



# CONCISE GUIDE TO USAID'S TOOLKIT FOR MONITORING ENGAGEMENT AND VERIFYING FREE PRIOR, AND INFORMED CONSENT (FPIC)

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## **LIST OF ACRONYMS**

|        |   |
|--------|---|
| CDCS   | Country Development Cooperation Strategy                      |
| EIA    | Environmental Impact Assessment                               |
| FPIC   | Free, Prior, and Informed Consent                             |
| IDA    | Inclusive Development Analysis                                |
| IEE    | Initial Environmental Examination                             |
| MEL    | Monitoring, Evaluation, and Learning                          |
| OU     | Operating Unit  |
| PAD    | Project Appraisal Document                                    |
| PRO-IP | Policy on Promoting the Rights of Indigenous Peoples          |
| SIA    | Social Impact Assessment                                      |
| UNDRIP | United Nations Declaration on the Rights of Indigenous People |

## WELCOME TO THE FPIC-360° TOOL

This is a multipronged tool developed for the United States Agency for International Development (USAID) to facilitate implementing partners, Indigenous Peoples, and other stakeholders to implement the FPIC processes. This is a management tool that allows all parties to document activities, track progress, and organize multimedia evidence. At each step of the FPIC process: Enabling Conditions, Prerequisites, FPIC Process, Achieving FPIC, and Follow-up (see below), this tool requires that evidence be uploaded as proof of compliance. This evidence may be contributed by the Indigenous Peoples or the implementing partner before being made available to a third-party assurance provider to confirm and verify.

### ENGAGEMENT AND FPIC IN THE USAID PROGRAM CYCLE

USAID's Policy on Promoting the Rights of Indigenous Peoples (PRO-IP) emphasizes the importance of dialogue, engagement, and partnerships with Indigenous Peoples throughout the Program Cycle. Initial informal conversations with the communities inform USAID and implementing partners, promote trust building, and facilitate further analysis of the local context. Formal consultations ensure the two-way flow of information whereby USAID, implementing partners, the communities, and other stakeholders jointly examine the program design and assess potential positive or negative impacts and, if necessary, develop mitigation measures. Formal consultation is the necessary basis through which USAID, implementing partners, and other stakeholders can pursue FPIC with Indigenous Peoples' communities, and ideally, collaborate to co-create programs and establish partnerships for sustainable development. Important lessons learned and best practices from USAID's prior collaboration with Indigenous Peoples are detailed in the Sector Guidance,<sup>1</sup> including for Agriculture and Food Security; Biodiversity; Education; Energy and Infrastructure; Sustainable Landscape; Democracy, Human Rights, and Governance; Global Health; and Livelihoods.

### FACILITATING FORMAL CONSULTATIONS

To achieve meaningful consultations with Indigenous Peoples, USAID and implementing partners should establish Enabling Conditions (see step 1) and Prerequisites (see step 2) by building a holistic and systematic engagement platform to ensure effective participation by Indigenous Peoples and other stakeholders. The aim of a formal consultation is to generate a two-way flow of information that facilitates mutual understanding about potential programming, and if carried out early enough, about the formulation of development objectives and activities. This tool outlines the process for structured formal consultations, including seeking FPIC. Steps 1, 2, 3, and 5 are helpful to USAID and implementing partners in conducting, verifying, and documenting thorough and meaningful formal consultations with Indigenous Peoples. In situations where FPIC is required (see USAID's Guidance on Monitoring Free, Prior, and Informed Consent for determining the need for FPIC), step 4 helps to ensure that such requirements are met. In all cases, formal consultation and seeking FPIC with Indigenous Peoples should

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<sup>1</sup> <https://www.usaid.gov/indigenous-peoples/sector-guidance>

not be treated as a one-off event, but rather as a process of continuing engagement where all stakeholders participate to ensure sustainable development.

## CONSENT IN LINE WITH FPIC

When an implementing partner seeks to achieve consent in line with FPIC principles, formal documentation of the willingness of the community to enter into an agreement and negotiating an agreement are the two requirements (step 4) added to meaningful consultation procedures (steps 1, 2, 3, and 5). Reference the USAID Guidance on Monitoring Free, Prior, and Informed Consent,2 figure 1, Forms of engagement and conditions when FPIC may be required, to determine when the obligation of FPIC is triggered. In order to assure compliance, consent must be obtained if there are existing legal requirements where the activity is being implemented.

**A note on documentation** Transparent, accountable, and accessible documentation of the consultations, information shared, and negotiated decisions is the cornerstone of a successful FPIC process. In the program design and pre award stages, USAID operating units (OUs) should integrate documentation on consultations and FPIC as part of the Initial Environmental (and Social) Examination, Gender and Inclusive Development Analyses, Project Appraisal Document, and so forth. During the procurement and post award stages, requirements for documentation should be integrated into the solicitation; evaluation criteria; reporting requirements; program monitoring and evaluation activities; and collaborating, learning, and adapting efforts. While it is not necessary to structure documentation in response to the prompting questions for steps 1 through 5, the intended information (especially information demonstrating the communities willingness to negotiate, the agreement, and dissenting opinions) can be integrated into the most relevant stages of the program cycle (and be accessible for audit as necessary). For example, the question on women’s participation is best integrated into the gender analysis and report.

USAID OUs should consider local political dynamics and exercise best judgment to determine whether sufficient information has been gathered in response to the prompting questions (below). OUs also may need to modify the tool to best fit changing local contexts and legal requirements (e.g., interpretation and translation services may be necessary to facilitate engagement).

Throughout all phases of the process, USAID OUs and implementing partners should follow applicable policies on protecting personally identifiable and similarly sensitive information.

## KEY STEPS IN THE FPIC PROCESS

### I. ENABLING CONDITIONS

- ▶ **Program cycle stages: Country Development Cooperation Strategy (CDCS), Inclusive Development Analysis (IDA), Environmental Impact Assessment (EIA)/ Social Impact Assessment (SIA), Training**

Meaningful engagement and consultation with communities require understanding of the community. Enabling Conditions are circumstances that should be in place before the consultation or the FPIC Process begins. Some conditions are relevant to the affected community, while other conditions are relevant to USAID or the implementing partner. The consultation or FPIC Process can start once the following Enabling Conditions are met.

Information to be learned from the community:

- What is the community’s process or procedures for representative decision making and developing (or identifying) cultural norms?
- What is the community’s process for consultations and consulting with women and other marginalized groups?

- Does the community have the knowledge and capacity to participate equitably in the consultation process?
- What does the community require in order to effectively participate?

Enabling Conditions that require collaborative input:

- Is there a mechanism for community representatives, implementing partners, and other representatives to facilitate diverse and collaborative participation?
- Does the community have the opportunity to actively participate in the consultation process?

Enabling Conditions that require input from the implementing partner:

- Does the implementing partner have policies and procedures aligned with PRO-IP and that support Indigenous Peoples' rights?
- Does the implementing partner have dedicated and qualified personnel responsible for community engagement and consultation?
- Does the implementing partner understand and respect community customary decision-making mechanisms and structures?

## 2. PREREQUISITES

### ▣ Program cycle stages: IDA, EIA/SIA, PAD, Activity Design and Implementation, Training

The Prerequisites assess the scope and the impact of the activity and whether FPIC is required (or whether ongoing consultation is sufficient), and who the rights holders are.

- What is the geography and predicted impact of the activities?
- Is there a legal or contractual obligation to achieve FPIC?
- Who are the rights holders and duty bearers of FPIC and consultation?

## 3. FPIC PROCESS

### ▣ Program cycle stages: CDCS, IDA, EIA/SIA, PAD, Activity Design, Activity Implementation, Implementing Partner Solicitation and Selection, Implementing Partner Annual Review, Monitoring, Evaluation, and Learning (MEL), Mission Portfolio Review, Training

Consultations and the FPIC Process both consist of understanding the community's willingness to consider the activity and ensuring that they are aware of the potential impacts and benefits of the proposed activity:

- How will the activity impact the community?<sup>2</sup>
- Has the community been consulted regarding the activity?
- Does the community support the activity?

#### 4. ACHIEVING FPIC

In order to assure compliance with international norms for FPIC, consent must be obtained if there are existing local or legal requirements where the activity is being implemented. To achieve FPIC beyond consultation requires the element of consent. Gaining the consent of a community relies on two main steps: understanding whether the community is willing to negotiate and coming to an agreement. When an agreement is freely signed after a robust consultation process, FPIC can be considered accomplished

However, the process does not end with an agreement. The steps for following up on the agreement can be found below.

- Is the community willing to enter into negotiations?
- Have the community and implementing partner negotiated an agreement regarding the activity?
- How are dissenting opinions accounted for and incorporated into the agreement?

See Annex I for indicative elements of an agreement.

#### 5. FOLLOW-UP

▣ **Program cycle stages: PAD, Activity Design and Implementation, Implementing Partner Solicitation and Selection, Implementing Partner Annual Review, MEL, Mission Portfolio Review, Training**

Whether a process of consultation or FPIC was carried out, the activity impacts and agreements should be monitored going forward. This includes setting up processes for monitoring and evaluation, as well as protocols in case of a grievance.

- Is there a mechanism for ongoing dialogue and consultation?
- Is there a participatory mechanism for monitoring and evaluation?
- Are there additional inclusive development needs/concerns/issues to be considered?
- Has a grievance and remediation mechanism been established collaboratively?

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<sup>2</sup> A starting point may be USAID's Optional Social Impact Assessment Framework (<https://www.usaid.gov/indigenous-peoples/social-impact-assessment-toolkit>).

## ANNEX I. ELEMENTS OF AN AGREEMENT

Agreements can vary significantly, depending on the project. They can range from a very simple agreement with a single community or stakeholder to a very complex agreement, including negotiations for benefit sharing, impact mitigation, and remediation measures with multiple communities. As a best practice, agreements should include the following elements:<sup>3</sup>

- Summary of program, project, and/or activity information (location, duration, area of influence, objectives, and impacts).
- Clear signatory parties or an alternative customary binding practice that will be used to finalize the agreement, indicating the chosen representatives, their role in the community, how they were chosen, and their responsibility and role as representatives.
- Whether any ownership, titles, or use rights change and how, including whether any constituents will exchange their rights or titles for compensation and how negative impacts will be avoided, mitigated, or compensated.
- Mutually agreed upon, substantive evidence of consent (e.g., written documentation, observed verbal commitment, recordings, or photographs [only if participants have given consent], third-party interviews when customary processes are used).
- Communication arrangements:
  - The best way to communicate with the representatives includes consideration of the language spoken, the level of literacy, and cultural considerations and etiquette to be followed when communicating with leaders, elders, or spiritual/religious figures.
  - How the representatives will ensure that they speak for the community as a whole, taking into consideration marginalized groups such as women, youth, the elderly, or individuals with disabilities.
  - How the dialogue will be shared with constituents and how their inputs will be solicited for decision making.
  - How disputes will be resolved.
- Agreed feedback, a complaints mechanism, and provision of access to a remedy.

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<sup>3</sup> Adapted from the Food and Agriculture Organization (FAO) Free Prior and Informed Consent: An indigenous peoples' right and a good practice for local communities, Manual for Project Practitioners, 2016, p. 26., <https://www.fao.org/3/i6190e/i6190e.pdf>



- A monitoring (for compliance with the agreement) and evaluation plan, including community participation and feedback.
- Terms for revision, including a means to revisit and/or revise as the program or project progresses.
- Terms for the withdrawal of consent.
- Independent verification provisions (e.g., verification of the process used to reach the negotiated agreement and/or continuous monitoring of the agreement).