

EarthTrends Featured Topic:

Empowering Communities Through Free, Prior, and Informed Consent

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Community-based natural resource management offers local people the chance to participate directly in decisions about local ecosystems and to benefit economically from their efforts. But in the real world, poor communities often do not initiate the large-scale resource development projects—such as mines, oil and gas development, or major forest concessions—that account for most natural resource wealth. More often, they are bystanders or second-class participants in these negotiations, inheriting the ecosystem costs of these projects with little gain.

The practice of "free, prior, and informed consent"—or FPIC—is designed as an antidote to this state of affairs. FPIC consists of giving local people a formal role—and some form of veto power—in the consultations and ultimate decisions about local development projects. It is intended to secure the rights of indigenous peoples and local communities: their rights to self-determination, to control access to their land and natural resources, and to share in the benefits when these are utilized by others. Many experts believe that without such informed consent on large projects, a community's land and resource rights are compromised.

In fact, without the kind of substantive participation that FPIC mandates, the tenure security of rural communities is always at the mercy of decisions made by others. It is well documented that such insecurity perpetuates poverty. In contrast, with the bargaining power that FPIC provisions bring them, communities can demand direct

compensation for damages or a continuing share of the profits of resource extraction. They can even require the backers of development to invest part of the profits from these ventures to meet community needs. In this respect, FPIC is a tool for greater equity and a natural pathway to a co-management role for local communities in large development projects (Permanent Forum on Indigenous Issues 2005).

FPIC is relevant when governments make regulatory decisions—for example, allowing logging in forests traditionally occupied by indigenous peoples, or displacing riverside communities in order to construct a large hydropower dam. It can also be incorporated into infrastructure planning—from the building of roads that traverse through ancestral domains, to tourism development decisions such as providing access to sites considered sacred by tribal peoples. It is equally important in making decisions about bioprospecting for genetic resources as it is for making choices about locating major energy projects, from power plants to pipelines. To date, however, FPIC has been most relevant and critical in cases involving mining projects in countries as diverse as Australia, Canada, Peru, and the Philippines (Bass et. al. 2003:vii; Tebtebba 2002:7)

The potential poverty impact of FPIC in decisions on extractive industries such as oil, gas, and mining is particularly relevant and contentious. In order for communities to reap greater benefits from such development,

their rights to sustainable livelihoods must be protected. Rules enforcing these rights will not only promote "cleaner" extraction, but also empower local communities to take the risks and share the benefits of future development. Without FPIC, these projects may further the economic marginalization of peoples and communities that are already poor and vulnerable.

These projects often require involuntary resettlement and all the negative economic consequences such dislocation brings. An FPIC requirement would enable affected people to negotiate more favorable relocation terms, including legally binding provisions on compensation, support for new housing, and the necessary infrastructure not only for shelter, but for livelihoods and education as well. Requiring FPIC could even allow these people and communities to negotiate fair, equitable, and enforceable terms of revenue- and other benefit-sharing. The inclusion of FPIC as a legal condition for financing, investment, or regulatory decisions could become a critical means to make poverty alleviation programs more sustainable (Goodland 2004; Kamijyo 2004).

To date, countries like the Philippines (Congress of the Philippines 1997) and Australia (Commonwealth of Australia 1976: Sections 66-78) have enacted laws requiring that FPIC be obtained by the government for projects within the ancestral domains of indigenous peoples. Internationally, the World Commission on Dams (WCD 2000:xxxiv-xxxv,98-112) and the Extractive Industries Review (World Bank Group 2003

Executive Summary: 2-3, Volume 2:29-33, 47-50; MacKay 2004) of the World Bank have recommended the adoption of FPIC in making decisions about dams and oil, gas, and mining projects. In addition, FPIC as a principle has been acknowledged in the Convention on Biological Diversity, with regard to access to and benefit-sharing of genetic resources (Perrault 2004: 22; Casas 2004:2728).

Putting the principles of free, prior, informed consent into practice remains a challenge. Important questions remain:

- How can we define "free" in practice? How far ahead does

"prior" mean? What are the formal terms of "informed consent"?

- What is the role of customary law in FPIC? And what is the role of official processes, such as public hearings or referenda?
- In a diverse community, how is consent given and who gives the consent? Is a majority enough or is full consensus required? Is a written, legally binding agreement necessary?
- How is FPIC verified? Does the government verify it or is oversight by an independent

party necessary?

- In implementing FPIC, how do we ensure a balance between the state, the general public interest, and affected community interests, particularly in the distribution of benefits?

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