



UGANDA CONSORTIUM ON
CORPORATE ACCOUNTABILITY

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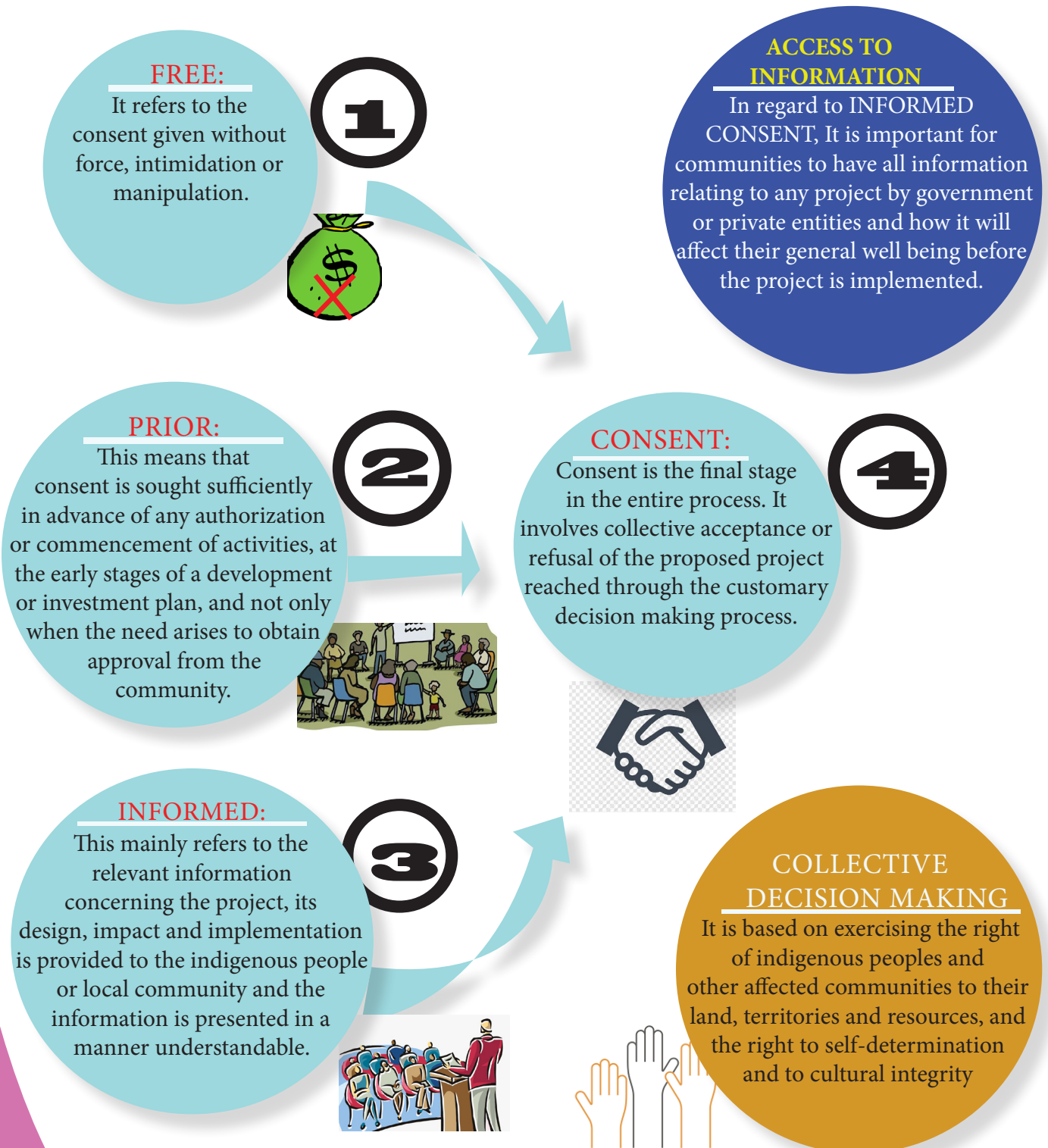
UNDERSTANDING

FREE, PRIOR AND INFORMED
CONSENT (FPIC)

What is Free, Prior and Informed Consent(FPIC)?

It is the right of indigenous peoples and affected communities to make free and informed choices about the development of their lands and resources.

Elements in FPIC



Policy and Legal Framework Governing FPIC

When does FPIC Apply?

The relocation of indigenous peoples from their lands or territories (**Article 10 of the United Nation Declaration on the Rights of Indigenous Peoples**)

The storage or disposal of hazardous materials on indigenous peoples' lands or territories (**Article 29 of the United Nation Declaration on the Rights of Indigenous People**)

International Labour Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (ILO C169) states that governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). is to the effect that Indigenous peoples shall not be forcibly removed from their lands or territories. Similarly, the declaration notes that no relocation shall take place without the free prior and informed consent of the indigenous peoples concerned and after agreement on just fair compensation and, where possible, with the option of return.

How does FPIC Operate?

1 Community Unity and Peace Building: Project must value the unity of indigenous people and other local communities in relation to their land. The decision-making of the community members in the conduct of the FPIC is a measure to promote peace, harmony, understanding, unity and security.

2 Empowerment. Projects must work to empower local communities to pursue their economic, social and cultural development through their participation in decision-making, and determining development priorities.

3 Consensus-Building and Decision-Making Process. The traditional way of consultation is consensus building. Its not about majority decisions. All indigenous people and community engagements on land matters must be driven by the ultimate goal of achieving consensus rather than majority wins.

4 Respect for Community Structures: Project implementers must show respect for local structures and all community people shall participate in the decision-making processes primarily through their indigenous and communal socio-political structures.

5 Ensure Cultural Sensitivity and Integrity. All project plans, designs, developments and implementation strategies on indigenous people's land and other local communities must adhere to people's cultures and physical environment including the spiritual and cultural bonds to the areas.

6 Inter-Generational Responsibility. The communal concept of ownership sustains the view that customary and ancestral domains are considered community property which belong to all generations and therefore cannot be sold, disposed or destroyed. Projects must ensure protection of future generations.

7 Importance of Customary Law. The importance of customary law and decision making processes determined by local communities and indigenous people must be observed subject to the constitution.

8 Access to Information and Transparency. The processes shall be transparent to all stakeholders. The applicant shall make a full and accurate disclosure of information concerning the proposed project in a manner that is both accessible and understandable to the concerned community.

What is the Rationale(Reasons) for Promotion of FPIC?

- Self-determination:**

The right to self-determination is the fundamental human right upon which free, prior and informed consent is grounded. It is rooted in the decolonization movement, and was devised to ensure peoples could recover their autonomy, preside over their destinies, make decisions for themselves and control their resources.
- Engagement with governments and other external entities:**

Along the framework of respecting the rights of indigenous peoples, the FPIC process defines the relation of indigenous peoples with external entities, including governments, in relation to the projects, plans, activities, laws, and policies that affect indigenous peoples.
- Control of their lands, territories and resources, and upholding respect to their cultural integrity:**

The FPIC process allows indigenous peoples and other local communities to exercise their control and management of their land, territories and the respect to their cultural integrity and self-determination, especially on their own development as distinct peoples.
- Safeguard measure:**

FPIC serves as a safeguard to protect the underlying fundamental rights of indigenous people and other local communities. It is critical in ensuring that potential social, economic, cultural and environmental impacts of any project are considered in their decision-making.
- Collective decision-making process:**

FPIC is a collective undertaking of the members of community/communities that shall be involved in collective decisions.
- Re-iterative process:**

FPIC is a reiterative process that shall be undertaken in good faith to ensure mutual respect and meaningful participation in decision-making on matters that affect the well-being of indigenous peoples as a distinct group/people.

What are the BENEFITS of Ensuring Respect for FPIC?

- Respect for FPIC guarantees indigenous peoples and local communities a voice at every stage of designing, development planning and implementation for projects that may affect their wider rights.
- It prepares a community's mind set, perception and attitude to the benefits and the risk that may come with the project
- It promotes protection of the livelihoods of local communities since they would prepare alternatives on how to balance the project and their livelihood,
- Strengthens the practical and financial viability and sustainability of investment and development projects and therefore increasing the investment potential and opportunities of developing countries.
- It provides an opportunity for the community to make decisions in matters that affect them and come up with relevant suggestions that can benefit both the project and the community

TO WHOM DOES FPIC APPLY?

- ➔ FPIC is applicable to a 'man or woman of the land, who has a direct and special relationship with the land and nature through the production of food or other agricultural products', including landless persons.
- ➔ FPIC is applicable at local community level concerning specific projects with potential impacts on indigenous people or other local communities and most importantly in relation to their communal lands.
- ➔ FPIC is also applicable to marginalized communities who self identify as either indigenous people or ethnic minorities and desire to preserve their unique culture and identity;

Checklist for appraising whether an activity will require FPIC

- 1 Will the activity involve the relocation/resettlement/removal of an indigenous population from their lands?
- 2 Will the activity involve the taking, confiscation, removal or damage of cultural, intellectual, religious and/or spiritual property from indigenous peoples?
- 3 Will the activity involve mining and oil and/or gas operations (extraction of subsurface resources) on the lands/territories of indigenous peoples?
- 4 Will the activity involve logging on the lands/territories of indigenous peoples?
- 5 Will the activity involve decisions regarding benefit-sharing arrangements, when benefits are derived from the lands/territories/ resources of indigenous peoples?
- 6 Will the activity involve any decisions that will affect the status of indigenous peoples' rights to their lands/territories or resources?
- 7 Will the activity involve the accessing of traditional knowledge, innovations and practices of indigenous and local communities?
- 8 Will the activity have an impact on the continuance of the relationship of the indigenous peoples with their land or their culture?
- 9 Will the activity involve making commercial use of natural and/or cultural resources on lands subject to traditional ownership and/ or under customary use by indigenous peoples?
- 10 Will the activity involve the development of agro-industrial plantations on the lands/territories of indigenous peoples?

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