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ENABLING FPIC THROUGH VOLUNTARY STANDARDS

An ISEAL Innovations Fund Project

PROJECT REPORT SUMMARY

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EXECUTIVE SUMMARY

Enabling FPIC Through Voluntary Standards presents the methodology and results of a project that was jointly facilitated by Equitable Origin (EO) and the Roundtable on Sustainable Biomaterials (RSB.) The project was funded by the ISEAL Innovations Fund because members of the ISEAL Alliance¹ have identified the need to include Free, Prior and Informed Consent (FPIC) within their standards requirements. Outreach to ISEAL members has revealed that beyond the challenges of FPIC implementation, it is also challenging for assurance providers to verify that FPIC processes have been implemented.

The objective of this project was to draft a tool that will aid assurance providers to monitor and verify that the process is being implemented responsibly. By developing this tool in collaboration with representatives from Indigenous Peoples' communities who have experience with community consultation and FPIC processes, we establish a framework that integrates best practice management requirements with indicators, procedures and protocols that have been constructed with and by Indigenous Peoples.

The report contains seven sections. Section 1 of the report provides the background to the project. Section 2 details the methodology used for approaching the development of the tool, namely via three key project activities: a literature review of the international standards, guidance and recommendations regarding FPIC and its implementation (see Section 3); desktop research of the legislative and regulatory environments of Colombia, Ecuador and

Peru, specifically regarding their treatment of FPIC (see Section 4); and a series of three workshops conducted in these three same countries to better understand FPIC from the perspective of Indigenous Peoples (see Section 5.) The resulting framework for a monitoring and verification tool is presented in Section 6, and Section 7 explains the project's next steps and avenues for contributing or staying up to date with the project's progress.

The literature review conducted in this project revealed that despite the growing body of knowledge, experience and guidance on how FPIC can and should be implemented, there is little guidance on what constitutes acceptable evidence of FPIC processes. Few of the standards and guidance documents analysed provide assurance providers or auditors with possible indicators or verifiers, and there are few resources that define what successful implementation of FPIC is from the perspective of affected communities. While this perspective remains unrepresented in the international guidance literature, credible and consistent verification of FPIC will remain problematic. Resources to aid verification must be socially-informed from the ground up if they are to be credible to all project stakeholders, and therefore acceptable as a means of verification. International guidance on FPIC processes makes clear that Indigenous Peoples must be engaged from the outset in a participatory process that allows them to co-design the subsequent stages of the consultation process. The workshops conducted during the project revealed that while indigenous community representatives may be aware

of their rights to an FPIC process, and what it means in theory, they are often lacking the knowledge and capacity to be able to participate meaningfully in FPIC consultation because they are not clear on what the FPIC process should constitute in practice, nor aware of the expectation that they co-lead the process. A successful FPIC process, therefore, cannot be measured by the outcome alone, nor by affirming Indigenous Peoples the right to say yes or no to development, rather it relies on the creation of a space for two-way dialogue that is carried out in good faith with equal participation from communities and project developers. Starting an FPIC process with the appropriate engagement and participation of affected communities is crucial to being able to implement the rest of the process responsibly.

Based on these findings, we developed a draft framework for a monitoring and verification tool for assuring that the correct steps are being taken throughout an FPIC process. We assert that assurance of FPIC processes must go beyond verifying the existence of management systems, to verify the legitimacy and credibility of the process itself. Without this assurance the credibility of the process outcome is open to question. The premise of the tool is to facilitate a two-way dialogue between project developer and community, whereby both actors can participate in data generation in support of the requirements outlined by the framework. Meanwhile, third-party auditors also have access to the data for verification and assurance purposes. Due to regional and project-contextual specificities, it is acknowledged

that the resulting resources will, in part, be specific to the Amazonian communities engaged during the course of the project². The last and final section presents the project's next steps and avenues for contributing or staying up to date with the project's progress.

Included in this summary are an introduction to the project, and to the draft monitoring and verification framework that has been developed. For access to the full project report, please see: <https://www.equitableorigin.org/programs/free-prior-and-informed-consent/>

¹The ISEAL Alliance is a global membership association for voluntary sustainability standards. Member standards must comply with ISEAL's Code of Good Practice. See: <https://www.isealliance.org/about-iseal>

²In the Latin American region, in a manner distinct to the African and Asian regions, there is a historic recognition of Indigenous Peoples which has contributed to increased engagement with, and adoption of, legal mechanisms for addressing their rights, including the manner in which communities articulate these rights vis-à-vis corporate actors. See ASI APIF Fact Sheet 1: Criteria for the Identification of Indigenous Peoples.

INTRODUCTION

Project Relevance

Standard-setting organisations that certify mineral, forest and agriculture and biomass-based resources adjacent to or overlapping with Indigenous Peoples claims to customary land and resource rights have identified the need to include Free Prior and Informed Consent in their Standards³ requirements. These organisations include Equitable Origin, the Roundtable on Sustainable Biofuels, the Forest Stewardship Council (FSC), the Roundtable on Sustainable Palm Oil (RSPO), the sustainable sugar initiative Bonsucro, the Sustainable Agriculture Network (SAN), the Responsible Jewellery Council (RJC), the Aluminium Stewardship Initiative, the Initiative for Responsible Mining Assurance (IRMA), Initiative for ResponsibleSteel™, the Bettercoal Code, and Global Infrastructure Basel (GIB)'s Standard for Sustainable and Resilient Infrastructure (SuRe® Standard). Many of these organisations are full members of the ISEAL Alliance or have joined the ISEAL Community as subscribers. Hereafter, these Standard-setting organisations are referred to as the “Standards.”

Standards interviewed reported two broad obstacles to effective FPIC processes. First, project developers face many diverse challenges to the implementation of FPIC including insufficient time and resources, communities with weak institutional and technical capacity, lack of consensus among project stakeholders on what constitutes FPIC and at what stages of a project it is required, and an absence of national legislative and regulatory structures to support consultations aimed

at achieving FPIC. Second, the Standards also revealed that verifying this implementation to satisfy conformance with their requirements is challenging. While there are management system indicators that can be used to verify the existence of structures and systems required to implement an FPIC process, there is a lack of verifiable procedures and protocols which can assure effective implementation at the process level.

³Standards™ should be understood as sets of criteria defining good social and environmental practices in specific industries or products, that are used by companies, governments, financial institutions and consumers. For more information see ISEAL: <https://www.isealalliance.org/credible-sustainability-standards/what-are-credible-sustainability-standards>.

⁴Membership pending successful certification of first site.

Problem Statement

There is a growing body of knowledge, experience, case studies and guidance on how FPIC can and should be implemented. There are limited resources however, that define how assurance providers can verify whether FPIC has been achieved. From a project management perspective, the outcome of an FPIC process is required for the project to be able to progress to implementation phase. From a legal perspective, however, there is a need to measure whether the rights of Indigenous Peoples that FPIC serves to safeguard, are being upheld. We assert that the effective safeguarding of these rights is as dependent on the way in which procedures and processes are conducted, as they are on the final outcomes. FPIC processes are founded in two-way dialogues, conducted in good faith and between parties who have the institutional and technical knowledge and capacity to make informed decisions. Beyond verifying the outcome therefore, and the management systems or structures used to achieve that outcome, one of the key challenges to verifying FPIC lies in being able to assure that the process itself is conducted in a manner that actively promotes the rights of Indigenous Peoples and empowers them to participate in, and co-lead the process. Without this assurance the credibility of the process outcome is open to question. This project aims, therefore, to develop a practically-implementable tool to facilitate the verification of an FPIC process for the mutual benefit of affected communities and project developers, by measuring and verifying both the outcome of an FPIC process, but also the process itself.

FPIC MONITORING AND VERIFICATION TOOL

Background

Our research has demonstrated that existing guidelines and tools for FPIC tend to be geared towards use by project developers and the data produced regarding the FPIC process is similarly one-sided. Based on our analysis of Standards' FPIC requirements, and insights gained from field workshops, we have developed a draft framework for monitoring and verifying FPIC. The framework is designed to be implemented via a multi-sided tool that will allow it to be used by project developers to guide the implementation of an FPIC process, and also by Indigenous Peoples' communities to participate more effectively in FPIC processes. Assurance providers can also use the tool to access the data generated by other users for verification purposes. The tool can also be used by all parties to monitor the ongoing compliance of projects according to agreements that have been negotiated between project developers and affected communities. We have involved Indigenous Peoples community representatives in the development of this framework in an effort to ensure that the framework reflects what is socially and culturally appropriate, effective and useable from the perspective of Indigenous Peoples. The more trusted and credible the framework is to affected communities, the more effective it will be for project developers and assurance providers to use as a supporting resource in implementing and verifying FPIC processes.

The multi-sided approach of the tool is innovative in that it will facilitate data generation from both sides of the FPIC

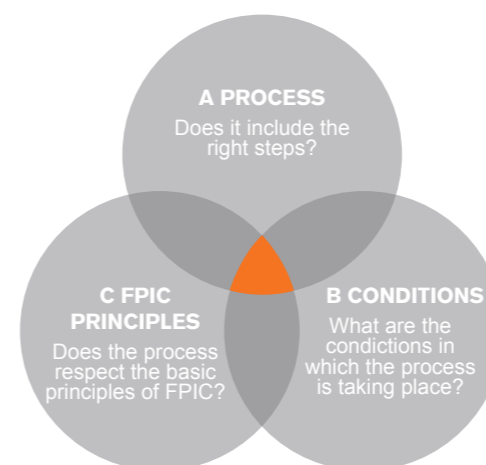
process. Given the unique perspective and worldviews of Indigenous Peoples, particularly regarding their connection with territory and resources, we propose that FPIC can only be adequately monitored if the community has equal ownership over the data generation and monitoring processes as the project developer. By employing considered application of appropriate technological solutions, this tool can help rebalance the project developer – community dynamic by facilitating greater community ownership of the FPIC process and its ongoing verification.

Beyond the facilitation of more effective and equitable FPIC processes, this tool will also contribute to increased transparency and knowledge of FPIC processes that will provide a valuable learning resource for others. Through the development of specialist software, this project holds further innovative potential in enabling a centralised system for hosting data that can be mapped or analysed in a variety of ways for the educational benefit of all. It is expected that this tool will be implemented by practitioners with the specific skills, cultural awareness and linguistic capabilities required to be able to engage directly with stakeholders involved with the FPIC process⁵.



Structure

The tool is based on the premise that without a responsible process for achieving FPIC, the credibility of the outcome of that process is compromised. The resulting framework is unique in that it considers not only the outcome of the process, but also the Process used to obtain FPIC, the Conditions under which this process is conducted, and whether or not it adheres to the key Principles of Free, Prior, Informed and Consent. That is, FPIC can only be verified when all three of these elements coincide.



Structuring the framework according to these three elements enables it to be implemented in a circular way and with multiple entry points, as opposed to a linear 'tick-box' system, which has been critiqued for over-simplifying the complex and iterative nature of FPIC processes. Although numbered, the Process stages defined within the framework are not necessarily sequential; some may need to happen in a specific order, while others may happen in parallel. The Conditions fall into two categories – conditions relevant to the community, and conditions relevant

to the project developer. The tool does not currently address Conditions relevant to local legislative or regulatory context, such as land titling policy, for example, since these are unlikely to be influenced or changed by project stakeholders during the timeframe of a project. Nevertheless, it is important that companies and communities approach an FPIC process with knowledge of the national legal and policy environment relevant to FPIC processes and an understanding of how this environment may either help or hinder the efficacy of the FPIC process. This expectation is included within the second Process stage of the tool's framework.

Each of the Process stages, Conditions and Principles are further broken down into: 1) the Expectation, that has been distilled from our analysis of international voluntary and human rights standards and their FPIC requirements; 2) the Action that the Project Developer needs to take to meet with the outlined Expectation; and 3) the Evidence that an assurance provider or auditor can use to verify that the Action has been undertaken in conformance with the Expectation.

Where "documented evidence" is specified this should be understood as written and signed by the relevant stakeholder representatives, for example the community representatives agreed upon in advance of the FPIC process, relevant company personnel and local government. The community may specify that such documentation should also be notarized. In some cases, in relation to interviews,

⁵For further information on competence requirements for human rights assurance practitioners, see: the UN Guiding Principles Reporting Framework, Guidance Part II: Assurance of Human Rights and Reporting, p.19-21.





community meetings, or dissemination of information regarding FPIC processes, audio or visual documentation may be appropriate, or preferable to, written documents. In addition to hard copies of this evidence being publicly viewable at a pre-agreed community location, evidence should also be digitalised and uploaded to an agreed online location or central registry that is publicly accessible. This may be the website of the relevant indigenous association and/or through a central platform or dashboard integrated with the software solution for the tool itself.

The full draft framework is included as an Annex in the full report.

Limitations

The framework is currently structured for use in a situation where the need for an FPIC process has been identified but no part of the process, or the proposed project, has yet been implemented. Further modification will be required for it to be employed retroactively, for example instances where a project has already been implemented without having undertaken an FPIC process in advance.

The development of the framework has been informed by Indigenous Peoples' leaders from the Amazon region. The example forms of evidence it stipulates may need to be reconsidered the framework is to be implemented in other regions, however the overall structure, expectations, and actions required of the developer should remain relevant and applicable worldwide.

In draft form, the framework does not lend itself to easy implementation, however it is currently being translated into Excel format, where simple programmed functions will sufficiently 'toolify' the framework for it to be piloted.

▶▶● NEXT STEPS

Equitable Origin is currently securing funding to continue this project to stage two, involving three key activities:

1. Piloting the framework to further refine it through experiential input from ground-up. We are working to identify suitable pilot case study situations within the Amazon region, where the need for an FPIC process has been identified but neither the process or any aspect of the proposed project and yet been implemented. The pilot would be conducted as a joint effort between the project developer, the affected community and the assurance provider, to test the process and the indicators and to gather further examples of verification data.
2. Working with developers of existing software solutions that focus on supply chain transparency and community reporting, to develop software that will facilitate the 'toolification' and implementation of the framework. Software development will take a human-centred design approach to ensure the facilitating technology is culturally relevant and logistically viable.
3. Developing a training programme and materials to accompany the tool, to ensure its correct implementation, and integrate into existing Indigenous Peoples' leadership and capacity-building initiatives.

BE INVOLVED

For further information, or if you / your organization would like to support the project in some way, please contact Emma Hague (ehague@equitableorigin.org.)

To stay informed of project progress, please see Equitable Origin's [blog](#) page, or follow us on [Twitter](#) and [LinkedIn](#).

If you work at the community level we have produced [this animated video](#) as an educational resource about FPIC that we welcome you to share.

