

FREE, PRIOR AND INFORMED CONSENT (FPIC)

Free, Prior and Informed Consent (FPIC) is a specific right that pertains to indigenous peoples and is recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

It allows them to give or withhold consent to a project that may affect them or their territories. Once they have given their consent, they can withdraw it at any stage.

Furthermore, FPIC enables them to negotiate the conditions under which the project will be designed, implemented, monitored and evaluated. This is also embedded within the universal right to self-determination.

ELEMENTS OF FREE, PRIOR AND INFORMED CONSENT (FPIC)

Source:

UNPFII, 2005; EMRIP, 2011.

FREE

PRIOR

INFORMED

CONSENT



FREE

Free implies no coercion, intimidation or manipulation. The consent is free, given voluntarily and without coercion, intimidation or manipulation.

A process that is self-directed by the community from whom consent is being sought, unencumbered by coercion, expectations or timelines that are externally imposed.

PRIOR

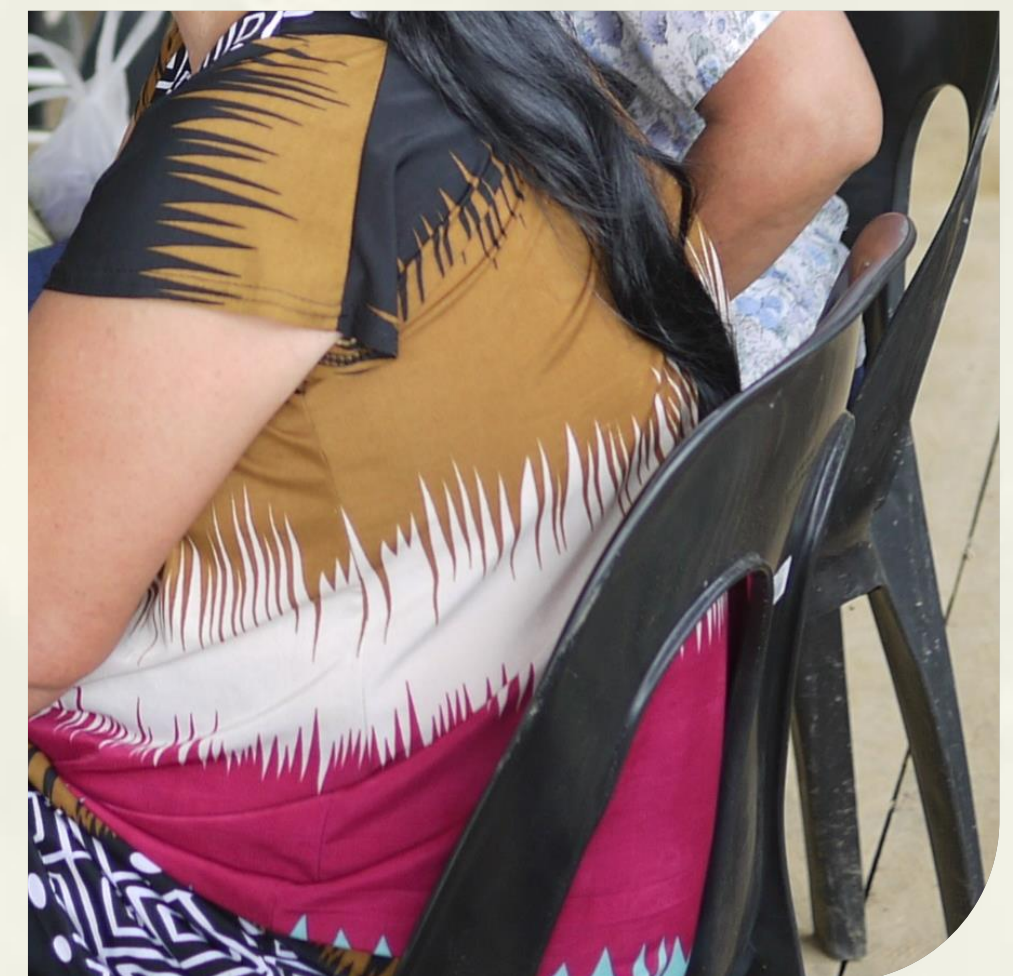
Prior implies consent is sought far enough in advance of any authorisation or commencement of activities, and the time requirements of indigenous consultation and consensus processes are respected.



INFORMED

Informed implies that all information relating to the activity is provided to indigenous peoples and that the information is objective, accurate and presented in a manner or form that is understandable to indigenous peoples. Relevant information includes:

- ✓ the nature, size, duration, reversibility and scope of any proposed project;
- ✓ the reason(s) or purpose of the project;
- ✓ the location of areas that will be affected;
- ✓ a preliminary assessment of the possible economic, social, cultural and environmental impacts, including potential risks and benefits;
- ✓ personnel likely to be involved in the implementation of the project;
- ✓ procedures that the project may entail.



CONSENT

Consent implies that indigenous peoples have agreed to the activity that is the subject of the consultation. Indigenous peoples also have the prerogative to withhold consent or to offer it with conditions. Consultation and participation are key elements of a consent-seeking process. Consultation must be undertaken in good faith, which, among other things, requires that indigenous views are accommodated in the process or objective justifications are provided as to why such accommodation is not possible.

The parties must establish a dialogue allowing them to identify appropriate and workable solutions in an atmosphere of mutual respect and full and equitable participation, with ample time to reach decisions. Indigenous peoples and local communities must be able to participate through their own freely chosen representatives and customary or other institutions. The participation of women, youth and children is preferable where appropriate.



WHY FPIC?

When **FPIC** is properly conducted:

- ✓ Building of a long-term trust-based relationship
- ✓ consent that is obtained is free from issues and if there are issues can be revisited due to the relationship that was built during the FPIC process
- ✓ Minimise risks avoid future conflict
 - ◆ Disputes & other forms of conflict
 - ◆ Harm to the natives & their territories
 - ◆ Damage to the reputation of the implementing organisation/company
- ✓ Informs project managers on how to better target beneficiaries' needs and expectation and strengthen possibilities for future collaboration



WHAT IS FPIC?



A MARRIAGE – AN ANALOGY OF FPIC



MERISIK

Sebelum sesuatu upacara perkahwinan dilaksanakan, keluarga kedua-dua pihak mengatur segala persiapan yang diperlukan seperti cincin. Sebelum peminangan dibuat, pihak lelaki melantik seorang tua yang bukan terdiri daripada keluarga terdekat lelaki berkenaan. Wakil pihak lelaki merisik kepada ibubapa perempuan yang hendak dipinang atau pengganti ibubapa jika ibubapa perempuan sudah tidak ada.

A MARRIAGE – AN ANALOGY OF FPIC



perbincangan yang santai dan tenang

Risikan ini dibuat berulang kali, peringkat demi peringkat dan adakalanya memakan masa berhari hari, malah ada sampai berbulan-bulan. Ini disebabkan banyak perkara yang mesti diketahui dengan jelas oleh ibubapa perempuan terhadap keluarga yang merisik anaknya. Antaranya: susunan keluarga, kemampuan, Pekerjaan dsbg.

A MARRIAGE – AN ANALOGY OF FPIC



MEMINANG

Proses apabila ibubapa perempuan mendapati risikan boleh dipertimbangkan, mereka akan menentukan hari untuk wakil lelaki datang membawa cincin.

A MARRIAGE – AN ANALOGY OF FPIC



BERTUNANG

Selesai mesyuarat keluarga, ibubapa perempuan memanggil wakil pihak lelaki untuk memberitahu Keputusan mereka. Perundingan antara pihak lelaki dgn ibubapa perempuan hanya berkisar pada syarat-syarat hantaran perkahwinan.

Pertunangan yang telah ditetapkan tidak boleh diingkari. Jika tidak, pihak yang ingkar terpaksa membayar seluruh atau separuh hantaran yang sudah ditentukan.

A MARRIAGE – AN ANALOGY OF FPIC



BERNIKAH

Hantaran yang telah dipersetujui semasa majlis pertunangan dibawa ke majlis perkahwinan.

Kadang-kadang ada Barian Mati juga.



FPIC WITH NON-CONFLICTED COMMUNITIES

Straight forward process following the RSPO guidelines on FPIC



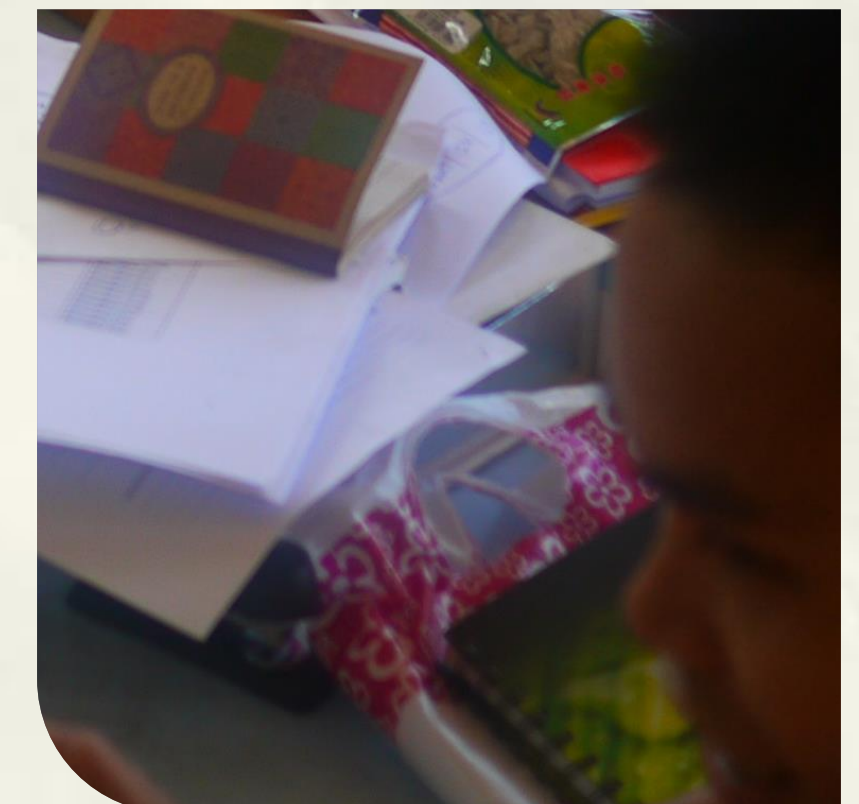
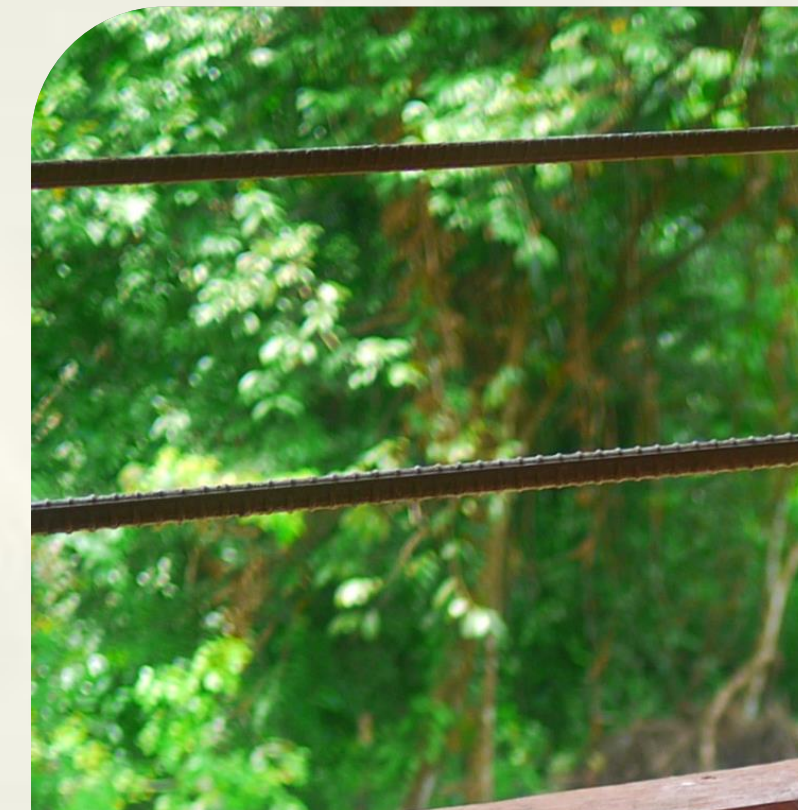
NPP



A new Project (e.g. CSR with a community neighbouring the unit of certification)

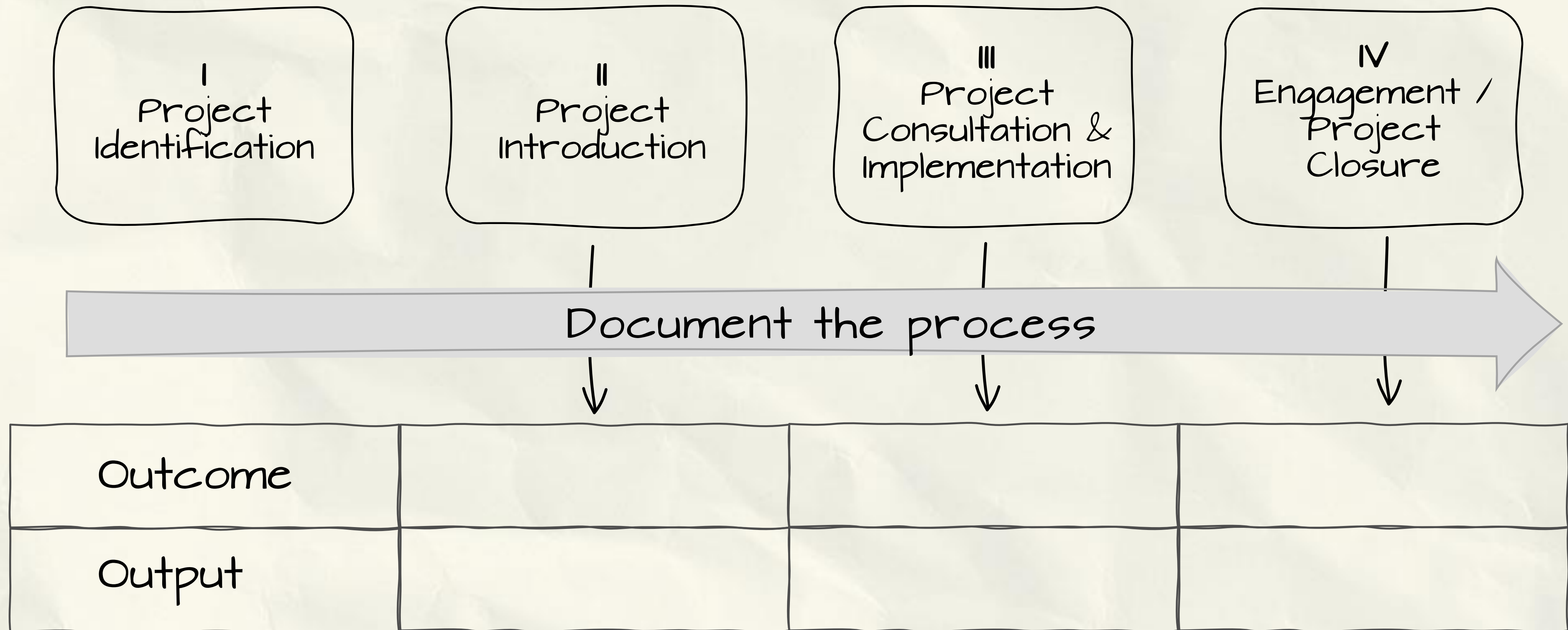
WHAT YOU NEED TO KNOW

- ✓ **WHO** will you be interacting with & what kind of decision-making structure do the community(ies) follow. Do not forget the role of relevant local authorities in your plan (if applicable)
- ✓ **WHERE** your community(ies) live, where is their land & natural resources at & what user rights do they have & what are the customary rights that should be accorded to them in order to undertake your project (HCV 4, 5 and 6) (Be careful because they may have NCR in HCV 1, 2 and 3 as well) - (participatory mapping would be needed)
- ✓ **INFORM** your community(ies) in a transparent manner so they can freely decide on the project that your company would like to implement
- ✓ **CONSENT** to be obtained by all parties involved in your project before commencement of activities
- ✓ **ENSURE** that the agreement reached is properly monitored & evaluated by all interested parties in a transparent & effective manner
- ✓ **DOCUMENTATION** of the process and of lessons learnt



IMPLEMENTING FPIC

Engagement and consultation of the project will have at least 3 to 4 engagement processes.



METHODS OF ENGAGEMENT PROCESS BASED FROM EXPERIENCE ON THE GROUND OF BCI AND SEPA

PROJECT INTRODUCTION	
	ACTIVITY DESCRIPTION
ACTIVITY DESCRIPTION	District Level (optional) Targeted/Affected Community or Communities
PROJECT CONSULTATION AND IMPLEMENTATION	
DISTRICT OFFICE	<ul style="list-style-type: none">▪ Soft entry to introduce the project and reconnaissance▪ Official meeting with the District office and other relevant local authorities in the identified areas▪ Official meeting with the District Office and other affected stakeholder groups (e.g. village head, JKKK/MPKK, etc)
IPLCS (INDIGENOUS PEOPLES/LOCAL COMMUNITY(S))	<ul style="list-style-type: none">▪ Soft entry to targeted/affected IPLC stakeholders & reconnaissance to identify which IPLC could be affected by the project▪ After receiving an official notification and letter of invite from the District office, the 1st community meeting will be conducted▪ A series of meetings or iterative discussions will be conducted to plan and develop engagement activities which project information will be disclosed in a transparent way (e.g. identify grievances (if any), to mitigate issues raised (if any))

ENGAGEMENT/PROJECT CLOSURE	
DISTRICT LEVEL	<ul style="list-style-type: none">▪ Presentation of the overall project cycle▪ Provide Summary Final Report
IPLCS (INDIGENOUS PEOPLES/LOCAL COMMUNITY(S))	<ul style="list-style-type: none">▪ Presentation of overall project cycle▪ Socialising of results



ON THE GROUND SCENARIO WITH NON-CONFLICTED COMMUNITY

Methods of engagement process based from experience on the ground of BCI and SEPA

- ✓ BCI has been working with them since 2012;
- ✓ FPIC process was conducted even before establishing any project
- ✓ Community + BCI + State Govt in partnership and the community have developed their terms of engagement with all external stakeholders including NGOs and government;
- ✓ During a recent land issue and issue with a government agency, things were smoothly dealt with.

FPIC WITH CONFLICTED COMMUNITIES



Identify the conflict and address the conflict first



FPIC May need to conduct FPIC Process from the start, or not depending on nature of conflict was conducted even before establishing any project



If highly conflicted, may need an independent third party and start the engagement process again (same scenario as if there is a breakdown in relationship with the future in laws)



Require more time and engagement with the communities



Not engage with only one person



Conduct programmes for community to understand the elements of FPIC, to ensure that all parties are on the same page



FPIC WITH CONFLICTED COMMUNITIES



Respect that the communities need space and/or time to make their own decisions



Understand the basis of participatory mapping (will definitely be needed)



3DM Vs 2DM



3D MAP IN MELANGKAP

Example of a 3D-mapping process conducted by the communities themselves.



CASE STUDY 1: BCI ENGAGEMENT WITH A NON-CONFLICTED COMMUNITY

- ✓ FPIC process was conducted even before establishing any project with communities and local govt agencies
- ✓ Took time to engage with the communities
- ✓ Learning process on both sides due to FPIC being very theoretical
- ✓ The process led to strong foundations with both sides understanding the concepts of FPIC
- ✓ Community then developed their terms of engagements with external stakeholders





Community developed their terms of engagement with external stakeholders



During a recent land issue and issue with a government agency, things were smoothly dealt with. State government have also adopted their protocol under the State Biodiversity Council.



PROTOKOL MELANGKAP (2020)

INI ADALAH PROTOKOL YANG TELAH DIPERAKUI DAN DIPERSETUJUI OLEH KOMUNITI MELANGKAP.
SETIAP ORANG YANG INGIN BERURUSAN DENGAN KOMUNITI MELANGKAP MESTILAH: -

1. MENGHORMATI DAN MEMATUHI ADAT RESAM/ISTIADAT KAMPUNG MELANGKAP APABILA MEMASUKI DAN BERURUSAN DENGAN KAMPUNG MELANGKAP.

"Sesiapa Yang Hendak Menjalankan Aktiviti Atau Berurusan Dengan Komuniti Kampung Melangkap Mesti Berjumpa Terlebih Dahulu Dengan Ketua Kampung, Pengerusi Majlis Pengurusan Komuniti Kampung (MPKK) dan Pengerusi Jawatankuasa Bio-Budaya Melangkap (JBBM)".

2. TUJUAN BERURUSAN DENGAN KAMPUNG MELANGKAP MESTI DIKEMUKAKAN DENGAN JELAS, IKHLAS DAN BERTULIS.

"Setiap Orang Luar Tidak Kira Perseorangan Atau Badan-Badan Kerajaan/Swasta Mesti Mengemukakan Tujuan Secara Bertulis Kepada Ketua Kampung, Pengerusi Majlis Pengurusan Komuniti Kampung (MPKK) dan Jawatankuasa Bio-Budaya Melangkap (JBBM) Dan Semestinya Mengikut Proses IZIN berasaskan MAKLUMAT AWAL BEBAS dan TELUS (IMABT)".

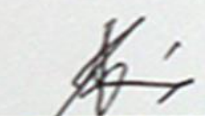
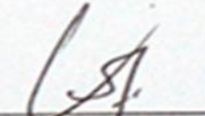

3. PERATURAN DAN ADAT RESAM/ISTIADAT KAMPUNG MELANGKAP HARUS DIHORMATI DAN DITURUTI. KEKEBALAN TIDAK AKAN DIBERI KEPADA PESALAH ATAU YANG BERSUBAHAT.

"Sesiapa Yang Melanggar Atau Bersubahat Dalam Melanggar Protokol Melangkap Atau/Dan Adat Resam Kampung Melangkap Akan Diadili Mengikut Peraturan Adat Yang Sedia Ada. Hukuman Akan Dijatuhkan Setimpal Dengan Kesalahannya".

Protokol Induk ini digubal hasil dari gagasan dan persetujuan komuniti Melangkap. Protokol ini disokong oleh adat resam/istiadat yang sedia ada. Protokol Induk telah dipersetujui dan ditandatangani buat pertama kali oleh pemimpin setiap kampung pada 06 September 2014.

SEMPENA ULANGTAHUN YANG KE-6 PEMBINAAN PROTOKOL MELANGKAP, kami pemimpin setiap kampung menurunkan tandatangan di bawah, pada tarikh **21 bulan Jun tahun 2020** untuk Penguatkuasaan dan Keperkasaan Protokol Induk ini.

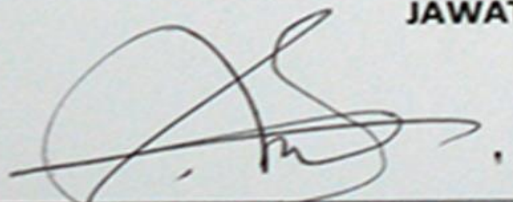
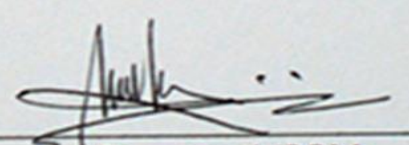
KETUA KAMPUNG (KK)

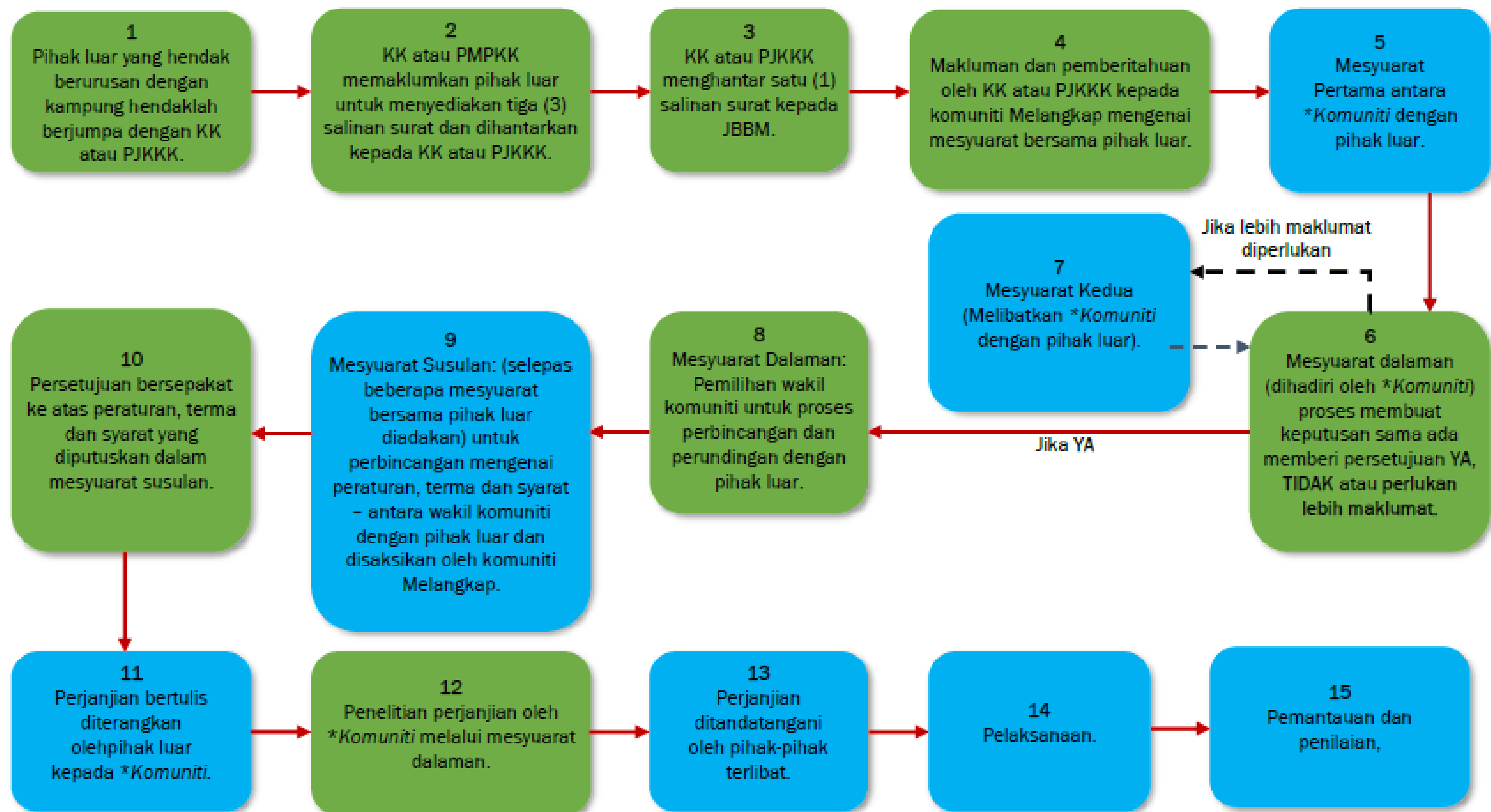
 Melangkap Baru WKAN.Pilang Ransab	 Melangkap Tomis KK Roubin Tinggayan	 Melangkap Tiong KK Kundian Sumbin	 Melangkap Neriou KK Idoh Galing	 Melangkap Kapa KK James Palit
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PENGERUSI MAJLIS PENGURUSAN KOMUNITI KAMPUNG (MPKK)

 Melangkap Baru Fredrickson Tunding	 Melangkap Tomis Wictor Bin Lankin	 Melangkap Tiong Sakimin Setan	 Melangkap Neriou Dumin Sinit	 Melangkap Kapa Saunah Balinsai
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JAWATANKUASA BIO BUDAYA MELANGKAP (JBBM)

 Penasihat Projek Bio-Budaya Melangkap Somboton Gunsalahon	 Pengerusi JBBM Minsin Bin Panis
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Petunjuk:



Proses dalaman (*Komuniti sahaja)



Proses luaran (*Komuniti dengan pihak luar)

*Komuniti merujuk kepada KK, PJKKK, JBBM dan komuniti Melangkap

CASE STUDY 2: BCI ENGAGEMENT WITH A LOW-LEVEL CONFLICTED COMMUNITY

- ✓ The project proponent (SFD, SEARRP, BCI, Pacos) conducted FPIC process
- ✓ Two kampungs withheld consent due to bad experience with other organisations prior to this project.
- ✓ However, meetings including with these two kampungs were still conducted at a "safe space".
- ✓ Engagement is still on-going.

MPKK/KAT/100-2020/JLD 1()

Tarikh:05 MARCH 2020.

Jabatan Perhutanan Sabah, South East Asia

Rainforest Research Partnership (SEARRP)

Pacos Trust dan BC Initiative Sdn Bhd.(BCI)

Tuan,

Per: Bantahan Pemetaan Kawasan Perlindungan Baru untuk Pemeliharaan di Sabah di kawasan Kg. Katubu.

Dengan hormatnya dan sukacitanya perkara diatas adalah dirujuk.

2. Dukacita dimaklumkan kepada pihak yang berkenaan setelah MPKK dan warga kampung mengadakan perbincangan paa 29/02/2020. Bertempat Dewan Serbaguna Kg. Katubu untuk membantah atau tidak bersetuju mengenai Pemetaan Kawasan Perlindungan Baru untuk pemeliharaan di Sabah disebabkan kawasan kampung tidak mencukupi untuk keperluan pelbagai tanaman, penduduk kampung pada masa akan datang untuk sara hidup setiap keluarga.

3. Oleh yang demikian, kami bersama warga kampung memohon pihak yang berkenaan untuk menngecualikan kampung kami daripada program tersebut melalui JPNTN/PSH 100-14/69(12) bertarikh: 10-05-2019, agar dibatalkan serta merta.

4. Keprihatinan serta pertimbangan pihak yang berkenaan dalam perkara ini amat kami hargai dan kami dahului dengan ucapan terima kasih.

(Kehadiran perbincangan serta ketua isi rumah disertakan dalam lampiran A).

Sekian terima kasih.

“Berkhidmat untuk Negara Dengan Bersih, Cekap dan Amanah.”



Sk – ADUN N.36 Kemabong

- Penolong pegawai Daerah, pejabat daerah kecil Kemabong

- Fail.

-RK/2020

CASE STUDY 3: SEPA ENGAGEMENT WITH A MEDIUM-LEVEL CONFLICTED COMMUNITY

THE G6 CASE



No FPIC was conducted at conception and initiation phase, planning phase, execution phase, performance/monitoring phase, project close phase.



SEPA conducted FPIC process with the affected communities from the various Kampung due to internal conflict as well



Community fought the project developers and govt agencies (5 years and on-going)



The community managed to stop the development from encroaching into the HCV 4, 5, and 6 areas.

CASE STUDY 4: BCI ENGAGEMENT WITH A HIGHLY CONFLICTED COMMUNITY

✓ Major issues with government agencies and other groups

✓ Independent third party conducted FPIC process and polarised situations were discussed.

✓ Community initially did not allow government/other groups to these meetings, however in discussions the community wanted to have a win-win situation

✓ Discussions and work is still ongoing, but both parties now can sit at the same table.



REFLECTING FPIC IN YOUR ORGANISATION



Respect the FPIC regulatory framework



FPIC integration through human rights-based approach

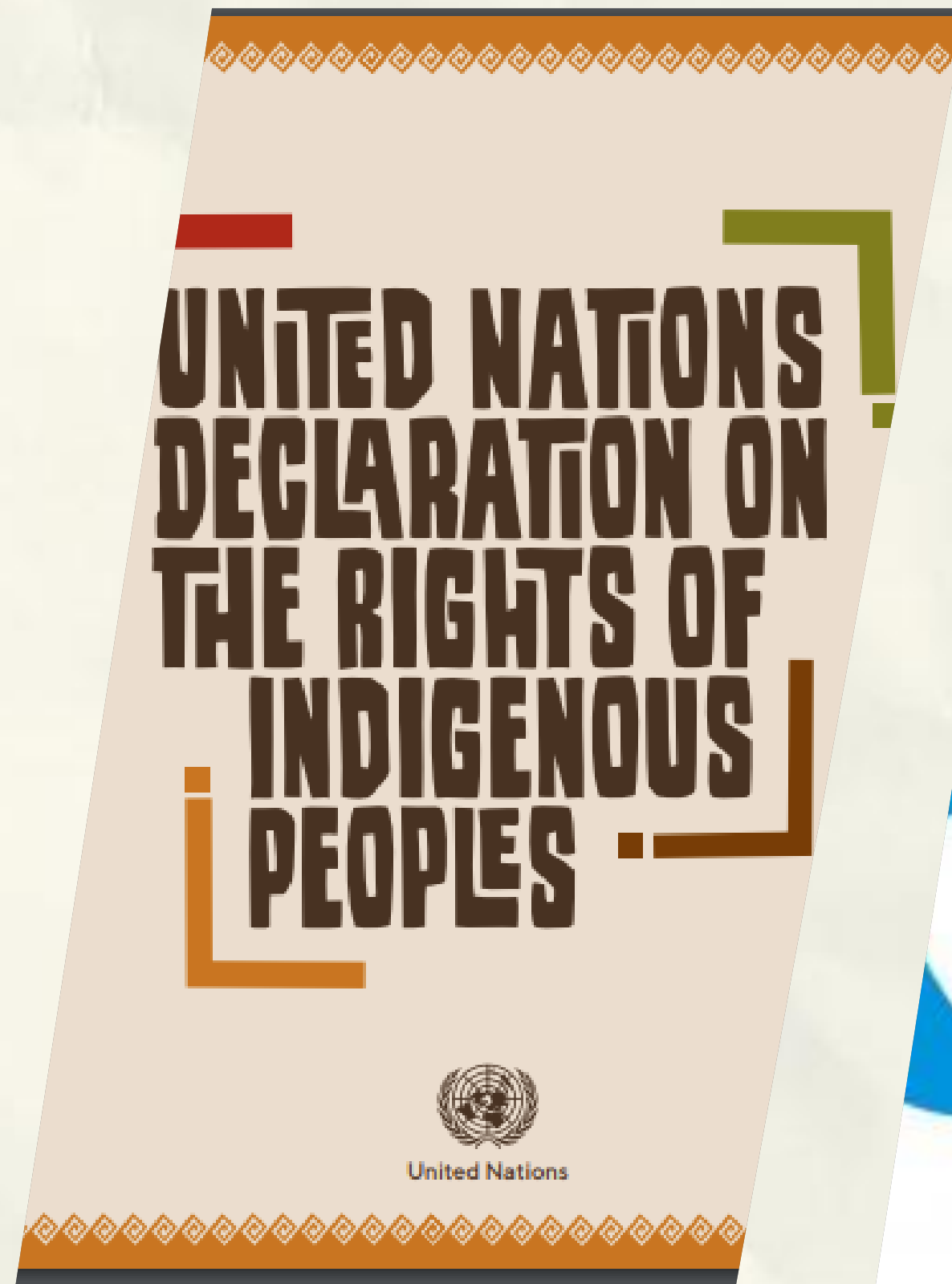


Ensuring consistency when applying FPIC in your organisation



Resources required to ensure FPIC implementation

RESPECT THE FPIC REGULATORY FRAMEWORK



The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

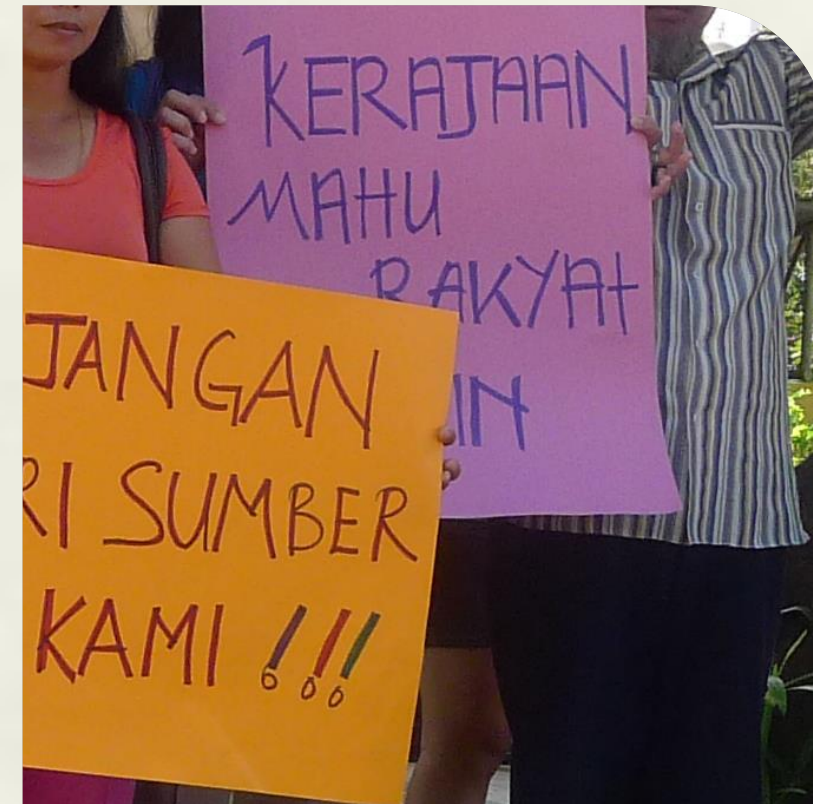


The ILO Convention 169



Convention on Biological Diversity

EPIC INTEGRATION THROUGH HUMAN RIGHTS-BASED APPROACH



Essential attributes:



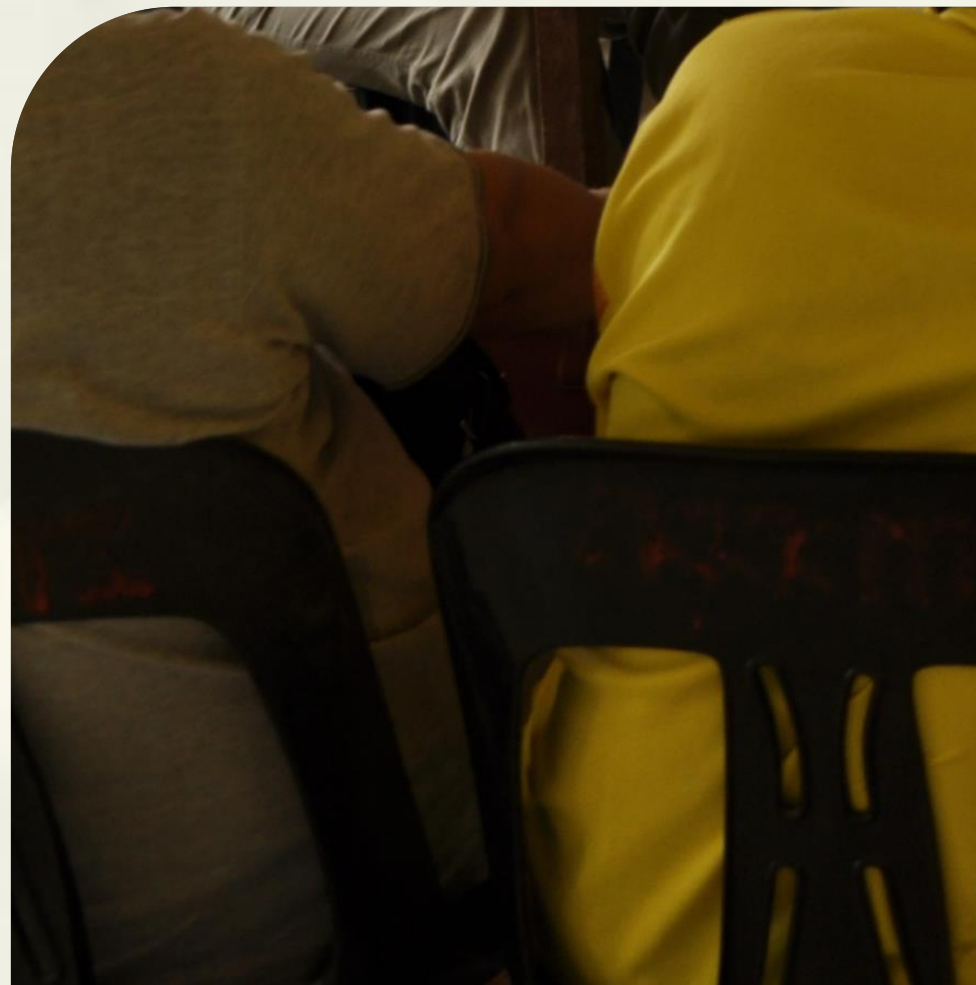
Development and programmes main objectives should be to fulfil human rights



Identifies rights-holders and their entitlements and corresponding duty-bearers and their obligations and works towards strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations

ENSURING CONSISTENCY WHEN APPLYING FPIC IN YOUR ORGANISATION

- ✓ Policies and standards that encourage FPIC
- ✓ Guidelines that facilitate FPIC implementation as a process during the different phases of the project cycle
- ✓ A grievance, feedback and complaints mechanism





RESOURCES REQUIRED TO ENSURE FPIC IMPLEMENTATION

- ✓ Establish human resources capacity
- ✓ Feedback and complaints mechanism can address concerns in an independent and transparent manner.
- ✓ Capacity building and guidance

Thank you for
your attention!

Any questions?

Email us at

lanasht@gmail.com
dygali@gmail.com