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# MODULE III

## SESSION 1 AND 2

### BELIZE

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# FPIC IN BELIZE

1. FPIC PRINCIPLES

2. FPIC PROTOCOL

3. IMPLEMENTING CHALLENGES

4. POSSIBLE STRATEGIES

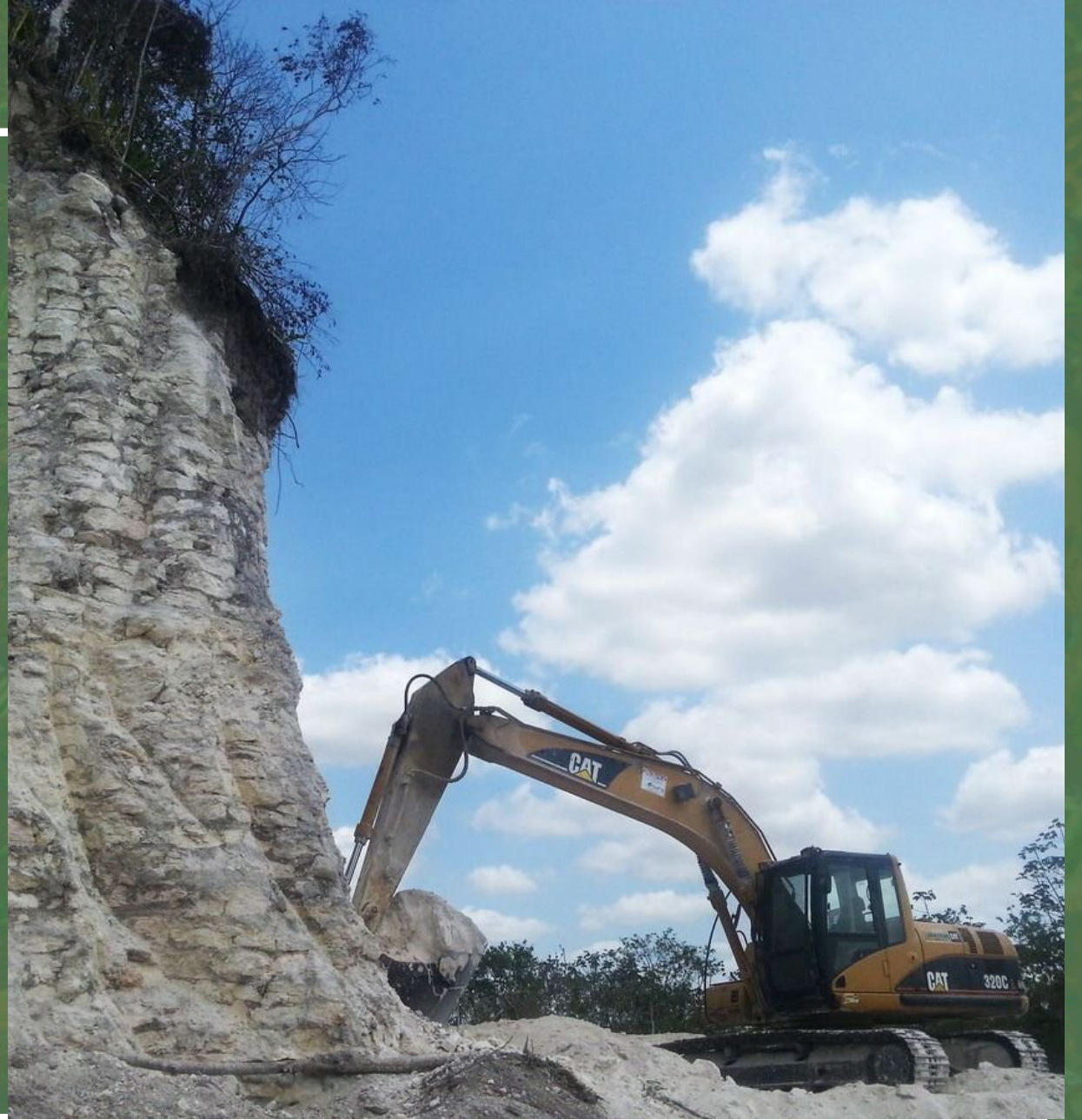
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# OBJECTIVES

- **Gain an understanding** of the core principles of FPIC
  - **Develop** the ability to apply and adapt the principles to the FPIC process
  - **Understand** the FPIC Protocol
  - **Critically analyze** the differences between FPIC principles and their practical application in Belize
  - **Explore** the challenges in implementing FPIC in the Belizean context
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# FPIC IN BELIZE RECAP

- **Belize Constitution, Chapter 104**

- Under the Belize Constitution, public officials have a duty to act fairly. Where decisions may adversely affect the rights of a community, the Government has a duty to carry out meaningful consultations.

- **Sarstoon Temash Institute for Indigenous Management et al v The Attorney General of Belize et al (the SATIIM case)**

- The court specially recognized the government's obligation to obtain the FPIC of Maya and Garinagu communities directly affected by permits for road construction and oil drilling within the Sarstoon Temas National Park.

- **Maya of Southern Belize Free, Prior and Informed Consent Protocol, 2022**

- The Protocol establishes the national framework for the operationalization of free, prior and informed consent in Belize. although its development was contentious, with Maya representatives raising objections to certain provisions, it remains the governing instrument for implementing FPIC in Maya village of southern Belize.
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# DEFINITION OF FPIC

- “Free, Prior and Informed Consent” is defined in the Protocol as the “manifestation of the Maya Peoples’ right to self-determine their political, social, economic and cultural priorities. It constitutes three interrelated and cumulative rights of the Maya people: the right to be consulted; the right to participate and the right to their lands, territories and resources. Free, prior and informed consent cannot be achieved if one of these components is missing.”
- FPIC in Belize requires consent and not only consultation. Section 12 of the Protocol states that a proponent/developer is absolutely prohibited from commencing any activity without first having obtained the free, prior and informed consent of the village(s) to be affected.



### ***FPIC as a procedural right***

As a procedural right, FPIC guarantees the right to be consulted. It relates to a process of engaging communities to afford them an opportunity to receive and provide information as well as express their views on a proposed project.

### ***FPIC as a substantive right***

As a substantive right, FPIC is an exercise of indigenous peoples' right to self-determination. FPIC should not be isolated from the overall indigenous peoples' rights framework. Put another way, FPIC does not only exist because the proposed activities may affect them but also because they have rights to rights to land, resources and culture. Furthermore, FPIC is also a substantive right in that it must be done in a way that is consistent and compliant with the indigenous peoples' customary laws and processes.

### ***FPIC as a collective right***

The right to FPIC is afforded to indigenous peoples as collectives, that is as villages or communities – not as individuals. In the case of Belize, it is a right of indigenous villages, whether Maya or Garinagu villages, or as indigenous groups managed through their governance mechanisms.



### ***FPIC as a defense mechanism***

FPIC serves as a mechanism for communities to defend their culture, their resources, their health, and their overall wellbeing.

### ***FPIC as an obligation***

*Government* - Government has an obligation to ensure that the FPIC process is meaningful and complies with the national and international standard for FPIC process. This means that government representatives should ensure that translation services are provided when requested, that sufficient time is being provided to the communities to consider the project, that the private sector is abiding by the village's customary processes and laws.

*Private sector*- Private sector, whether an individual or legal entity like a company, has an obligation to consult with the village(s) that would be affected by their proposed project. Private sector has an obligation to consult with the village and to carry out its project, if approved, in a manner that respects indigenous peoples' rights as recognized under the domestic and international law.

# WHY IS FPIC IMPORTANT?

FPIC is important because it:

- gives indigenous communities the freedom and power to determine their own development path;
- empowers indigenous communities to advocate for their development needs and priorities in a manner that also preserves their cultural identity and spiritual ties to their lands and ancestors;
- Enables the village to assess the degree of the expected direct and indirect economic, social, cultural and environmental impacts on indigenous peoples who live in the project area.
- enables indigenous communities to safeguard against adverse impacts of activities/projects; and
- enables communities to negotiate direct and concrete benefits for the community from
- proposed projects that use their lands, resources and traditional knowledge.



# WHO IS INVOLVED

## GOVERNMENT OF BELIZE



Director of IP Affairs



Ministry with power to approve



Translator

## PROPONENT



Company representative



Expert for company

## THE VILLAGE



Alcalde of the Village



Chairman of the Village

## Village Members



## Legal Representative



Technical expert



TAA Executive Member



# WHEN IS FPIC REQUIRED?

The Protocol provides that FPIC shall be required for all “administrative measures”, defined as

*“any Project, activity, investment or action which approval might affect the Maya peoples’ rights on their lands, territories and resources, including but not limited to issuing or renewing any authorizations for resource exploitation, including concessions, permits or contracts authorizing logging, prospecting or exploration, mining or similar activity under the Forests Act, the Mines and Minerals Act, the Petroleum Act, or any other Act. This includes those listed in Schedule 1.”*

- The list of activities is not the complete list. The main consideration to bear in mind is whether the decision or action will impact the rights of the Villages.

# EXCEPTIONS IN CASES OF EMERGENCY

Section 3 of the Protocol establishes:-

*“ When the purpose of the administrative measure is to address unforeseen and urgent circumstances such as natural disasters, health epidemic or national security issues or is otherwise considered a public emergency under the Constitutional of Belize, the Government of Belize may not be required to consult”*

Nonetheless, it is not every public emergency that will warrant an exception to FPIC. It must be shown that the circumstances of the emergency require an exception to FPIC, meaning that because of the urgency and importance to protect FPIC cannot be carried out and consent is not required for the measures to be carried out. However, especially in activities that deal with the exploitation of resources, there should still be a Monitoring Plan and a Benefit Sharing Plan.

# APPLICABLE PRINCIPLES

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.
- a. the rights of Maya people enshrined in international treaties and declarations which Belize has ratified or adopted.
- a. 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]

# MEANING OF FREE

**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.

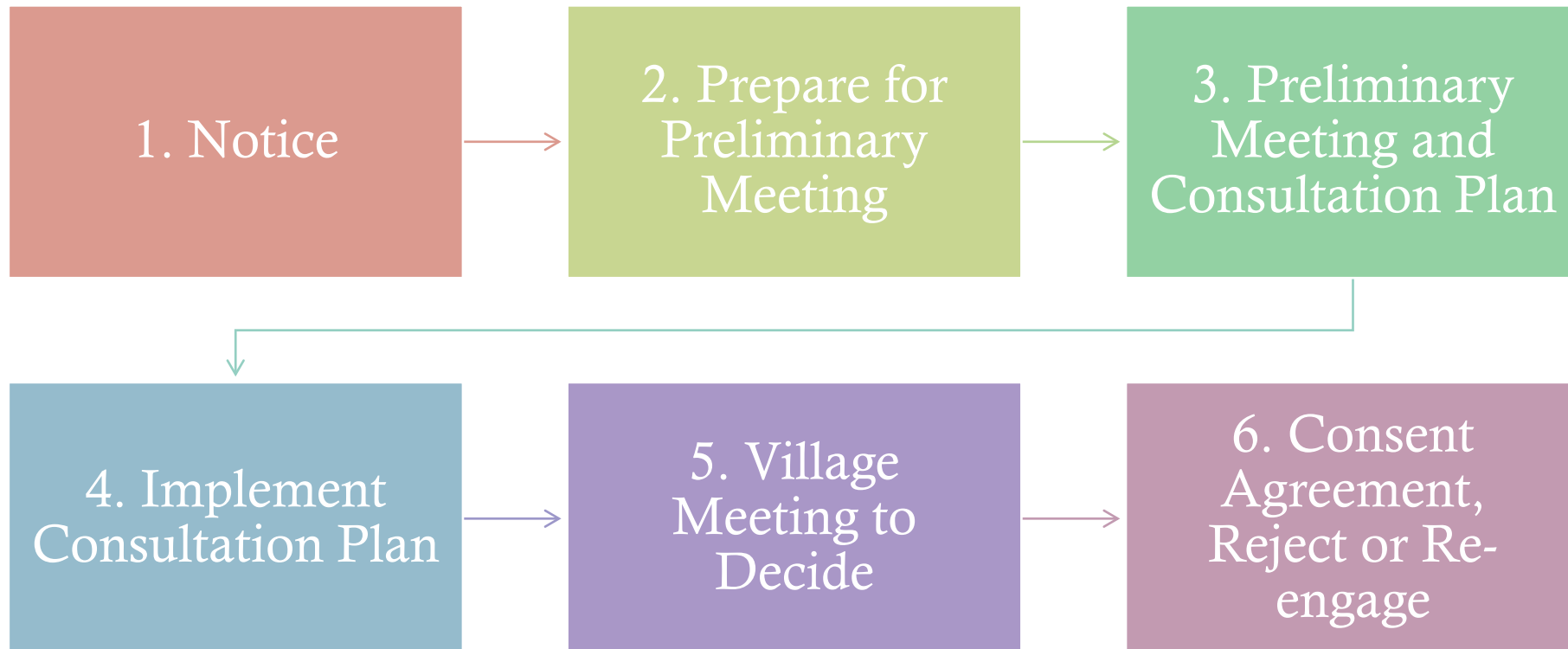
# MEANING OF PRIOR

**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.

# MEANING OF INFORMED

**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

# OVERVIEW OF PROCESS- STEPS IN FPIC





# STEP 1: NOTICE

The first step for commencing an FPIC process is to notify the alcaldes of the affected Maya Villages of the administrative measure under consideration. As section 4 of the FPIC Protocol, the notice should 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

# STEP 2: PREPARATORY MEETING

Following receipt of the notice, the Alcalde should communicate the notice and request to other village leaders and the village at a Village Meeting where a decision shall be taken on whether or not to accept the preliminary meeting.

While the FPIC Protocol requires that the Village shall respond to the Government within 21 days, this is only a guideline. This is because strict timelines can result in the Village being pressured to make a decision, which is contrary to the need that the process be “free”.

At this preparatory 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.

At the end, the Alcalde receives instruction on how to respond to the request from the Government.

## STEP 3: PRELIMINARY MEETING

The purpose of the meeting is for the village to be informed of the measure, their right to be consulted and their right to refuse consent. It is not a meeting for the village to decide on the administrative measure itself. At the preliminary meeting, government representatives and the proponent should be ready and prepared to answer the village's questions about the proposed measure.

**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 is a roadmap. In general, the consultation plan will provide the: -

- 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; and
- Any other necessary information.

# WHAT IS AN ESCEA?

An environmental, social, cultural and economic assessment 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 Maya 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.

Where a village determines that such a study is necessary, the government or the proponent shall be responsible to commission and pay for the study. This is expressly established under section 9 of the FPIC Protocol.

As per **section 10 of the FPIC Protocol**, the village shall have a right to participate in the development of this assessment.

## STEP 4: IMPLEMENTING PLAN

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 with a select committee empowered by the Village at a Village Meeting to negotiate a provisional consent agreement on their behalf.

Part of the negotiations should include discussions about:

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

# BENEFIT SHARING AND MONITORING PLAN

**Benefit Sharing Plan** – this plan specifies the agreed forms of benefit sharing between the parties. This may include provision of goods and services, payment of funds and rent, establishment of social services and other benefits negotiated and agreed between the parties. **[See Section 11 of the FPIC Protocol]**

**Monitoring Plan** – this a plan that will ensure ongoing monitoring of compliance of the Prevention and Mitigation Plan and any other matters that may arise in relation to the implementation of the administrative measure. The Plan includes the establishment of an Implementation and Impact Monitoring Team. The plan should specific the consequences that should following once the Implementation team determines that the Prevention and Mitigation Plan is not being followed. The focus of this Plan is to ensure that the plan to mitigate any adverse impact is being adhered to. **[See Section 11 of the FPIC Protocol]**

## STEP 5: VILLAGE MEETING

Once a provisional consent agreement has been agreed, it shall be presented 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 Negotiating Committee, 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 AGREEMENT/OUTCOME**

Where consent is given, then the leaders, together with any other members authorized by the Village, may proceed to sign and finalize the Consent Agreement. **[see Section 13 of the FPIC Protocol]**

Where consent is withheld, an outcome document shall be developed, which states clearly the reason for disagreement. **[See Section 13.3 of the FPIC Protocol]**

# **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.

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**FPIC IN PRACTICE**

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# FPIC IN PRACTICE

- While there are clear standards and steps established for FPIC, the reality of FPIC in practice is **messy** and under **constant threat**. The **main challenges** we have experienced in Belize are as follows:
  - FPIC has just process
  - Public demonizing
  - Imbalance of power
  - Undermining of indigenous governance
  - “Consent” as the standard for a good fpic process
  - Stirring internal conflicts
  - Meeting fatigue
  - And more....

# 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.

The right is **not only a process** for inclusivity and participation. FPIC is about enabling a village to decide, not only participate.

# **PUBLIC VIEW THAT IS 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 assert 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.

- *“We have a problem in regards to the Maya cultural movement that we are faced with in this country. And I think it is a very very bad move that is being made, influenced by external money and influence and it will create a racial divide in this country. And all of you sit back and say nothing...that is the problem I have. Tha you cannot put a military man in front and all of the soldiers behind you run. We are too complacent in this country. We have accept anything and we don't care, or we don't think about it until when it hits you and when it hits you it is too late. I have tried, I have discussed this matter with Prime Minister over and over again, and it seems to me that we are going up against a brick wall and we need some big sledgehammer to break it down. We are faced with a six-million-dollar road because we built a road to Jalacte. Because we built a road for the people of this country. We did not build that road to satisfy one ethnic group in this country. We built the road for the people in this country Belize. Nobody say nothing... 6 million you know. Right now, we are negotiating with US Capital an oil company working in Crique Sarco they have spent over 40 million dollars in this country...40million...did not find no oil. Now they are applying to continue their exploration...They are now up against a brick wall. We have a commissioner of “Indian” affairs, hired by the Government of Belize in this town, and I will say it now and I will say it again, you cannot have the rat mind the cheese.” Attached hereto is a link to the video <https://fb.watch/iShr2G5ugt/>*

*Minister Mike Espot*

# 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 being 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.**



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# NOT RECOGNIZING INDIGENOUS 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 as 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.

# 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.

# 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.

# 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.

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# **NON-RECOGNITION OF FPIC 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.

# CONSENT AS BENCHMARK

- Finally, 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 is unworkable in Belize, labelling it as too burdensome and expensive, 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.

# CONCLUSION

- The recognition of FPIC is the first step for ensuring the right to FPIC is respected.
- Communities need to ensure that both the spirit and letter of FPIC is being followed by developers and governments.
- Unfortunately, in the process of advocating and asserting their rights, communities are likely to come under extreme pressure from their members, the developers, government and the Belizean public as a whole.

