensation for social, cultural and environmental damages caused to them. The consultation that must be conducted by the competent authorities shall be mandatory and in due time. If consent of the consulted community is not obtained, steps provided for by the Constitution and the law shall be taken.</i></p> <p>[...]</p>
--	---

³⁴

<https://www.planetgold.org/sites/default/files/2020.%20G.%20Minnick.%20P%3B%20Doyle%3B%20H.Thomas.%20Formalization%20of%20ASGM%20in%20Colombia..pdf>

³⁵ <https://cesed.uniandes.edu.co/wp-content/uploads/2020/07/MINERIA-DE-ORO-ARTESANAL-Y-DE-PEQUE%C3%91A-ESCALA..pdf>

³⁶

<https://www.planetgold.org/sites/default/files/2020.%20G.%20Minnick.%20P%3B%20Doyle%3B%20H.Thomas.%20Formalization%20of%20ASGM%20in%20Colombia..pdf>

³⁷ <https://constitutions.unwomen.org/en/countries/americas/ecuador>

	The mining acts of 2000 and 2009 define the State as the owner of all mineral wealth, with power to transfer rights to private entities. State maintains responsibility for conducting required consultation where concessions overlap with Indigenous territory. ³⁸
FPIC/C requirements in ASM	<p>In Ecuador there are four types of mining according to the Mining Law: <i>artisanal</i> mining (Minería Artesanal), <i>small-scale</i> mining (Pequeña Escala), <i>medium-scale</i> mining and <i>large-scale</i> mining.</p> <p>Communes, communities, indigenous people and individuals that live in a protected area have the right to use the natural resources in a sustainable way according to their traditional uses, ancestral artisan activities and for survival purposes, without requiring any environmental permit.</p> <p>FPIC is a requirement of the environmental permit, so is not required for <i>artisanal</i> mining.³⁹</p>

Guyana

FPIC/C requirements for activities on Indigenous Land	<p>The Amerindian Act 2006 provides for free, prior, and informed consent of the Villagers on issues that require their involvement/support with respect to land, mining, etc.</p> <p>However, the Amerindian Act Amerindian Peoples Association, Forest Peoples Programme, and Rainforest Foundation US’s 2021 participatory study of Indigenous land tenure in Guyana⁴⁰ found:</p> <p><i>“The Amerindian Act does already include some measure of respect for FPIC, requiring that non-village residents obtain the consent of the village in order to conduct forestry or small- or medium-scale mining activities on titled village lands. However, this limits Indigenous Peoples’ right to participation and FPIC to titled lands, which is problematic when titled lands do not correspond to customary lands. The Amerindian Act also does not include protection for the rights to participation and FPIC more generally, for example, in the context of decision-making on projects such as the building of hydropower dams</i></p>
---	--

³⁸ Bavinck, M. Pellegrini, L., Mostert, E. (2014) Conflicts over Natural Resources in the Global South: Conceptual Approaches, RC Press.

³⁹ Article 398 of the Constitution establishes that any state decision that may affect the environment must be previously consulted with the potentially affected community. In addition to this, other provisions must be taken in consideration, such as the Indigenous and Tribal Peoples Convention of 1989 (“ILO Convention 169”), and article 57.7 of the Constitution, related to “Free Prior and Informed Consultation of communes, communities, indigenous peoples and indigenous nationalities”.

(<https://www.dentons.com/en/insights/newsletters/2022/january/17/dentons-global-mining-guide/dentons-global-mining-guide-2022/ecuador>)

⁴⁰ <https://rainforestfoundation.org/wp-content/uploads/APA-LTA-2021-FINAL-FOR-WEB.pdf>

	<p><i>or the adoption of policies such as the low carbon development strategy.</i></p> <p>The AmerAmerindian Act, Cap 29:01, at Sec. 50 ... the Amerindian Act currently contains a notable limitation on the right to FPIC, allowing for the government to approve large-scale mining activity in titled village lands even where a village has refused consent to the mining, as long as that mining activity is deemed to be in the public interest.⁴¹</p>
FPIC/C requirements in ASM	No specified requirements.

Indonesia

FPIC/C requirements for activities on Indigenous Land	<p>In May 2013, the Constitutional Court affirmed the constitutional rights of Indigenous Peoples to their land and territories, including their collective rights over customary forest. However, the government has yet to draft the operational guideline for the implementation of this court decision.⁴²</p> <p>In practice, this means that there is no administrative process for FPIC.</p>
FPIC/C requirements in ASM	<p>Izin Pertambangan Rakyat (Community Mining License)⁴³ There is no requirement for FPIC/C in the license itself, but local administrative measures may apply.</p>
Other legislation/regulation/policy	<p>A recent article in suggests that the Indigenous Peoples movement in Indonesia is shifting from focus from national laws to working at the regional or local level. The authors state, “by drawing on the example of Enrekang, South Sulawesi, the contribution shows how <i>peraturan daerah</i> (local regulations) provide a basis for recognition within the margins of the Indonesian nation state.”⁴⁴</p>

⁴¹ <https://rainforestfoundation.org/wp-content/uploads/APA-LTA-2021-FINAL-FOR-WEB.pdf>

⁴² https://aippnet.org/wp-content/uploads/2020/05/AIPP-Handbook-on-Extractive-Industries-and-FPIC-of-Indigenous-Peoples_web.pdf

⁴³ <https://www.ssek.com/blog/indonesia-introduces-significant-changes-to-mining-law>

⁴⁴ <https://journals.sagepub.com/doi/full/10.1177/1868103420905967>

Kenya

<p>FPIC/C requirements for activities on Indigenous Land</p>	<p>According to IWGIA: <i>“Chapter Four of the Constitution of Kenya contains a progressive Bill of Rights that makes international law a key component of the laws of Kenya and guarantees the protection of minorities and marginalized groups. In accordance with articles 33, 34, 35 and 36, freedom of expression, means of communication and access to information and association are guaranteed. However, the principle of Free, Prior and Informed Consent (FPIC) is not made in Kenya.”</i>⁴⁵</p> <p>The African Commission and African Court have made significant decisions upholding the right to consultation. As Ndlovu & Nwauche⁴⁶ observe:</p> <p>“The Endorois and Ogiek peoples challenged the lack of consultation and effective participation or compensation for their forced displacement from their traditional lands as breaches of the provisions of the African Charter on Human and Peoples’ Rights (African Charter). In addition, they challenged the lack of protection afforded their traditional way of life and claimed violations of the African Charter, particularly the right to property, the right to freely dispose natural resources on their land, and the right to development. In Endorois and Ogiek, the African Commission and African Court respectively held that the eviction of the Endorois and Ogieks against their will, and without prior consultation, was indeed a violation of these rights.”⁴⁷</p>
<p>FPIC/C requirements in ASM</p>	<p>While not an FPIC requirement, artisanal mining permits are subject to the advice of a county-level Artisan Mining Committee which makes recommendations to the representative of the Director of Mines on granting, renewal or revocation of permits.⁴⁸</p>

⁴⁵ <https://www.iwgia.org/en/kenya/4228-iw-2021-kenya.html>

⁴⁶ Ndlovu & Nwauche. 2022. Free, Prior and Informed Consent in Kenyan Law and Policy After Endorois and Ogiek, *Journal of African Law*, *First View*, pp. 1 – 27, DOI: <https://doi.org/10.1017/S002185532200002X>

⁴⁷ For more information on customary land rights in Kenya see: https://rightsandresources.org/wp-content/uploads/Summary-of-RRI-Analyses_Kenya_EN.pdf

⁴⁸ <https://chambers.com/articles/exploring-a-detailed-look-at-kenyas-mining-act>

Mongolia

FPIC/C requirements for activities on Indigenous Land	None recognized. ⁴⁹
FPIC/C requirements in ASM	<p>ASM is formalized in Mongolia through Minerals Law and supporting regulation.</p> <p>The Law of Mongolia on Amending the Minerals Law</p> <p><i>4.1.23 defines 'conducting artisanal mining' as follows: the mining activities of individuals organised as a 'cooperative' as set forth in Article 36.4, a 'partnership' as set forth in Article 35 or as an 'unregistered partnership' as set forth in Article 481.1, of the Civil Code, involving a deposit where it is unprofitable to produce a mining plant or an area formed up by industrial waste".⁵⁰</i></p> <p>In 2022, Mongolia issued a new regulation on ASM. This regulation does not have specific FPIC requirements but there are some community consultation requirements:</p> <ol style="list-style-type: none"> 1. ASM land approval process goes through local Citizen's Representative Council meetings which in a broad sense, can be regarded as community consultation. 2. The environmental impact assessment for the mineral processing plants requires public consultation with the local communities.

Peru

FPIC/C requirements for activities on Indigenous Land	<p>On September 07, the Law N° 29785, Law of Prior Consultation for Indigenous and Native Communities, hereafter the communities, established by the 169 ILO convention, has been published in the official newspaper El Peruano.</p> <p>The Law establishes that communities have to be consulted in advance about a legislative or administrative decision, hereafter the decision, which may directly affect their collective rights, as their existence, cultural identity, life quality or development.</p> <p>The communities are the only and exclusive right holders of consultation. Some of the criteria indicated on the law to identify</p>
---	---

⁴⁹ <https://www.tandfonline.com/doi/pdf/10.1080/24761028.2021.2021356>

⁵⁰ <https://open.unido.org/api/documents/12601429/download/ESMP%20Mongolia.pdf>

	these communities are the direct descendants of the Peruvian native populations, lifestyles and spiritual ties, social institutions, customs and cultural patterns. ⁵¹
FPIC/C requirements in ASM	Not a requirement for a Certificate of Mining Operation for Small Scale Miners (PPM) and Artisanal Miners (PMA). ⁵² Regional authorities are responsible for oversight of PPM and PMA activities. ⁵³

Philippines

FPIC/C requirements for activities on Indigenous Land	The Implementing Rules and Regulations of the IPRA and the National Commission on Indigenous Peoples (NCIP) Administrative Order No. 3, Series of 2012 further define FPIC and provide guidance on implementation. Even with strong legislation in place, Indigenous Peoples in the Philippines have faced considerable challenges in realizing their right to give or withhold FPIC. Various researchers and evaluations have found significant gaps between policy and practice in the implementation of FPIC. ⁵⁴
FPIC/C requirements in ASM	Act 7076, or the Small-scale Mining Act Small-scale mining supervision is technically devolved to the local government units (LGUs) with MGB as chair of Provincial Mining Regulatory Boards (PMRB). ⁵⁵ This law requires FPIC for the declaration of a People's Small-Scale Mining Area (Minahang Bayan), although the timing in the project approvals process is debated.

Conclusion

This review of national-level law and policy shows a complex and evolving state-of-play with respect to recognition of Indigenous Peoples' rights, their right to FPIC on their territories, and the management of ASM. Although we know that ASM is conducted on the

⁵¹ Summary in English, <http://www.garciasayan.com/blog-legal/2011/09/07/approval-of-the-law-n%C2%BA-29785-law-of-prior-consultation-for-indigenous-and-native-communities/>

⁵² <https://environs.law.ucdavis.edu/volumes/43/1/Articles/Wieland.pdf>, p 27

⁵³ [https://uk.practicallaw.thomsonreuters.com/w-008-1009?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-008-1009?transitionType=Default&contextData=(sc.Default)&firstPage=true)

⁵⁴ https://aippnet.org/wp-content/uploads/2020/05/AIPP-Handbook-on-Extractive-Industries-and-FPIC-of-Indigenous-Peoples_web.pdf

⁵⁵ <https://think-asia.org/bitstream/handle/11540/12467/pidspn2007.pdf>

lands of Indigenous Peoples in many countries, this not often clearly formalized in legislative frameworks.

The example jurisdictions examined in this report show this gap in different forms. In the case of Burkina Faso, Kenya and Mongolia, there is no recognition of Indigenous Peoples' territories. This lack of recognition in law means that FPIC as per the UNDRIP cannot be met but, as is the case in Kenya and Mongolia, there are other mechanisms for community-level consultation that do apply to ASM.

In other countries where FPIC is a requirement for development on Indigenous territories (Ecuador, Peru), artisanal mining permits are specifically exempt from the permitting process which would establish FPIC.

In Indonesia, Mongolia, Peru, and the Philippines, ASM permitting is overseen by regional government institutions. In the case of Mongolia and the Philippines, the regional governments designate areas where ASM is permitted, and this process involves consultation with the community and development of environmental plans at a collective level. In Indonesia, regional governments are able to construct their own requirements for ASM permitting. In Colombia, Indigenous governments are able to do the same for any activity on their lands.

Our overall observations are that:

- Legislation has been rapidly evolving, with many countries updating their laws regarding Indigenous Peoples, mining and/or natural resource management in the last decade.
- Regulation is generally lagging behind legislation. In some cases, this is stalled due to lack of political will.⁵⁶
- Judicial test cases will continue to refine definitions and standards required for FPIC.⁵⁷ ILO169, where ratified, has reinforced the need for “consent” over “consultation”.⁵⁸
- There is evidence that implementation and enforcement of FPIC and consultation are challenged by weak governance capacity, particularly in relation to establishing Indigenous title, coordination between regulators, procedural effectiveness, and access to remedy.⁵⁹

⁵⁶

https://scms.usaid.gov/sites/default/files/documents/1866/ILRG_IP_DRG_Sector_Guideline_Final_July_2020_new.pdf

⁵⁷ <https://journals.sagepub.com/doi/full/10.1177/0094582X211008148>

⁵⁸ <https://www.tandfonline.com/doi/full/10.1080/13642987.2019.1677615>

⁵⁹ <https://doi.org/10.1080/13642987.2017.1314648>

- ASM formalization processes are inhibited by lack of regulatory capacity and technical support for miners.
- ASM formalization processes largely do not consider FPIC/C process (with the notable exception of consultation in designation of community mining areas in Mongolia and the Philippines).
- Complications in some regions arise due to internal displacement (of both Indigenous and non-Indigenous populations).⁶⁰

⁶⁰ <https://heinonline.org/HOL/P?h=hein.journals/meljil19&i=724>

1.2 FPIC in existing responsible environmental and social standards of development agencies and financial institutions

International development agencies and development financial institutions are influential policy makers in the sphere of development. As the major funders and financiers of private and public sector projects in developing countries, they have sophisticated policy and administrative systems to manage risk and achieve their policy goals. In terms of Indigenous Peoples’ rights and FPIC/C, these can be policy requirements, principles, and standards as well as safeguard procedures.

In this section, we look at the policies of ten agencies and institutions chosen for their engagement with activities impacting Indigenous Peoples.

Development financial institutions:	African Development Bank Asian Development Bank European Bank for Reconstruction and Development International Finance Corporation World Bank
Sector-specific financial institution:	Global Environment Facility
UN Specialized Agency:	International Fund for Agricultural Development
UN Programmes:	United Nations Development Programme, United Nations Environment Programme and UN REDD Programme

Is Consent Required?

Of this group, all but the African and Asian Development Banks specifically include FPIC (with C standing for “consent” rather than “consultation”) in their standards, safeguards, policies and guidance (see table for details). The African Development Bank does not require consent, and the Asian Development Bank refers to ‘broad community support’.

Agency	Requirement	Where FPIC is in policy (name of document)
African Development Bank Group	Free, prior, and informed (no consent) Proposes safeguard on vulnerable groups, which includes indigenous peoples.	African Development Bank Group’s Integrated Safeguards System

Asian Development Bank	Broad Community Support rather than FPIC	Safeguard Policy Document (2009) Summary of the Analytical Study for the Safeguard Policy Review and Update: Indigenous Peoples (2021)
European Bank for Reconstruction and Development	FPIC	Environmental and Social Policy
Global Environment Facility	FPIC/Broad Community Support	Principles and Guidelines for Engagement with Indigenous Peoples Policy on Environmental and Social Standards
International Finance Corporation⁶¹	FPIC	Performance Standard 7
International Fund for Agricultural Development	FPIC	Policy on Improving Access to Land and Tenure Security (2008) Policy on Engagement with Indigenous Peoples (2009) Policy on Environment and Natural Resource Management (2011) Seeking, free, prior and informed consent in IFAD investment projects
United Nations Development Programme	FPIC	Guidance Note UNDP Social and Environmental Standards Standard 6: Indigenous Peoples
United Nations Environment Programme	FPIC	UNEP and Indigenous Peoples: A Partnership in Caring for the Environment Policy Guidance
UN-REDD Program	FPIC	Guidelines on Free, Prior and Informed Consent
World Bank	FPIC	Environmental and Social Framework ESS7: Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities

⁶¹ Additionally, major private banks providing international project finance and bilateral development finance institutions have adopted the Equator Principles, which are based on the IFC's Performance Standards on Environmental and Social Sustainability.

What policy instruments are cited?

UNDRIP and ILO169 are the most commonly cited instruments of FPIC, underlining their importance as broadly accepted norms and legitimate principles in the international domain.

Agency	What FPIC instruments are referenced?
African Development Bank Group	UN Charter and the African Charter of Human and Peoples' Rights, UN Convention on Biological Diversity
Asian Development Bank	ILO Convention 169; UNDRIP; World Bank Group Environmental, Health and Safety Guidelines
European Bank for Reconstruction and Development	ILO Convention 169 and UNDRIP
Global Environment Facility	ILO Convention 169 and UNDRIP
International Finance Corporation	World Bank Group Environmental, Health and Safety Guidelines
International Fund for Agricultural Development	UNDRIP; UNDG Guidelines on Indigenous Peoples' Issues; also refers to ILO for definition on 'tribal peoples'
United Nations Development Programme	UN-REDD Guidelines on FPIC
United Nations Environment Programme	UNDRIP; UN-REDD Guidelines on FPIC; "The Future We Want"
UN-REDD Program	UNDRIP; The Convention on Biological Diversity; The African Court of Human Rights; Inter-American Court of Human Rights; The European Bank for Reconstruction and Development; IFC Policy and Performance Standards
World Bank	Universal Declaration of Human Rights

What are the triggers for FPIC requirements?

As can be seen in the table below, the different organizations have slightly different requirements for when FPIC policy is triggered. This can have implications for whether FPIC only applies to projects on legally recognized Indigenous lands, or whether any significant impact on Indigenous Peoples' rights is sufficient. Restrictive FPIC triggers can mean that projects do not need to meet the high bar of consent, though consultation would still be required.

Agency	When is FPIC triggered?
African Development Bank Group	The borrower or client is responsible for conducting and providing evidence of meaningful consultation (i.e., consultation that is free, prior, and informed) with communities likely to be affected by environmental and social impacts, and with local stakeholders, and also for ensuring broad community support, especially for Category 1 projects and for projects affecting indigenous peoples. Consultation is undertaken with reference to the updated IESIA Guidance Notes on consultation, participation and broad community support, which also provide guidance on affected communities' involvement in the process of project planning, implementation and monitoring.
Asian Development Bank	... consent of affected Indigenous Peoples communities, through meaningful consultation, will be ascertained for the following project activities: (i) commercial development of the cultural resources and knowledge of Indigenous Peoples; (ii) physical relocation from traditional or customary lands; and (iii) commercial development of natural resources within customary lands under use that would impact the livelihoods or cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples. For the purposes of policy application, consent of affected Indigenous Peoples communities refers to a collective expression by the affected Indigenous Peoples communities, through individuals and/or their recognized representatives, of broad community support for such project activities.
European Bank for Reconstruction and Development	FPIC of affected indigenous peoples is required in circumstances where a project: (i) affects their customary lands or resources; (ii) relocates them from their traditional or customary lands; or (iii) affects or proposes to use their cultural resources.
Global Environment Facility	<i>Minimum Standard 5: Indigenous Peoples</i> ⁶² Agencies demonstrate that they have in place the necessary policies, procedures, systems and capabilities to ensure that the Free, Prior, and Informed Consent (FPIC) of affected Indigenous Peoples is obtained when a project or program may cause: (a) Impacts on land and natural resources, including Restrictions on Land Use or loss of access to natural resources, subject to traditional ownership or under customary use or occupation, or the location of a project or program on such land or the commercial development of such natural

⁶² https://www.thegef.org/sites/default/files/documents/gef_environmental_social_safeguards_policy.pdf, p23

	<p>resources;</p> <p>(b) Relocation of Indigenous Peoples from land and natural resources subject to traditional ownership, or under customary use or occupation; or</p> <p>(c) Significant impacts on an Indigenous People’s Cultural Heritage that is material to the identity and/or cultural, ceremonial, or spiritual aspects of the affected Indigenous People’s lives, or the use of such Cultural Heritage for commercial purposes.</p>
<p>International Finance Corporation</p>	<p>If the client proposes to locate a project on, or commercially develop natural resources on lands traditionally owned by, or under the customary use of, Indigenous Peoples, and adverse impacts can be expected, the client will take the following steps:</p> <ul style="list-style-type: none"> - Document efforts to avoid and otherwise minimize the area of land proposed for the project; - Document efforts to avoid and otherwise minimize impacts on natural resources and natural areas of importance⁹ to Indigenous People; - Identify and review all property interests and traditional resource uses prior to purchasing or leasing land; - Assess and document the Affected Communities of Indigenous Peoples’ resource use without prejudicing any Indigenous Peoples’ land claim.¹⁰ The assessment of and natural resource use should be gender inclusive and specifically consider women’s role in the management and use of these resources; - Ensure that Affected Communities of Indigenous Peoples are informed of their land rights under national law, including any national law recognizing customary use rights; and - Offer Affected Communities of Indigenous Peoples compensation and due process in the case of commercial development of their land and natural resources, together with culturally appropriate sustainable development opportunities, including: <ul style="list-style-type: none"> o Providing land-based compensation or compensation-in-kind in lieu of cash compensation where feasible. o Ensuring continued access to natural resources, identifying the equivalent replacement resources, or, as a last option, providing compensation and identifying alternative livelihoods if project development results in the loss of access to and the loss of natural resources independent of project land acquisition. o Ensuring fair and equitable sharing of benefits associated with project usage of the resources where the client intends to utilize natural resources that are central to the identity and livelihood of Affected Communities of Indigenous People and their usage thereof exacerbates livelihood risk. o Providing Affected Communities of Indigenous Peoples with access, usage, and transit on land it is developing subject to overriding health, safety, and security considerations.
<p>International Fund for</p>	<p>1. When IFAD-funded projects are likely to have an impact on the land access and use rights of rural communities.</p>

Agricultural Development	<p>2. When IFAD-funded projects are targeting rural areas that are home to indigenous peoples. Free, prior, and informed consent should be sought sufficiently in advance of commencement or authorization of activities, taking into account indigenous peoples’ own decision-making processes, in phases of assessment, planning, implementation, monitoring, evaluation and closure of a project.</p>
United Nations Development Programme	<p>While all consultations with indigenous peoples should be carried out in good faith with the objective of achieving agreement, Standard 6 stipulates circumstances in which FPIC must be pursued and secured before proceeding with the specified actions:</p> <ul style="list-style-type: none"> • Rights, lands territories, resources, traditional livelihoods: FPIC will be ensured on any matters that may affect the rights and interests, lands, resources, territories (whether titled or untitled to the people in question) and traditional livelihoods of the indigenous peoples concerned. Project activities that may adversely affect the existence, value, use or enjoyment of indigenous lands, resources or territories shall not be conducted unless agreement has been achieved through the FPIC process. (Requirement 9) • Resettlement: No relocation of indigenous peoples will take place without the free, prior, and informed consent (FPIC) of the indigenous peoples concerned and only after agreement on just and fair compensation, and where possible, with the option of return (Requirement 8) • Cultural Heritage: UNDP will respect, protect, conserve and not take or appropriate the cultural, intellectual, religious and spiritual property of indigenous peoples without their free, prior, and informed consent (Requirement 13d)
United Nations Environment Programme	<p>UNEP recognizes – in line with “The Future We Want” and the UNDRIP - the importance of Indigenous Peoples’ participation at all levels of policy and programme development and implementation stage in order to achieve sustainable development in a holistic and integrated manner. UNEP also recognizes that all initiatives directly affecting Indigenous Peoples require their effective participation in decision-making, planning and implementation, and consent to ensure that such initiatives are in line with their rights, cultures, visions and priorities.</p>
UN-REDD Program	<p>The UNDRIP recognizes several situations in which the State is under an obligation to not just seek but secure the consent of the indigenous peoples concerned. Particularly relevant to the UN-REDD Programme, States must consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to:</p> <ol style="list-style-type: none"> i. Relocating an indigenous population from their lands; ii. Taking “cultural, intellectual, religious and spiritual property;” iii. Causing “damages, takings, occupation, confiscation and uses of their lands, territories and resources;” iv. “Adopting and implementing legislative or administrative measures;”

	<p>and</p> <p>v. Approving “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.”</p>
<p>World Bank</p>	<p><i>Community engagement and consultation is an underlying principle the World Bank’s Environmental and Social Standards, with specific requirements for consultation with communities elaborated in ESS1 and ESS10. Requirements regarding engagement with workers are found in ESS2. Special provisions on emergency preparedness and response are covered in ESS2 and ESS4. In the case of projects involving involuntary resettlement, Indigenous Peoples or cultural heritage, the Borrower will also apply the special disclosure and consultation requirements set out in ESS5, ESS7 and ESS8.</i></p> <p>Environmental and Social Standard ESS1 applies to all projects for which Bank Investment Project Financing is sought. ESS1 establishes the importance of:</p> <ul style="list-style-type: none"> (a) the Borrower’s existing environmental and social framework in addressing the risks and impacts of the project; (b) an integrated environmental and social assessment to identify the risks and impacts of a project; (c) effective community engagement through disclosure of project-related information, consultation and effective feedback; and (d) management of environmental and social risks and impacts by the Borrower throughout the project life cycle. The Bank requires that all environmental and social risks and impacts of the project be addressed as part of the environmental and social assessment conducted in accordance with ESS1. <p>Environmental and Social Standard ESS 7: Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities</p> <p>Paragraph 25. There is no universally accepted definition of FPIC. For the purposes of this ESS, FPIC is established as follows:</p> <ul style="list-style-type: none"> (a) The scope of FPIC applies to project design, implementation arrangements and expected outcomes related to risks and impacts on the affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities; (b) FPIC builds on and expands the process of meaningful consultation described in ESS10 and paragraph 23 above, and will be established through good faith negotiation between the Borrower and affected Indigenous Peoples/ Sub-Saharan African Historically Underserved Traditional Local Communities; (c) The Borrower will document: (i) the mutually accepted process to carry out good faith negotiations that has been agreed by the Borrower and Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities; and (ii) the outcome of the good faith

negotiations between the Borrower and Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, including all agreements reached as well as dissenting views; and
(d) FPIC does not require unanimity and may be achieved even when individuals or groups within or among affected Indigenous Peoples/ Sub-Saharan African Historically Underserved Traditional Local Communities explicitly disagree.

Paragraph 26. For the purposes of this ESS, consent refers to the collective support of affected Indigenous Peoples communities/Sub-Saharan African Historically Underserved Traditional Local Communities for the project activities that affect them, reached through a culturally appropriate process. It may exist even if some individuals or groups object to such project activities, as recognized by paragraph 25 (d).

Environmental and Social Standard ESS 10: Stakeholder Engagement and Information Disclosure

Paragraph 6. Borrowers will engage with stakeholders throughout the project life cycle, commencing such engagement as early as possible in the project development process and in a timeframe that enables meaningful consultations with stakeholders on project design. The nature, scope and frequency of stakeholder engagement will be proportionate to the nature and scale of the project and its potential risks and impacts.

Paragraph 7. Borrowers will engage in meaningful consultations with all stakeholders. Borrowers will provide stakeholders with timely, relevant, understandable and accessible information, and consult with them in a culturally appropriate manner, which is free of manipulation, interference, coercion, discrimination and intimidation.

Paragraph 8. The process of stakeholder engagement will involve the following, as set out in further detail in this ESS: (i) stakeholder identification and analysis; (ii) planning how the engagement with stakeholders will take place; (iii) disclosure of information; (iv) consultation with stakeholders; (v) addressing and responding to grievances; and (vi) reporting to stakeholders.

Paragraph 9. The Borrower will maintain and disclose, as part of the environmental and social assessment, a documented record of stakeholder engagement, including a description of the stakeholders consulted, a summary of the feedback received and a brief explanation of how the feedback was taken into account, or the reasons why it was not.

Is the right to withhold consent considered?

A significant consequence of engaging in an FPIC process is whether there is the potential for Indigenous Peoples to withhold consent. The following table presents the organizational positions on withholding consent, and the consequences for proposed activities.

Agency	Policy statement on withholding consent
African Development Bank Group	<p>Broad community support is a collection of expressions by the affected communities, through individuals or their representatives, of support for the project. It can exist even if some individuals or groups do not support the project.</p> <p>(AfDB response to withheld consent is not specified.)</p>
Asian Development Bank	<p>Broad community support may exist even if some individuals or groups object to the project activities.</p> <p>...</p> <p>ADB will not finance the project if such broad community support does not exist.</p>
European Bank for Reconstruction and Development	<p>The client will explore feasible alternative project designs to avoid the relocation of indigenous peoples from their communally held traditional or customary lands. When relocation is unavoidable, the client will minimise the size of land used and not carry out such relocation without obtaining the FPIC of affected indigenous peoples. Any relocation of indigenous peoples will meet the requirements of PR 5. In addition, indigenous peoples will be entitled to receive fair and equitable compensation from the client for the lands, territories, and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged as a result of the project without their FPIC.</p>
Global Environment Facility	<p>Not specified</p>
International Finance Corporation	<p>Not specified for projects in general.</p> <p>For unavoidable relocation from communally held lands and natural resources: PS7, Paragraph 15: ... If such relocation is unavoidable the client will not proceed with the project unless FPIC has been obtained as described above.</p>
International Fund for Agricultural Development	<p>If consent is withheld by the affected communities, the project proponent needs to assess the causes and conditions required by the communities to reach agreement and provide consent. In most cases, the consultation process of FPIC may lead to an adjustment of proposed project activities to communities' rights and priorities. In other cases, the community withholding consent may not be interested in joining the project. In this</p>

	case, the dissent should be clearly documented and communicated to IFAD and the borrowing government.
United Nations Development Programme	While the objective of consultation processes shall be to reach an agreement (consent) between the relevant parties, this does not mean that all FPIC processes will lead to the consent of and approval by the rights-holders in question. At the core of FPIC is the right of the peoples concerned to choose to engage, negotiate and decide to grant or withhold consent, as well as the acknowledgement that under certain circumstances, it must be accepted that the project will not proceed and/or that engagement must be ceased if the affected peoples decide that they do not want to commence or continue with negotiations or if they decide to withhold their consent to the project.
United Nations Environment Programme	Not specified
UN-REDD Program	While the objective of consultation processes shall be to reach an agreement (consent) between the relevant parties, this does not mean that all FPIC processes will lead to the consent of and approval by the rights-holders in question. At the core of FPIC is the right of the peoples concerned to choose to engage, negotiate and decide to grant or withhold consent, as well as the acknowledgement that under certain circumstances, it must be accepted that the project will not proceed and/or that engagement must be ceased if the affected peoples decide that they do not want to commence or continue with negotiations or if they decide to withhold their consent to the project.
World Bank	Environmental and Social Framework, Paragraph 55: For the purposes of ESS7, consent refers to the collective support of affected Indigenous Peoples communities for the project activities that affect them, reached through a culturally appropriate process. It may exist even if some individuals or groups object to such project activities. When the Bank is unable to ascertain that such consent is obtained from the affected Indigenous Peoples, the Bank will not proceed further with the aspects of the project that are relevant to those Indigenous Peoples for which FPIC cannot be ascertained. In such cases, the Bank will require the Borrower to ensure that the project will not cause adverse impacts on such Indigenous Peoples.

What is the definition of Indigenous?

Just as for policy triggers, the definition of Indigenous used by each organization can determine whether the standard of consent or consultation is applied.

Agency	Definition of Indigenous
African Development Bank Group	<p>Not defined in 2013 Safeguards.</p> <p>2016 Issues Paper⁶³ states: Indigenous Peoples are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them.</p> <p>(United Nations-system as a body has never adopted a definition of the concept of “Indigenous Peoples”. The prevailing view today is that no formal universal definition of the term is necessary, given that a single definition will inevitably be either over- or under-inclusive, making sense in some societies but not in others. For practical purposes, the commonly accepted understanding of the term is that provided in the Jose R. Martinez Cobo’s (former special rapporteur of the Sub-commission on Prevention of Discrimination and Protection of Minorities) study on the Problem of Discrimination against Indigenous Populations.)</p>
Asian Development Bank	<p>Within Asia and the Pacific, individual indigenous communities reflect tremendous diversity in their cultures, histories, and current circumstances. The contexts in which such peoples live are varied and changing and no universally accepted definition of Indigenous Peoples exists. Indigenous Peoples may be referred to in different countries by such terms as indigenous ethnic minorities, indigenous cultural communities, aboriginals, hill tribes, minority nationalities, scheduled tribes, or tribal groups. Such groups can be considered Indigenous Peoples for operational purposes when they possess the characteristics listed in para. 6. :</p> <p>Paragraph 6. For operational purposes, the term Indigenous Peoples is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:</p> <ul style="list-style-type: none"> (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (iii) customary cultural, economic, social, or political institutions that are

⁶³

https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Development_and_Indigenous_Peoples_in_Africa_En_-_v3.pdf

	<p>separate from those of the dominant society and culture; and (iv) a distinct language, often different from the official language of the country or region.</p> <p>Paragraph 7. In considering these characteristics, national legislation, customary law, and any international conventions to which the country is a party will be taken into account.</p> <p>Paragraph 8. A group that has lost collective attachment to geographically distinct habitats or ancestral territories in the project area because of forced severance remains eligible for coverage under this policy.</p> <p>Paragraph 9. The Indigenous Peoples safeguards are triggered if a project directly or indirectly affects the dignity, human rights, livelihood systems, or culture of Indigenous Peoples or affects the territories or natural or cultural resources that Indigenous Peoples own, use, occupy, or claim as their ancestral domain.</p>
<p>European Bank for Reconstruction and Development</p>	<p>... the term “indigenous peoples” is used in a technical sense to refer to a social and cultural group, distinct from dominant groups within national societies, possessing all of the following characteristics:</p> <ul style="list-style-type: none"> • self-identification as members of a distinct indigenous ethnic or cultural group and recognition of this identity by others; • collective attachment to geographically distinct habitats, traditional lands or ancestral territories in the project area and to the natural resources in these habitats and territories; • customary cultural, economic, social, or political institutions, laws or regulations that are separate from those of the dominant society or culture; and • a distinct language or dialect, often different from the official language or dialect of the country or region.
<p>Global Environment Facility</p>	<p>Policy on Environmental and Social Safeguards:</p> <p>Indigenous Peoples* means people belonging to a distinct social and cultural group characterized in varying degrees by (i) self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others; (ii) collective attachment to geographically distinct Habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas; (iii) customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture; and (iv) a distinct language or dialect, often different from the official language or languages of the country or region in which they reside. “To varying degrees” reflects the fact that some characteristics may be less, or no longer, evident, but have been present and are relevant in identifying Indigenous Peoples.</p> <p>* This clarification is intended solely for the purpose of this Policy, given that there is no universally accepted definition of Indigenous peoples, and given that these terms and concepts are subject to national legislation and to the different national circumstances of each country, taking into</p>

	<p>account that many countries have specific interpretations for terms and concepts that already apply within their jurisdictions. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.</p>
<p>International Finance Corporation</p>	<p>Performance Standard 7. There is no universally accepted definition of “Indigenous Peoples.” Indigenous Peoples may be referred to in different countries by such terms as “Indigenous ethnic minorities,” “aboriginals,” “hill tribes,” “minority nationalities,” “scheduled tribes,” “first nations,” or “tribal groups.”</p> <p>Paragraph 5. In this Performance Standard, the term “Indigenous Peoples” is used in a generic sense to refer to a distinct social and cultural group possessing the following characteristics in varying degrees:</p> <ul style="list-style-type: none"> • Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; • Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; • Customary cultural, economic, social, or political institutions that are separate from those of the mainstream society or culture; or • A distinct language or dialect, often different from the official language or languages of the country or region in which they reside. <p>Paragraph 6. This Performance Standard applies to communities or groups of Indigenous Peoples who maintain a collective attachment, i.e., whose identity as a group or community is linked, to distinct habitats or ancestral territories and the natural resources therein. It may also apply to communities or groups that have lost collective attachment to distinct habitats or ancestral territories in the project area, occurring within the concerned group members’ lifetime, because of forced severance, conflict, government resettlement programs, dispossession of their lands, natural disasters, or incorporation of such territories into an urban area.</p>
<p>International Fund for Agricultural Development</p>	<p>IFAD’s working definition of indigenous peoples is based on the following criteria (as mentioned in the IFAD Policy on Engagement with Indigenous Peoples)</p> <ul style="list-style-type: none"> - Priority in time, with respect to occupation and use of a specific territory; - The voluntary perpetuation of cultural distinctiveness, which may include aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions; - Self-identification, as well as recognition by other groups, or by state authorities, as a distinct collectivity; and - An experience of subjugation, marginalization, dispossession, exclusion or discrimination
<p>United Nations Development Programme</p>	<p>Indigenous Peoples: There is no one universally accepted definition of indigenous peoples. It is critical to note that States and indigenous groups might differ regarding official recognition.</p>

	<p>For purposes of the SES UNDP will identify distinct collectives as "indigenous peoples" if they satisfy any of the more commonly accepted definitions of indigenous peoples, regardless of the local, national and regional terms applied to them. These definitions include, among other factors, consideration of whether the collective:</p> <ul style="list-style-type: none"> · self-identifies as indigenous peoples; · has pursued its own concept and way of human development in a given socio-economic, political and historical context; · has tried to maintain its distinct group identity, languages, traditional beliefs, customs, laws and institutions, worldviews and ways of life; · has exercised control and management of the lands, natural resources, and territories that it has historically used and occupied, with which it has a special connection, and upon which its physical and cultural survival as indigenous peoples typically depends; and · whether its existence pre-dates those that colonized the lands within which it was originally found or of which it was then dispossessed. <p>While self-identification as indigenous or tribal is considered a fundamental criterion in identifying a collective as indigenous, it is not the only criteria to consider. This is especially true where self-identification as indigenous may result in prejudice. Consideration of a collective's classification as indigenous should also not be unduly influenced by local terms or whether the State in question has recognized the collective as an indigenous people, but rather whether the collective satisfies any of the more commonly accepted definitions of indigenous peoples. Guidance on screening question 6.1 in section 4 below lists some practical questions that may assist in determining a collective's identification as indigenous.</p>
<p>United Nations Environment Programme</p>	<p>The UNPFII provides following approach on how Indigenous Peoples can be identified:</p> <ul style="list-style-type: none"> · They have historical continuity or association with a given region or part of a given region prior to colonization or annexation; · They identify themselves as Indigenous Peoples and are, at the individual level, accepted as members by their community; · They have strong links to territories, surrounding natural resources and ecosystems; · They maintain at least in part, distinct social, economic and political systems; · They maintain, at least in part, distinct languages, cultures, beliefs and knowledge systems; · They are resolved to maintain and further develop their identity and distinct social, economic, cultural and political institutions as distinct peoples and communities. They often form non-dominant sectors of society.
<p>UN-REDD Program</p>	<p>See Annex I: Identifying Indigenous People (pp. 36-40). Refers to ILO Convention 169; The Working Paper on the Concept of "Indigenous People"; article 33 of UNDRIP (self-identification of Indigenous groups).</p>
<p>World Bank</p>	<p>ESS7: Indigenous Peoples/ Sub-Saharan African Historically Underserved Traditional Local Communities</p>

Paragraph 8. In this ESS, the term “Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities” (or as they may be referred to in the national context using an alternative terminology) is used in a generic sense to refer exclusively to a distinct social and cultural group possessing the following characteristics in varying degrees:

(a) Self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others;

(b) Collective attachment⁶ to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas;

(c) Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture; and

(d) A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.

Footnote 6. “Collective attachment” means that for generations there has been a physical presence in and economic ties to land and territories traditionally owned, or customarily used or occupied, by the group concerned, including areas that hold special significance for it, such as sacred sites.

Paragraph 9. This ESS also applies to communities or groups of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities who, during the lifetime of members of the community or group, have lost collective attachment to distinct habitats or ancestral territories in the project area because of forced severance, conflict, government resettlement programs, dispossession of their land, natural disasters, or incorporation of such territories into an urban area.⁷ This ESS also applies to forest dwellers, hunter-gatherers, pastoralists, or other nomadic groups subject to satisfaction of the criteria in paragraph 8.

Footnote 7. Care must be taken in application of this ESS in urban areas. Generally, it does not apply to individuals or small groups migrating to urban areas in search of economic opportunity. It may apply, however, where Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities have established distinct communities in or near urban areas but still possess the characteristics stated in paragraph 8.

1.3 FPIC in responsible sourcing standards of private sector entities related to the gold industry

This section examines the responsible sourcing standards for the gold industry, including:

- industry associations (e.g., World Gold Council, London Bullion Market Association)
- corporations (e.g., Apple, Tiffany)
- voluntary certification initiatives (e.g., Initiative for Responsible Mining Assurance, Responsible Jewellery Council, Fairmined Standard, Fairtrade Standard)
- CSO and miner cooperatives (e.g., Mosi-oa-Tunya Declaration).

For each of these organizations, public documentation was examined to determine the level of coverage of ASM and/or FPIC -related discussion. As detailed in the following table, although ASM and FPIC were raised by most organisations, sometimes in detail, FPIC was not generally applied in the context of ASM. All organisations note that the legal requirements of the local context must be met.

Industry associations

Organisation	Standard Name	Content
London Bullion Market Association (LBMA)	LBMA Responsible Gold Guidance Version 9	<ul style="list-style-type: none"> • No reference to FPIC in document • Refers to ASM and best practice (not mining in world heritage sites, human rights, etc.)
Responsible Jewellery Council	Code of Practices: Guidance	<ul style="list-style-type: none"> • Section on Indigenous Peoples and FPIC (pp.268-277). ASM not referenced in this section. • Section titled: Sourcing directly from artisanal and small-scale mining (pp.91-97). FPIC not referenced in this context.
World Gold Council	Responsible Gold Mining Principles	<p><i>“We will respect the collective and customary rights, culture and connection to the land of Indigenous Peoples. We will work to obtain their free, prior and informed consent where significant adverse impacts may occur during exploration, project design, operation and closure, including around the delivery of sustainable benefits.”</i></p> <ul style="list-style-type: none"> • Refers to ASM on p.1 & p.5. No reference to FPIC in this context.

Corporations

Organisation	Standard Name	Content
Apple	Apple Supplier Code of Conduct	<ul style="list-style-type: none"> Refers to <i>artisanal mining responsible sourcing systems (e.g., point of collection approved via a responsible sourcing initiative, standard, or verification or audit program)</i> on p.111 Apple does not have its own standard for gold supply per se but rather requires third party verifications or audits of supply chain due diligence (p.114) No reference to FPIC in the document.
Tiffany	Responsible Mining Philosophy	<ul style="list-style-type: none"> Tiffany mention both FPIC and ASM on their website under ‘Responsible Mining Principles’ Like Apple, Tiffany defer to a third party’s responsible mining standard (in this case IRMA). They give an overview of IRMA on their website.

Voluntary certification initiatives

Organisation	Standard Name	Content
Fairmined	Fairmined Standard for Gold From Artisanal And Small-Scale Mining. Including Associated Precious Metals	<p>PRINCIPLES FOR RESPONSIBLE ASM</p> <p>8. Multicultural Nature Artisanal and Small-scale Mining often develops in contexts of ethnic and cultural diversity. Where indigenous peoples or other ethnic groups are owners of the territory and are different from the miners themselves, responsible ASM organizations will undertake consultations based on the spirit of ILO Convention 169, with respect for local cultural practices in order to reach agreements with the local traditional authority and community with regards to the impacts and benefits of mining operations and trading in that indigenous or ethnic territory.</p>
Fairtrade	Fairtrade Standard for Gold and Associated Precious Metals for Artisanal and Small-Scale Mining	<p>1.4.2 Protection of land rights</p> <p>If you identify local communities* that can be affected by your mining activities, you identify, recognize and protect their customary and legal rights of land tenure, access to land resources and territories, through an engagement process. For Indigenous groups in particular, you are in full alignment with the ILO Convention C169 (Indigenous and Tribal Peoples Convention), Part II and the “Voluntary Guidelines on the Responsible Governance of Tenure as defined by the Committee on World Food Security, Food</p>

		<p>and Agricultural Organization (CFS-FAO) in May 2012 (http://www.fao.org/nr/tenure/voluntary-Guidelines/en/)</p> <p>1.4.3 Binding agreements with affected communities If you identify local communities that can be affected by your mining activities, you set up a binding agreement through Free, Prior and Informed Consent. The agreement defines duration, provisions for renegotiation, renewal, termination, economic conditions and other terms and conditions. The agreement makes provisions for monitoring by local communities of your compliance with its terms and conditions.</p> <p>1.4.5 Traditional knowledge You uphold the rights of local communities to protect and utilize their traditional knowledge and compensate them for the utilization of such knowledge and their intellectual property. A binding agreement exists between you and the local communities for such utilization through Free, Prior and Informed Consent and must be consistent with the protection of intellectual property rights.</p> <p>*Local communities include traditional groups that are not indigenous, who do not self-identify as indigenous and who affirm rights to their lands, forests and other resources based on long established custom or traditional occupation and use (Source: Forest Peoples Programme (Marcus Colchester, 7 October 2009))</p>
<p>Initiative for Responsible Mining Assurance (IRMA)</p>	<p>IRMA Standard for Responsible Mining IRMA-STD-001</p>	<p>Scope of the IRMA Standard The IRMA Standard is intended to be applicable to all types of industrial- or large-scale mining (including surface, sub-surface and solution mining), and all mined materials (e.g., minerals, metals) with the exception of energy fuels. IRMA will not certify oil and gas operations, and more work is needed before thermal coal and uranium can be considered for inclusion.</p> <p>There is no defined minimum cut-off point for the scale of mine to which the IRMA Standard may apply, but it is not designed to be applicable to artisanal or small-scale mining.</p> <p>Content: Chapter 2.2: Free, Prior and Informed Consent (FPIC) ...Both States and corporations should respect these rights. Corporations may demonstrate such respect by obtaining the Free, Prior and Informed Consent (FPIC) of indigenous peoples and providing culturally appropriate alternatives</p>

		<p>and adequate compensation and benefits for projects that affect indigenous peoples' rights...</p> <p>Chapter 2.3: Obtaining Community Support and Delivering Benefits</p> <p>To obtain and maintain credible broad support from affected communities; and produce tangible and equitable benefits that are in alignment with community needs and aspirations and are sustainable over the long term.</p> <p>(If ASM entities are present and are affected by the mining project, they should be included in the process to plan and determine benefits in [the requirement related to "Planning and Delivering Community Benefits"].)</p>
--	--	--

CSO and miner cooperatives

Organisation	Standard Name	Content
Mosi-oa-Tunya Declaration on Artisanal and Small-scale Mining, Quarrying and Development	Declaration	<ul style="list-style-type: none"> The declaration refers to ASM including the need for mining rights to ASM, though no reference to FPIC.
CRAFT	Website	<ul style="list-style-type: none"> The Alliance for Responsible Mining (ARM) and RESOLVE have released a code to facilitate increased responsible sourcing from artisanal miners. Solidaridad was involved in the development of the CRAFT Code. Neither the website nor the downloadable files mention FPIC; however, Module 5 does mention community engagement, encouraging the Artisanal Mineral Producers (AMPs) to take "steps towards being accepted and/or integrated into existing communities."

Annex 2: FPIC Implementation Tools

Alongside FPIC/C's development in law and policy, several organisations have considered how to approach implementing FPIC/C at the project level. This section presents some of the guidance documents that have been developed in the last decade. Each guidance is tailored for different sectors and audiences, but they can provide useful insights for how FPIC/C might be approached in ASGM.⁶⁴

The tools covered in detail in this annex are:

- Guidelines for applying for Free, Prior and Informed Consent (Conservation International, 2013)
- Indigenous Negotiations Resource Guide (Conservation International, 2021)
- FPIC 360° (Equitable Origin, 2019)
- Free Prior and Informed Consent: An Indigenous Peoples' Right and a Good Practice for Local Communities – Manual for Project Practitioners (Food and Agriculture Organization, 2016)
- Guidelines for the Implementation of the Right to Free, Prior, and Informed Consent (FPIC) FSC-GUI-30-003 V2.0 – EN (Forest Stewardship Council, 2021)
- The Practice of FPIC: Insights from the FPIC Solutions Dialogue, (RESOLVE, 2021)
- Simplified FPIC Approach for Independent Smallholders (Roundtable on Sustainable Palm Oil, 2021 draft)

The table at the conclusion of this annex provides a brief overview of these and other guidance tools available.

⁶⁴ The authors are grateful for the advice and background information provided in discussions with staff from Conservation International, Equitable Origin, Oxfam Australia, the World Bank Group, and the International Land Coalition, as well as colleagues from RESOLVE and the University of Queensland.

Tool: [Guidelines for applying for Free, Prior and Informed Consent](#)

Published: 2013

Organisation: Conservation International

Authors: Theresa Buppert and Adrienne McKeegan

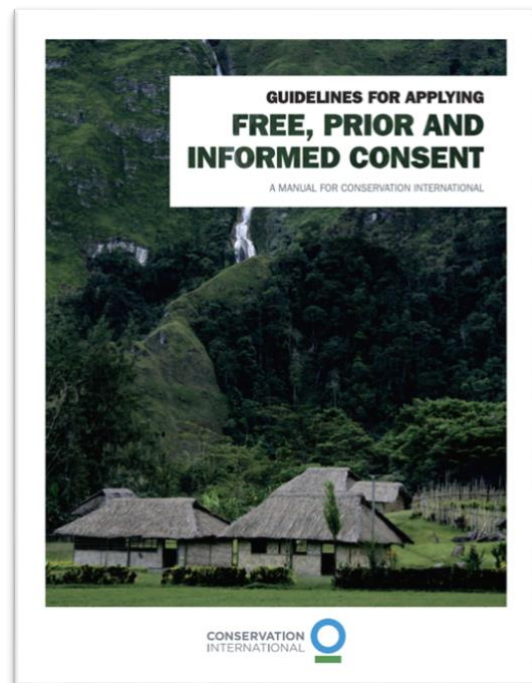
Contributors: Ramiro Batzin, Paulo Celso de Oliveira, David James, Kanyinke Sena, Mina Setra, Rogeliano Solis

These guidelines by Conservation International are one of the earliest examples of an FPIC guide. The document is aimed at Conservation International staff implementing conservation projects with Indigenous Peoples in a range of legislative contexts. As they state, the “guidelines are designed to balance the needs for broad principles, prescriptive standards, and a flexible

approach for ensuring FPIC with indigenous peoples. They are presented in a document of moderate length to be user-friendly and encourage maximum use”.

The guideline uses the term “Indigenous Peoples” throughout, but notes that lessons from FPIC can be applied to communities that do not identify as Indigenous. The guide focuses on understanding the local context and identifying customary decision-making processes and discusses how to apply these in an FPIC process. Importantly, the guide acknowledges that decision-making processes (both traditional and introduced) can exclude women or have inequitable distribution of impacts. The guide encourages consultation with the full community about inclusion (p.18) and gives some examples of how women can be excluded (p. 22). The ‘Actions’ throughout the document also specify where gender-specific considerations, or capacity building are needed.

The guide includes important aspects of designing an FPIC process that continues beyond the initiation of a project, i.e., a grievance mechanism, and monitoring and adaptation of commitments.



Applicability to ASM and FPIC/C	<p>This guide would be of use to planetGOLD practitioners tasked with initiating projects where FPIC/C is sought (i.e., a project where budget, expertise and capacity are able to collaborate with a community). This guide is particularly effective at articulating how the principles of FPIC should be transformed into concrete actions.</p> <p>Specific issues related to ASM are not covered, but practitioners will still be able to relate to the examples given.</p> <p>Conservation International identified a gap in their implementation of FPIC and developed a guide specifically on negotiation (see below).</p>
--	---

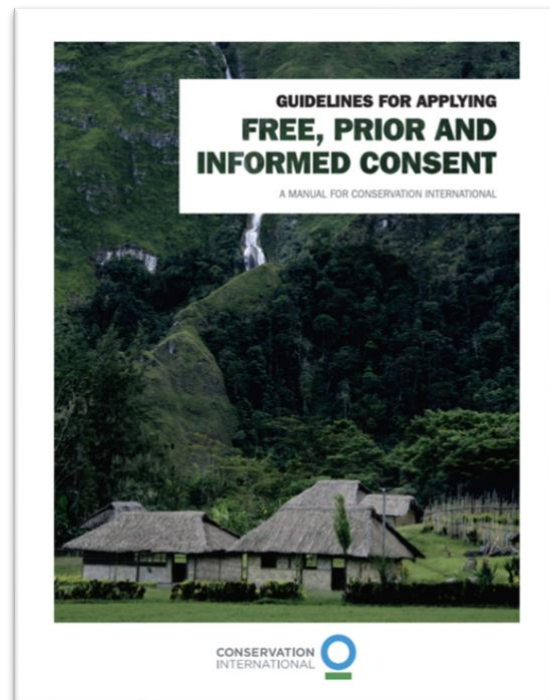
Guide structure	<p>The guidelines consist of nine steps grouped into three stages that outline the elements required to achieve an effective FPIC process. The stages and steps are as follows:</p> <p>GATHER INFORMATION</p> <ul style="list-style-type: none"> • Understand the current local context • Understand legal and customary rights • Identify and respect traditional decision-making structures <p>COLLABORATE ON DESIGN AND IMPLEMENTATION</p> <ul style="list-style-type: none"> • Develop a culturally sensitive approach • Ensure full and effective participation • Ensure information exchange • Reach consent on course of action <p>ENSURE ACCOUNTABILITY</p> <ul style="list-style-type: none"> • Incorporate FPIC into grievance mechanism • Monitor and adapt commitments
------------------------	--

Tool: [Indigenous Negotiations Resource Guide](#)

Published: 2021

Organisation: Conservation International

Authors: McElhinny, V., M. Degawan, P. Dunne, A. Cruz. (This Resource Guide draws heavily on lived experiences by Indigenous Peoples and CI recognizes them as primary authors of the central lessons of the approach to negotiations presented in this publication.)



This guide focuses a critical aspect of FPIC, negotiation. The guide was developed based on many years of implementation and the identification of negotiation as one of the areas in which Indigenous capacity could be built to enable more effective FPIC processes. The guide is based on lessons learned in FPIC processes around the world – particularly from agreement making that has become established practice in Australia and Canada (particularly Gibson and O’Faircheallaigh, 2015).⁶⁵ This background knowledge was supplemented with a series of workshops with CI practitioners and Indigenous stakeholders.

Four ‘known success factors’ for negotiation underpin the guide’s approach:

- Internal political capacity
- External political capacity
- Technical expertise based on a solid understanding of human rights, robust and legitimate.
- The effective operation and support of regional organizations representation.

The target audience of this guide are Indigenous negotiators themselves. Conservation International is currently mobilizing this guidance via an Indigenous Negotiations Training Program.

⁶⁵ https://gordonfoundation.ca/wp-content/uploads/2017/03/IBA_toolkit_web_Sept_2015_low_res_0.pdf

<p>Applicability to ASM and FPIC/C</p>	<p>This guide would be of use to planetGOLD practitioners if/where they take the role of an ally or support operation with an Indigenous community and want to ensure that the community is best placed to enter into an FPIC process. For planetGOLD technical projects, this guide may assist practitioners in understanding the types of capacity building or organisation that could benefit communities.</p> <p>While many of the lessons of this guide are derived from the large-scale extractives sector, the guide aims to extend these insights to:</p> <ul style="list-style-type: none"> - land-use zoning and impact mitigation programs for large infrastructure investments - Reduced Emissions through Deforestation and Degradation (REDD+) Emissions Reduction Purchase Agreements (ERPAs) or other carbon trading contracts - payments for ecosystem service programs and other related types of conservation agreements - large-scale agriculture.
---	--

<p>Guide structure</p>	<p>The Resource Guide consists of twelve chapters subdivided into four sections:</p> <ol style="list-style-type: none"> 1. Negotiation Background (Chapters 1-2) 2. Preliminary Work (Chapters 3-6) 3. Preparing to Negotiate (Chapters 7-8) 4. Negotiation and Monitoring (Chapter 9-12) <p>Detailed contents:</p> <ol style="list-style-type: none"> 1. Introduction 2. Rights as the basis for negotiation 3. The project cycle, agreement types and impact assessment 4. Community unity 5. Researching the opportunity to negotiate 6. The decision to negotiate 7. Preparing for negotiation 8. Establishing the rules of the negotiation 9. Negotiation tactics 10. Good agreements 11. Natural resource management sector agreements 12. Implementing agreements and maintaining relationships <p>APPENDIX 1: RESOURCES APPENDIX 2: DRAFT CHECKLIST OF KEY ELEMENTS IN AN IMPACT AND BENEFIT SHARING AGREEMENT GLOSSARY OF KEY TERMS FOR INDIGENOUS NEGOTIATION</p>
-------------------------------	---

Tool: [FPIC 360°](#)

Published: 2019



Organisation: Equitable Origin

Partners: FPIC-360° is an Equitable Origin initiative in partnership with the [Roundtable on Sustainable Biomaterials \(RSB\)](#) and the [Coordinator of Indigenous Organizations of the Amazon River Basin \(COICA\)](#). This project is co-financed by the [ISEAL Innovations Fund](#), which is supported by the [Swiss State Secretariat for Economic Affairs SECO](#).

The FPIC-360° tool developed by Equitable Origin and Partners takes the form of a guided online repository for documentation relating to an FPIC process. The tool aims to encourage co-ownership of FPIC processes by being a place where both parties can store and access information relating to decisions made throughout the FPIC process, from design to implementation and monitoring. The co-creators of this tool⁶⁶ identified this as a gap for both Indigenous and non-Indigenous project stakeholders. Creating a shared space for verification and monitoring an FPIC process is the way that the tool embeds the underlying principles of:

- **Participation:** *The FPIC-360° Tool is founded on the understanding that FPIC can only be implemented and monitored responsibly if the community has equal participation in, and ownership of, the process.*
- **Transparency:** *In many cases, FPIC is something that happens to a community from the top-down. FPIC-360° Tool redresses this imbalance by facilitating data collection from both sides of the FPIC process and making it available for review and approval by the other stakeholders before being submitted for external verification.*⁶⁷

For each stage of an FPIC process, the tool addresses a range of cross-cutting issues by identifying ‘conditions’ that should be in place to ensure a responsible and equitable FPIC process (see table).

As a tool focused on documenting an FPIC process for verification or auditing,⁶⁸ the tool itself does not contain a great deal of explanatory or instructional content, however links to further resources including an [e-learning on capacity-building for Indigenous participants to guide their communities and organizations in consultation processes](#).

⁶⁶ Working Group of ISEAL Member Standards and stakeholders provided input on the research and development process, and workshops in Colombia, Ecuador and Peru with leaders of 15 Indigenous Peoples nations.

⁶⁷ <https://fpic360.org/about-fpic360/how-it-works/>

⁶⁸ https://fpic360.org/wp-content/uploads/2021/04/EO-FPIC360-Tool-Indicators_2020.pdf

Applicability to ASM and FPIC/C	<p>This tool would be useful for planetGOLD and partner communities as a repository of documents relating to any FPIC/C process.</p> <p>The tool is flexible enough to be adapted to FPIC processes of variable complexity.</p> <p>Access to technology may be a challenge but having an independent repository would help to support transparency objectives.</p>
--	--

Guide structure	<p>The Tool has three main sections that represent the stages of FPIC:</p> <ol style="list-style-type: none"> 1. Enabling Conditions 2. Prerequisite Steps 3. FPIC Process Steps <p>Post-FPIC follow-up</p>
Cross-cutting issues	<p>CONDITIONS: The tool provides guidance on the conditions that should be in place to ensure that the FPIC process happens in a responsible, equitable manner and how to verify them.</p> <ul style="list-style-type: none"> • Conditions for the community <ul style="list-style-type: none"> ○ Community representatives ○ Gender ○ Marginalized and vulnerable groups ○ Community consensus ○ Community institutional capacity ○ Technical knowledge and capacity ○ Cross-cultural understanding • Conditions for the project develop <ul style="list-style-type: none"> ○ Procedures and processes ○ Designated project personnel ○ Participation in multi-stakeholder working group ○ Recognition of customary systems ○ Gender ○ Marginalized & vulnerable groups ○ Cross-cultural understanding ○ Technical knowledge and capacity ○ Collaborative design.

Tool: [Free Prior and Informed Consent: An Indigenous Peoples' Right and a Good Practice for Local Communities – Manual for Project Practitioners](#)

Published: 2016

Organisation: The Food and Agriculture Organization of the United Nations (FAO)

This document, by the FAO and partners, provides guidance for practitioners wishing to implement FPIC in any field of development. The guide has a strong human rights perspective and provides both contextual background to FPIC and practical guidance on how these rights might be upheld in the development process.

Coming out of the community/international development community, this guide includes explanations of participatory processes that would be familiar to development practitioners, including participatory mapping and dialogue-based strategies. These are then linked to the standards and principles of FPIC with specific examples. The guide focuses on what a practitioner needs to know at each stage of an FPIC process, and how engagement with communities should be conducted in an iterative and inclusive manner.

The guide also includes a section on how FPIC can be reflected as a programmatic goal within an organisation (Section 3).



<p>Applicability to ASM and FPIC/C</p>	<p>This tool will appeal to practitioners from a community development background.</p> <p>The section on FPIC in the organization may be useful to planetGOLD in developing its strategic approach to FPIC/C.</p> <p>While the guide is not specific to mining, the guide will be relevant in communities with limited resources and low organizational capacity.</p>
---	---

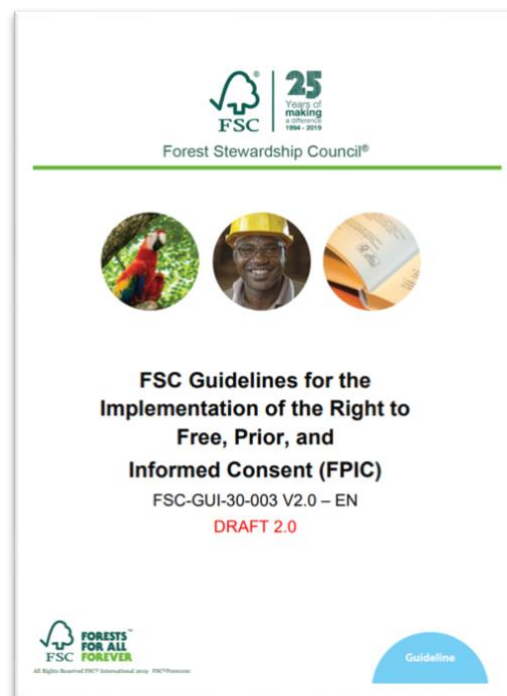
<p>Guide structure</p>	<p>Table of contents FOREWORD ACRONYMS AND ABBREVIATIONS ACKNOWLEDGEMENTS INTRODUCTION SECTION 1: FUNDAMENTALS 1.1. Who are Indigenous Peoples? 1.2. What is Free, Prior and Informed Consent? Who has the right to it? 1.3. Key elements in Free, Prior and Informed Consent 1.4. When is Free, Prior and Informed Consent (FPIC) required? 1.5. What are the benefits of the FPIC process? SECTION 2: IMPLEMENTING FREE, PRIOR AND INFORMED CONSENT (FPIC) 2.1. Identify the Indigenous Peoples concerned and their representatives 2.2. Document geographic and demographic information through participatory mapping 2.3. Design a participatory communication plan and carry out iterative discussions through which project information will be disclosed in a transparent way 2.4. Reach consent, document Indigenous Peoples’ needs that are to be included into the project, and agree on a feedback and complaints mechanism 2.5. Conduct participatory monitoring and evaluation of the agreement 2.6. Documenting lessons learned SECTION 3: REFLECTING FPIC IN YOUR ORGANIZATION 3.1. The FPIC regulatory framework 3.2. FPIC integration through the human rights-based approach 3.3. Ensuring consistency when applying FPIC in an Organization 3.4. Resources required to ensure FPIC implementation ANNEXES</p>
-------------------------------	--

Tool: [Guidelines for the Implementation of the Right to Free, Prior, and Informed Consent \(FPIC\) FSC-GUI-30-003 V2.0 – EN](#)

Published: 2021

Organisation: Forest Stewardship Council

The Forest Stewardship Council’s guidelines on the Implementation of FPIC are designed to meet the needs of their certification programs for forest management. The guide includes sections on the concept of FPIC, a practical 7-step process that projects are expected to follow and some guidance on cross-cutting issues. The FSC approach conceptualizes FPIC as a right of Indigenous Peoples, a principle of good practice for businesses, and a process for a relationship between Indigenous Peoples and other land users.



Both the background information and practical guidance offered are aimed at practitioners encountering the layered complexities of implementing an FPIC process. For example, giving advice on how to conduct an FPIC process in the absence of state recognition of Indigenous Peoples or when national laws conflict with FSC standards. While these are not immediately relevant to ASM, the kinds of issues raised are illustrative of what needs to be considered in designing and implementing an FPIC/C policy. The ‘recommended actions’ for the organization and rights holders are more generally applicable to ASM and include a more specific level of detail than most guides.

Applicability to ASM and FPIC/C	<p>This tool provides a good model for a guide developed to satisfy a policy or performance standard.</p> <p>Although not about mining, the principles and issues raised in this guide may also provide useful guidance to practitioners in the field.</p> <p>The background section provides a thorough overview of the concept of FPIC.</p>
--	---

Guide structure	<p>Table of Contents</p> <p>A. Preamble</p> <p>A.1 Context and Objectives</p> <p>A.2 Scope of the Guideline</p> <p>A.3 Application of the Guideline</p> <p>B. Introduction</p> <p>B.1 Preparing for Success</p> <p>C. PART I: Fundamentals of Free, Prior and Informed Consent (FPIC)</p> <p>C.1 Why does the FSC system include FPIC?</p> <p>C.2 What is free, prior and informed consent?</p> <p>C.3 Fundamental concepts for implementing FPIC</p> <p>C.4 What is the scope of an FPIC process?</p> <p>C.5 FPIC in the context of FSC Principles & Criteria</p> <p>C.6 Limitations of FPIC in FSC</p> <p>D. PART II: 7-Step FPIC Process</p> <p><i>STEP 1: Identify the Rights Holder and their Rights through Culturally Appropriate Engagement</i></p> <p><i>STEP 2: Prepare for Further Engagement and Agree on Scope of the FPIC Process Agreement</i></p> <p><i>STEP 3: Participatory Mapping and Assessments</i></p> <p><i>STEP 4: Inform Affected Rights Holders</i></p> <p><i>STEP 5: Prepare for Rights Holder Deliberations on the FPIC Agreement</i></p> <p><i>STEP 6: Verify and Formalize the FPIC Agreement</i></p> <p><i>STEP 7: Implement and Monitor the FPIC Agreement</i></p> <p>E. Part III: Key Concepts</p> <p>Benefit Sharing</p> <p>Binding Agreement</p> <p>Culturally Appropriate Engagement</p> <p>Dispute Resolution</p> <p>When a Dispute Cannot Be Resolved within the FSC System</p> <p>Participatory Monitoring</p> <p>Past Grievances</p> <p>F. ANNEX A: Glossary of Terms</p> <p>G. ANNEX B: Relevant Articles of ILO 16 and UNDRIP</p>
------------------------	---

Tool: [The Practice of FPIC: Insights from the FPIC Solutions Dialogue](#)

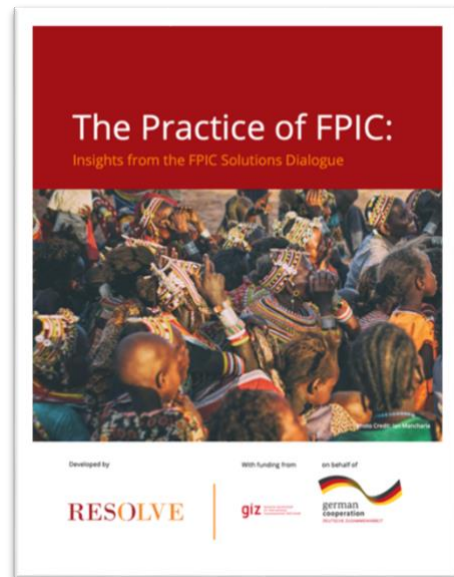
Published: 2021

Organisation: Kennedy, T., Martin, T., Lee, M.,
RESOLVE.

RESOLVE's guide on the practice of FPIC centers around the decision-making milestones that would occur in a development project seeking to undertake an FPIC process. The guide focusses on providing principles-based guidance that can be adapted to any industry or geographic/legal location.

The guide was informed by an ongoing dialogue process including civil society, Indigenous networks, and companies who are seeking to implement FPIC at project sites around the world. Their experiences and insights are found throughout the guide and represent current leading practice thinking. The involvement of several large-scale extractive companies in the dialogue, alongside more development-oriented groups, means that the approach reflects the 'stage-gate' and project permitting stages that are common in commercial projects. Given the focus on extractives, some of the terminology in this guide may be more familiar to ASM practitioners and technical experts than other tools highlighted in this section.

This guide also includes a section on closure, a phase that is frequently overlooked throughout the life of a project. Gender and inclusivity are also discussed as cross-cutting issues.



<p>Applicability to ASM and FPIC/C</p>	<p>This guide provides a balanced introduction to FPIC and how it should work through the phases of a project that would be useful for planetGOLD and partner organisations.</p> <p>The “for companies” sections throughout the document may be the best point of entry for planetGOLD project proponents, though the “for communities” sections may give insight into the questions and issues that will likely arise in consultation and consent processes.</p> <p>The approach to the ‘informed’ principle of FPIC is particularly relevant for communities who have little experience with the kind of development being proposed.</p>
---	--

<p>Guide structure</p>	<p>The Guide is structured around the decision-making milestones of:</p> <ul style="list-style-type: none"> - Pre-feasibility - Pre-permitting - Construction and operations - Before major change - Closure <p>Each milestone includes a section “for communities” and “for companies”, highlighting relevant considerations for each party.</p> <p>Many issues and principles – including agreement-making, gender and inclusivity considerations, and more – also cut across these stages. These issues are included throughout the guide and can also be accessed in aggregate in the “Resources” section.</p>
-------------------------------	---

Tool: [Simplified FPIC Approach for Independent Smallholders \(Roundtable on Sustainable Palm Oil, 2021 draft\)](#)

Published: 2021(draft)

Organisation: Roundtable on Sustainable Palm Oil

Unlike the other guides in this report, this guide specifically focusses on helping stakeholder groups with limited capacity and time-intensive processes to implement FPIC processes. The guide was designed to support Group Managers and members of independent smallholder groups in existing or new oil palm planting.

Taking these considerations into account, the RSPO has developed a simplified approach to FPIC for smallholders to be able to meet the ISPO RSH standard for certification. Many lessons from the field are included in the guide, including dealing with conflict, the RSPO complaints panel, reviews, and audits. The guide includes several 'tools' with simple steps for implementation.

The guide pays particular attention to how FPIC might be conducted in areas of High Conservation Value and neighbour impacts.

Stories, case studies and visuals are included to assist comprehension. The guide is available in English, Spanish, Indonesian, Thai and French.



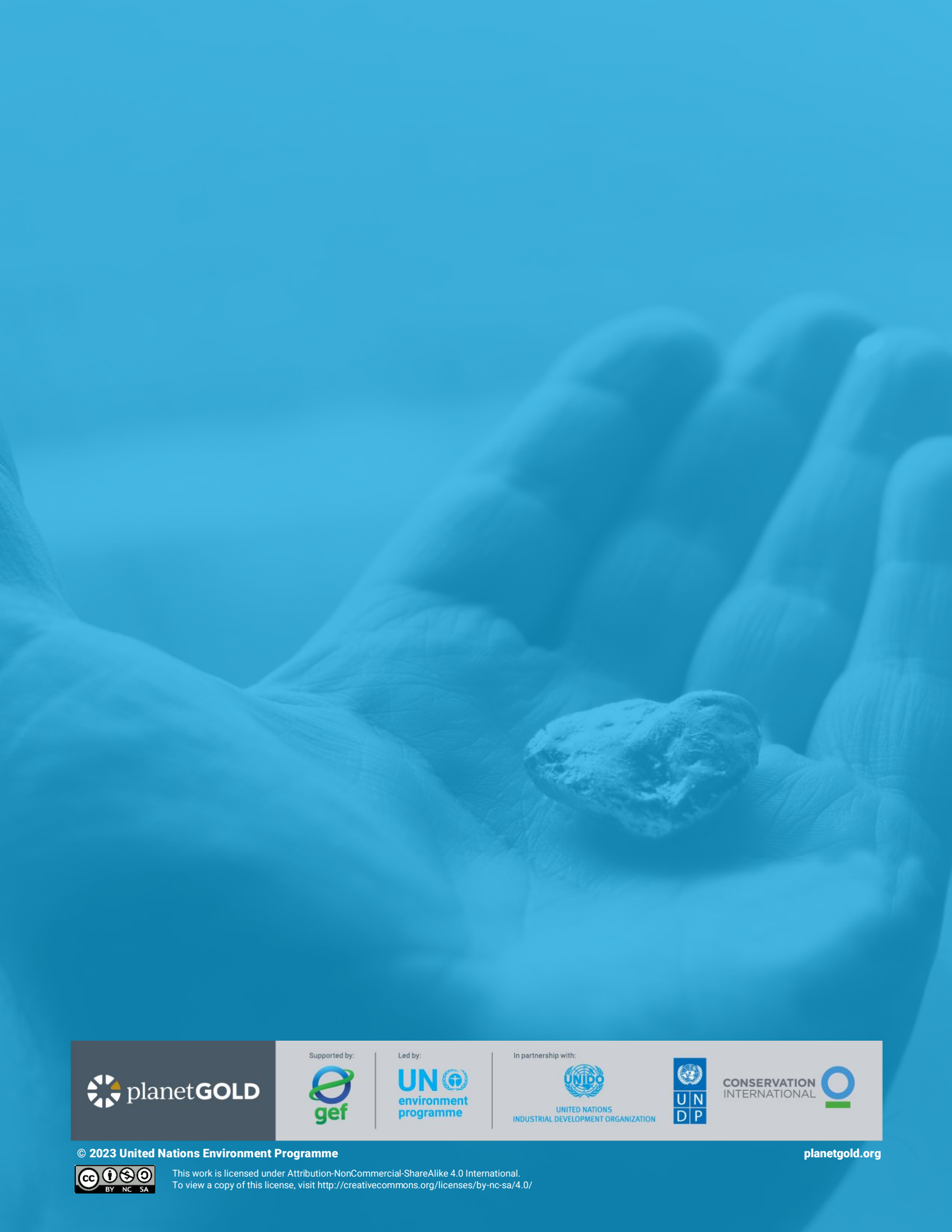
<p>Applicability to ASM and FPIC/C</p>	<p>This guide provides clear advice on community consultation and representation, respecting community decision-making, participatory mapping, gender equity, and securing livelihoods. The Guide also addresses how to identify customary land users and deal with disagreements on who has the rights to the land.</p> <p>The guide’s focus on smallholder farmers can, in many ways, be considered analogous to artisanal miners or miner collectives in terms of capacity levels and potential for their activity to impact on land rights and livelihoods.</p> <p>It contains a strong focus on environmental impacts and impacts to neighbours.</p>
---	---

<p>Guide structure</p>	<p>The Simplified FPIC Guide provides support for Group Managers (GM) and Members of independent smallholder groups in implementing FPIC procedures on existing farms and new planting in line with the RSPO ISH Standard. The Guide also offers practical tools to support the implementation of FPIC procedures.</p> <p>Contents:</p> <ul style="list-style-type: none"> • Overview • FPIC at a Glance • Guide 1. Preparation: Before Implementing FPIC • Guide 2. Ensuring Consent is Free • Guide 3. Ensuring Consent is Prior • Guide 4. Ensuring Consent is Informed • Guide 5. Ensuring there is Consent • Guide 6. Documentation <p>Tool 1. Flowchart: The FPIC Journey</p> <p>Tool 2. How to engage the stakeholders in your FPIC process</p> <p>Tool 3. Identifying Rights to the Land</p> <p>Tool 4. How to do participatory mapping</p> <p>Tool 5. Information to share with communities as part of consultation and negotiation</p> <p>Tool 6. FPIC in the Simplified Combined HCV-HCS Approach</p> <p>Tool 7. FPIC Steps in the Simplified Combined HCV-HCS Approach</p> <p>Tool 8. Documents required to demonstrate FPIC as an Independent Smallholder</p> <p>Tool 9. Verifying the simplified FPIC for ISH as an auditor</p> <p>Tool 10. Worksheet for Initial Stakeholder Contact on Independent Smallholder Plantation</p>
-------------------------------	---

	<p>Tool 11. Informational Sheet for Consultation and Negotiation with Community</p> <p>Tool 12. Sample community agreement to acknowledge the receipt of information</p> <p>Tool 13. Sample Participatory Map</p> <p>Tool 14. Equitable Origin FPIC-360° Tool</p>
--	---

SUMMARY TABLE: FPIC TOOLS OVERVIEW

TITLE	AUTHOR	SCOPE	INDUSTRY	ACTIVITY	AUDIENCE	SCALE OPERATION	OF	APPROACH	ASM APPLICATION
Guidelines for applying for Free, Prior and Informed Consent	Conservation International	Global	Conservation	Conservation projects	Guidelines for Conservation International staff	Conservation International projects		Provide introductory & background information on FPIC as well as steps for ensuring FPIC	Suitable for NGOs working on development
Indigenous Negotiations Resource Guide	Conservation International	Global	Conservation	Conservation projects	Indigenous communities	Not defined		Strategic guide for Indigenous communities to operationalize FPIC	Useful in ensuring fair FPIC negotiations
FPIC 360° tool	Equitable Origin	Global	NA	Development projects	Communities, business and government	Major/large development activities		Verification framework	Templates may be useful for documentation
Free, Prior and Informed Consent: an Indigenous Peoples' Right and a Good Practice for Local Communities	Food and Agriculture Organization of the United Nations	Global	Development	FAO programmes	Project practitioners	Major development activities		Presents a general framework for an FPIC process.	
Guidelines for the Implementation of the Right to Free, Prior, and Informed Consent (FPIC)	Forest Stewardship Council	Global	Forestry	Sustainable forestry management	Forest managers of organizations seeking FSC certification			Provides an overview of FPIC principles & how organizations wanting FSC certification should seek FPIC	Certification process focus
Good Practice Guide: Indigenous Peoples and Mining - second edition	International Council on Mining and Minerals	Global	Mining	large-scale mining	Mining companies	Mostly major mining projects (ASM is mentioned)		Provides a set of principles and accompanying tools to implement these principles	General social performance in LSM focus
The Practice of FPIC: Insights from the FPIC Solutions Dialogue	Resolve	Global	NA	Major projects	Companies and communities	Major/commercial activities		Supporting rights-based decision making and dialogue	Underlying principles apply
Free, Prior and Informed Consent Guide for RSPO Members (2021) Revised	Roundtable on Sustainable Palm Oil	Global	Palm Oil	Palm plantations	oil	Members of RSPO	Commercial plantations	Generic recommendations but includes tools and checklists to facilitate guidance for FPIC process	
Simplified FPIC Approach for RSPO Independent Smallholder	Roundtable on Sustainable Palm Oil	Global	Palm Oil	Palm smallholder groups	oil	RSPO managers and smallholder groups	Smallholders or smallholder groups	Staged approach and checklists suited to smallholders	Guidance on what is required for non-corporate actors



© 2023 United Nations Environment Programme

planetgold.org



This work is licensed under Attribution-NonCommercial-ShareAlike 4.0 International.
To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc-sa/4.0/>