



Module III

FPIC in Belize

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This material was made possible through support provided by the Office of Inclusive Development Hub, Bureau for Inclusive Growth, Partnerships, and Innovation, U.S. Agency for International Development, under the terms of Contract No.7200AA20CA00013. The opinions expressed herein are those of the authors and do not necessarily reflect the views of the U.S. Agency for International Development.

1. Redress Mechanisms

While the right to Free, Prior and Informed Consent is well-established under the laws of Belize, this alone does not guarantee that the right will be upheld. There may be instances where villagers observe outsiders conducting wholly unconsented activity in their village. At other times, the FPIC process may be pursued but the standards for free, prior or informed might not be fully respected. For example, villages might face extreme pressure and threats or struggle to obtain material information from the company. (And then!) There may be times where FPIC was fully respected with a consent agreement signed with all relevant parties. But later down the road, the Village may find that the Government and the Proponent are engaging in activities outside the scope of the projected agreed or that promised benefits are not being provided. In all these cases, it is crucial for the village be aware of their options to ensure compliance.

In this session, we will explore the various compliance options available to a Village to ensure that the right to FPIC is upheld at every stage of a proposed activity. In particular, we will look at legal and political tools can be employed to support FPIC compliance before the FPIC process, during the FPIC process and after the FPIC.

Before the FPIC process

In general, where no FPIC is pursued whatsoever, a Village should begin by filing a report or complaint with the relevant authorities. In Belize, this means filing complaint or report with the Ministry of Indigenous Peoples' Affairs through the Office of the Director of Indigenous Peoples' Affairs.

i. Legal Claim under the Belize Constitution

Where no remedy or response is provided within a reasonable time by the Ministry, the Village should retain an attorney and file a constitutional or administrative claim in the High Court of Belize against the private actor and the Government of Belize for a breach of the right to FPIC. Remember that, because this is a collective process, the decision to file a claim should be a Village decision.

The claim against the GOB could be for breach of the right to protection of the law guaranteed under sections 3 and 6 of the Belize Constitution. It is the duty of the Government to ensure that the Village's right to FPIC is respected.

ii. Interim Injunction

An interim injunction is an order of the Court requiring an individual to do or omit doing a specific action until the Court has an opportunity to determine the Claim. This helps to prevent serious and irreparable harm that may be

caused to the Village, its members and its land and resources by the unconsented activity before the Court has an opportunity to hear the case.

Once a claim is filed, the Village has the option to the court for an interim injunction to stop the development or detrimental activity being conducted.

iii. Possible Remedies

If successful, the court may grant the following remedies: -

- Declaration the right has been infringed- a declaration confirms that a specific act has violated a fundamental right of the village. It also serves to inform public authorities of the acts that infringe rights.
- Permanent Injunction- this is an order that indefinitely prevents someone from doing a specific action.
- Damages – this is monetary award intended to compensate for any loss or damaged caused by the wrongful act.
- Restitution, especially where lands were acquired without the prior consent of the Village – this remedy secures the return the lands wrongfully acquired

iv. Special Procedure- CCJ Authority

A special dispute resolution mechanism was also created as part of the implementation of the Consent Order primarily to address issues related to FPIC. The mechanism allows villages to submit complaints about encroachments on lands of Maya villages without the prior consent of the village. Referred to as the “Authority”, the mechanism is essentially an expert in indigenous peoples’ rights, appointed by the Court with the agreement of both parties. The Authority receives complaints from villages, conducts investigations and provides opinion on whether the act alleges constitutes an infringement of the right of the village. The Authority then offers recommendation to the parties on how to resolve the breach.

During the FPIC

FPIC may be also breached when corresponding standards are not adhered to during the consultative process. In these cases, a village may utilise any of the following options.

i. Withdraw consent

Where the village is reasonably dissatisfied with the FPIC process due to a breach of the standards by the proponent, it has the right to withdraw its consent to be consulted.

Upon this withdrawal, the FPIC process comes to an end and the proposed activity cannot move forward.

ii. File claim in contract for breach of consultation plan

Another option is filing a legal claim before the High Court of Belize in contract law. Where the proponent has failed to comply with its commitments under the Consultation Plan, resulting in actual damage or specific loss to the village, the Village may file a contractual claim against the proponent. This is because the Consultation Plan functions as a contract between the village and the developer.

iii. Injunctive relief

If the proponent disregards the withdrawal of consent and attempts to wrongfully proceed with the proposed activity, the village may also seek injunctive relief to stop the proponent from unlawfully conducting their activities.

iv. Mediation

For a project proposed in the public interest, the parties may engage in mediation to resolve a dispute which arises in the consultative process. As mentioned in the last session, the FPIC Protocol provides for this under the the Grievance Redress Mechanism.



A photo of the destruction of a Maya temple in Belize

After FPIC

Ideally, when FPIC results in consent being granted to the Government and the proponent, the parties should formalize the agreement through a Consent Agreement that clearly outlines the rights and obligations of all involved. Consent Agreements should also include a Monitoring Plan and Grievance Mechanism to ensure compliance with the terms. Additionally, these agreements typically establish a process for dispute resolution.

If the community chooses to move forward with a project, the Consent Agreement should contain a mechanism for addressing conflicts, as FPIC remains valid throughout the entire lifespan of the project—granting consent is just the first step.

Thus, where there is a breach the Consent Agreement, the first step is to review the Agreement to explore the dispute resolution mechanisms provided for in the Agreement.

i. Monitoring Plan

As per the FPIC Protocol, the parties should develop a Monitoring Plan during the consultative process. This Plan include duties and responsibilities for those involved in monitoring compliance. The Plan should also specifically include consequences for default.

ii. Grievance Redress Mechanism

Additionally, the Consent Agreement may also opt to include a grievance mechanism to deal with any issues outside of the scope of the Monitoring Plan. It is important to note that the Grievance Redress Mechanism in the Protocol is a mechanism that exists to assist the parties during the consultative process, not post-consent.

The Redress mechanism may provide for mediation, incorporating traditional conflict resolution mechanisms, before the parties resorting to court action. Timelines should be included so that the process does not result unreasonable long.

iii. Legal Claim under the Constitution or in Contract

Where the grievance mechanism does not adequately remedy the breach, the village may decide to withdraw consent and commence a legal claim in judicial review, constitutional claim or contract law.

As for any claim before the court, parties always have the option of applying for an injunction against the wrongful action.

iv. Ombudsman Office

Another option is to file a complaint with the Office of the Ombudsperson. Established under the Ombudsman Act,¹ the Ombudsperson is tasked with investigating complaints made against government agencies, officials or employees involving corruption, abuse of power, including discriminatory treatment and other breaches of fundamental rights and freedoms, or any other wrongdoing connected with the exercise of the administrative function of that authority.² In addition, the Ombudsperson may also institute investigation on his or her own motion. The purpose of the office is to protect persons against abuses of public officers, and, in so doing, further the protection of human rights in Belize. Once the Ombudsperson considers that the complaint has been made out, he or she recommends corrective measures which may be adopted by the officer or authority to remedy the wrongful act. In this way, the Ombudsperson acts as an alternative dispute resolution mechanism. The Ombudsperson also issues annual reports of the complaints made against the various departments.

The advantages of the Office of the Ombudsperson are that it offers persons access to a quasi-judicial authority at no cost. With the assistance of the Ombudsperson, persons are able to hopefully settle their dispute with the public official without having to resort to court action. Nonetheless, one of the major weaknesses of the office is its lack of coercive power. As its function is mainly investigative in nature, its recommendations are often ignored by the public official.

v. Inter-American Commission on Human Rights

Lastly, if none of the mechanisms in Belize provide an effective mechanism to remedy the breach, the Village may then file a petition before the Inter-American Commission on Human Rights for breach of the villages' right to FPIC as protected under the American Declaration of the Rights and Duties of Man.

2. Redress Mechanism - Political Tools

File a complaint with the Toledo Alcaldes Association (or a supporting organization)

A village dealing with a violation of FPIC usually struggles with navigating these issues on their own. In these circumstances, it would be recommended

¹ Chapter 5 of the laws of Belize

² Ombudsman Act, Section 12

to notify the Toledo Alcaldes Association, the organization comprises of all the elected alcaldes of Maya villages, to obtain support.

File a complaint with the Ministry

Making a report to the relevant ministries is important. This gives the Government the opportunity to become aware of the violation and take corrective action.

Launch a campaign

Media engagement has also assisted in preventing harm to indigenous peoples. There are times when the formal process does not work or where the harm threatened is so egregious that slow pace of formal complaint mechanism may not be effective. In this case, media engagement and public awareness may offer quick reprieve because this forced public officials to prioritize the concern. Companies are also sensitive to bad press and public opinion and so may be motivated to quash any dispute quickly.

Exercise

The Maya village of Poite has never had access to residential water use. In August 2023, the Chairperson receives a letter from a government official informing him that Quench Limited wants to construct a water system within their village lands. The letter is addressed solely to the Chairperson, with no other village leader being copied. The letter requests that the Chairperson indicates whether he agrees to have his village participate in a preliminary meeting with the QL to discuss the project.

Advise the Chairman on the appropriate steps to take.

Right to free, prior and informed consultation and consent

