



MODULE III

SESSION 1 AND 2 : FPIC IN BELIZE

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1. FPIC Guidelines and Instruments in Belize

This session offers an overview of the FPIC process in Belize, outlining the key steps and general principles required for a properly conducted FPIC process. Drawing from the Maya of Southern Belize Free, Prior and Informed Consent Protocol, the session maps out the general process. While certain aspects are Maya specific, the overall scheme is broadly applicable and adaptable to all groups.

Applicable Principles to Guide the Process

In implementing FPIC, the Government should bear in mind the need to:

- a. protect the identity, dignity and social and cultural values of Belizean, including Maya people;
- b. recognize the rights of indigenous peoples enshrined in international treaties and declarations which Belize has ratified or adopted; and
- c. Implement FPIC in a manner that is culturally appropriately, timely, meaningful, in good faith and accords with international normative standards.

(see Section 2 of the FPIC Protocol for the above)

Elements of FPIC

The FPIC Protocol affirms that for FPIC to be genuinely achieved all three primary criteria, i.e. **FREE**, **PRIOR**, and **INFORMED**, must be present. These are defined as follows: -

- 1.) **FREE** means that consent/permission is given without coercion, intimidation or manipulation, harassment, threat or bribery against any members of the community or anyone that advises or supports them. There should be no representation that funds or services may not be available if the community does not give -permission for the project. Communities must also not be pressured with expectations and timelines.
- 2.) **PRIOR** means that consent is sought in advance of the proposed date of the commencement of the project. This is to ensure that the information provided may be properly considered by the village. The village must have adequate time to receive, understand and analyze the information, and if need be, request further information.
- 3.) **INFORMED** means that the village(s) must understand the information presented, the available options and the consequences of their decision, including the positive and negative impacts. The information must be consistent, clear and accurate. It must be presented and shared in a culturally appropriate and sensitive manner. Information must also be provided on a continuous basis

Meaning of Consent

CONSENT is the collective decision made by the rights holders (the Village), reached through their customary decision-making process. FPIC is not an individual right but a collective one. For instance, for Maya communities in the south, the decision-making process is the Village Meeting.

How is FPIC carried out?

In general, the FPIC process is divided into six main steps. These steps are:

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Step 1. Initial communication and request of village expression of interest in a consultation process [see section 4 of the FPIC Protocol]

The FPIC process commences with notice from the Government to the Alcalde(s)/leaders of the affected villages of its intention to approve an administrative measure (project) that may affect the village's rights. In the notification, the Government shall include: -

- A request for a preliminary meeting with the village
- A description of the measure proposed
- Disclosure of the proposal
- A preliminary analysis of the risks and benefits
- A description of the proponent and its background and experiences
- Identification of the persons authorized to conduct the preliminary meeting

The information should be provided in a language that the village understands. Once notified, the Alcalde/leader should communicate the notice and request to the village at a Village Meeting where a decision shall be taken on whether or not to accept the preliminary meeting. It is important to note that while the Protocol provides that the Village shall respond to the Government within 21 days, the international standards for “free” establishes that timelines should not be set for the village. **In this respect, it is recommended that the 21-day period be treated as a guideline.** If the village decides to accept the preliminary meeting, the village should proceed to conduct an internal planning meeting. This is not established in the FPIC Protocol but it is important for the leaders and the Village to meet to prepare for the Preliminary Meeting.

Step 2. Planning Meeting

At the planning meeting, the village should discuss the following: -

- Whether, if the village agrees to be consulted, they prefer to engage in the process through full Village Meetings or through a Negotiating Committee;
- Any questions that the Village has in respect of the project;
- What support the Village might need to participate in the process: and
- Whether the village wishes to invite a supporting organization or the technical support.

Step 3. Preliminary Meeting [see Section 5 of the FPIC Protocol]

The purpose of the preliminary meeting is for the village to be informed of the project, their right to be consulted and their right to refuse consent. At the preliminary meeting, government representatives and the proponent should be ready and prepared to answer any question the village may have about the project. **At the end, the village will be asked if they consent to be consulted. If the village says yes, then a consultation plan should be developed.**

What is a consultation plan?

A consultation plan establishes the roadmap for the consultations with the Village. It sets out how many meetings will be required and the type of support that the Government and/or the proponent will be obliged to provide to the village to support and enable their participation. In general, the consultation plan will provide the following: -

- Schedule of meeting and the required notice period before a meeting will be called;
- Whether a translator will be necessary;
- The venue for consultation meetings;
- The person responsible for drafting the minutes of the meeting;

- Whether a full **environmental social cultural and/economic assessment** will be required;
- The channels of communication;
- Need for technical and legal support and how is responsible to pay for the cost; and
- Any other necessary information.

What is an environmental, social, cultural and economic assessment (ESCE)? [see Section 10 of the FPIC Protocol]

This is a detailed study of the potential impacts, including the positive and negative impacts, of a proposed activity on the environment, society, culture, and economy of the affected village(s). This assessment helps to determine the impact of a measure on the livelihood of the village, and thus, provides critical information for the village's decision.

The village shall have a right to participate in the development of this assessment.



Note: Even though this is a preliminary meeting requested by the government, it should still follow Village protocol. In practice, this means that the Alcalde should open the meeting and welcome his or her guests.



Another note: the reasonable costs of the consultation process shall be borne by the proponent or the Government, not the village. This includes the logistics of the meetings, the costs of the ESCE assessment, translation and interpretation. It also includes the cost of the legal and technical advice. **[See Section 9 of the FPIC Protocol]**

Step 4. Implementing the Consultation Plan

Once the consultation plan is developed, it will then be implemented. For the most part, this will involve negotiation meetings between the Village, the Proponent and the Government. This may be conducted with the entire village or through a select committee empowered by the Village at a Village Meeting to negotiate a provisional consent agreement on their behalf.

Negotiations should include discussions about:

1. A Benefit sharing Plan. **[see section 11 of the FPIC Protocol]**
2. A Monitoring plan. **[see section 15 of the FPIC Protocol]**
3. A Grievance Redress Mechanism.



Note: Remember that disclosure is continuous. It is the duty of the government representatives and the proponent to proactively disclose any new or changing information to the village. [See section 7 of the FPIC Protocol]

Step 5. Determination of Village Decision

Once a provisional consent agreement has been agreed between the committee and the proponent, the committee shall then present the agreement to the Village at a Village Meeting for their approval. A provisional consent agreement should include the following: -

- A Benefit Sharing Plan- this is the plan that guarantees and specifies the benefits for the village, including but not limited to goods and services, payment of funds, rent social services etc.
- A Prevention and Mitigation Plan.
- A Monitoring Plan, with clear consequences for default.
- A grievance redress mechanism.

If no provisional consent agreement was agreed upon by the parties, the committee shall present a report to the Village at a Village Meeting for further instruction or for the Village to decide whether or not to give or withhold consent.

Step 6: Consent or No Consent

Where consent is given, the leaders, together with any other members authorized by the Village, may proceed to sign and finalize the Consent Agreement.

Where consent is withheld, an outcome document shall be developed, which states clearly the reason for disagreement.

Step 7: Monitoring and Grievance Redress Mechanism

Where consent is withheld for a project proposed in the public interest, the parties may invoke the grievance redress mechanism in Section 17 of the FPIC Protocol, which provides for the parties to attend a mediation session to resolve their differences. Where this is unsuccessful, the parties may appoint a three-member panel to hear the dispute and make recommendation to the parties on how to resolve the dispute. The mechanism shall provide specific language for the consent agreement that might be acceptable to both parties. The recommendations, however, are not binding, though the parties should consider them in good faith. Where the dispute is not resolved, the parties may engage the court.

2. Challenges in implementing FPIC

Despite the clear principles developed for the operationalization of FPIC, the reality of their implementation is far more complex. In practice, achieving genuine FPIC can be challenging due to various factors. These include power imbalances between communities and developers, the lack of adequate legal frameworks to enforce FPIC, and the complexities of engaging with diverse communities with different needs, languages, and cultural practices.

1. FPIC as just a procedural step

One of the challenges is the misconception that FPIC is only a consultative process, akin to an environmental consultation. However, as we have seen in the principles and rights that undergird FPIC, FPIC is a substantive process that seeks to ensure the right of substantive rights, such as the right to the land and resources, the right to self-determination and the right to self-governance. Thus, it is not only a process for inclusivity and participation. FPIC is about enabling a village to decide, not only participate.

2. Public View FPIC as anti-development

Another significant challenge arises from the social and political backlash associated with the FPIC process. When FPIC is implemented, it is likely to result in increased costs, delays or even halting certain projects due to a village deciding to withhold consent. A significant sector of the Belizean public, aided by political rhetoric, then come to view FPIC as unfair- because only indigenous people can asset it- and anti-development. Indigenous villages then, as part of the broader Belizean society, frequently face intense social pressure to refrain from asserting their rights for of being perceived as selfish, backward, anti-Belizean or opposed to progress.

This challenge reflects broader tensions between the cosmovision of indigenous peoples and non-indigenous peoples; between the individual and the collective; between development and indigenous rights.

3. Lack of leverage due to the balance of power

Another challenge lies in the inherent imbalance of power among the actors involved in FPIC. While FPIC unambiguously ensures certain procedural guarantees, it does not secure minimum benefits to the villages. The quality of any given consent agreement then often depends on the leverage a village holds in a particular situation. Unfortunately, indigenous villages frequently face severe economic and political pressures, which significantly diminishes their bargaining power. This power imbalance is more pronounced when government has a direct stake in the project, as it leads to a village often feeling bullied and intimidated in the process.

For example, currently, the Government of Belize and a multinational company, US Capital are engaged in FPIC process with about 8 Maya communities individually. While the FPIC protocol currently seeks to ensure that these processes all result in Consent Agreements and in theory each community should be able to demand and secure village-specific safeguards and benefits, the Government has instead developed model agreements for the villages. Each village, thus, now has the exact same model agreement.

4. Delegitimizing Indigenous Governance

As mentioned earlier, indigenous people have the right to self-governance in matter concerning their internal affairs. They are entitled to maintain and develop their indigenous governance institutions. A proper FPIC process must recognize and respect indigenous peoples representatives and forms of governance. In Belize however, Maya villages operate under two competing forms of governance systems: a traditional Alcalde system, and a state-sanctioned Village Council system. The Government frequently regards the Village Council has the “legitimate” authority, as a result FPIC process may exclude the Alcalde or undermine the traditional system. This effectively creates a situation where the State, through the relevant ministry, is consulting with itself, via the Village Council.

Such practices contribute to conflicts within communities.

5. Stirs internal conflict

Furthermore, FPIC process and associated projects can foster jealousies and resentment between and within communities. As a result, negotiations then must be approached with great care. The amount, manner and administration of compensation and benefits must be conducted with utmost fairness and transparency, ensuring all parties are adequately informed and included.

6. Meeting Fatigue

Another common, and especially difficult challenge, is community fatigue. Negotiations can be prolonged and require numerous meetings. They are emotionally draining, especially when government representatives approach the process like a rubberstamp process or an unnecessary inconvenience. Further, when there are multiple projects affecting one village, the process can be extremely exhausting for community members.

Ensuring widespread participation of the majority of the population requires careful planning and strategies to motivate participation, in particular of marginalised groups such as women and young people.

7. Non-compliance

The lack of government support when FPIC process are not followed or communities rules are not respected is another disparity between the protocol and the principles and the reality on the ground. In the case of Santa Cruz, it led to damage of a sacred Maya temple. The case concerned the Maya village of Santa Cruz, who faced a situation in which Mr. Myles and his partner a member of the village cleared lands for farming and constructed a house within an area of the prohibited for residential or agricultural purposes because of its proximity to the Maya temple of Uxbenka. The Village instituted a claim for breach of the right to protection of the law against the Government and trespass against Mr. Myles. Prior to instituting the claim, the village repeatedly requested assistance from the Government to prevent Mr. Myles from conducting activities not approved by the Village. While the case did not directly speak to FPIC per se, it highlights the irreparable harm that may be caused by the government's failure to support the Village's right as ultimately damage was caused to the Maya temple of Uxbenka.

Manuel Pop on behalf of the Maya village of Santa Cruz v Rupert Myles and the AG of Belize Claim No. 189 of 2016



Photograph showing the unconsented activities carried out in Santa Cruz

8. Successful FPIC viewed as a consent

Additionally, government officials seem to take the view that the benchmark for a successful FPIC process is the granting of consent. When a community votes no, the state and the developers often represent that FPIC unworkable in Belize,

labelling it as too burdensome and expressive, dismissing the villages as unreasonable.

FPIC, however, is neutral about whether a project should be granted consent or not. It is NOT inherently about securing approval for a project. Rather, a successful consent process is one that adheres to the fundamental principles of free, prior and informed, while fully respecting the rights of indigenous peoples-whether or not the outcome results in consent.

9. FPIC not formally recognized for Garinagu Peoples

Garinagu communities face an additional hurdle as their right to FPIC has not been institutionalized within government. As such, Garinagu peoples bear a burden of heightened vigilance and must actively advocate for their rights. Numerous tourism developments, gas stations and other projects are often initiated on their lands without even proper notice or consultation, leaving them excluded from decisions that directly affect them. This lack of formal FPIC processes compounds the difficulty of protecting their and ensuring their voices in development decisions.

Reading materials

Maya of Southern Belize Free, Prior and Informed Consent Protocol

Celorio, Rosa, "Concluding Report, Dispute Resolution Framework Authority for complaint presented by Laguna Village", July 24 2020.

Right to free, prior and informed consultation and consent

