

# Free Prior Informed Consent



## A. Definition of FPIC

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# Introduction



- Free, Prior, and Informed Consent (FPIC):
  - Free: Consent is given voluntarily without coercion, manipulation, or undue influence.
  - Prior: Consent is sought sufficiently in advance of any authorization or commencement of activities.
  - Informed: All necessary information is provided in a clear and understandable manner, allowing for a fully informed decision.
  - Consent: The collective decision made by the rights-holders, given or withheld through their chosen representatives and decision-making processes.

# Importance of FPIC

- Protects the rights of indigenous and local communities.
- Ensures participation in decisions affecting their land, resources, and way of life.
- Promotes sustainable and ethical development practices.





# Relevance of FPIC to Ghana

- Ghana's diverse cultural landscape includes several indigenous communities with unique ties to their lands.
- The country's wealth in natural resources makes the implementation of FPIC crucial in the context of mining, forestry, and large-scale land acquisitions.



## II. The International Legal Framework of FPIC

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# The International Legal Framework of FPIC

## A. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

- Key Articles:
  - Article 10: Indigenous peoples shall not be forcibly removed from their lands or territories.
  - Article 19: States must consult and cooperate in good faith with indigenous peoples to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.



- Key Articles:
- Global Recognition:
  - FPIC as a fundamental right acknowledged internationally, ensuring that indigenous peoples' rights are upheld in the face of development projects.

# B. International Labour Organization (ILO) Convention 169



- Overview:
  - A legally binding international instrument that specifically addresses the rights of indigenous and tribal peoples.
- Key Provisions:
  - Consultation and participation as integral to the processes involving land and resource rights.
  - Requirement of FPIC in cases where relocation of indigenous peoples is considered.

# C. Convention on Biological Diversity (CBD)



- Relevance:
  - FPIC linked to the conservation of biological diversity, especially where indigenous lands and resources are involved.
- Guidelines:
  - The CBD's Akwé: Kon Guidelines for the conduct of cultural, environmental, and social impact assessments involving indigenous and local communities.

# III. FPIC in the Context of Ghana

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## III. FPIC in the Context of Ghana

### A. Legal Framework

- Ghanaian Constitution (1992):
  - Customary Land Rights: Recognition of traditional authorities and the rights of local communities to manage their lands.
  - Environmental Rights: The right to a clean and healthy environment, linked to the consent of local communities in decisions affecting their environment.

- B. Minerals and Mining Act (2006):
  - Requires the involvement of communities in decision-making processes related to mining.
  - Gaps:
    - Lack of explicit provisions mandating FPIC before granting mining rights.
    - Inadequate enforcement of community consultation processes.



## B. CURRENT STATUS OF FPIC IMPLEMENTATION

- Application in Practice:
  - Mining Sector: FPIC is not fully integrated; consultations often do not meet international standards.
  - Large-Scale Land Acquisitions: Limited instances of genuine FPIC being practiced.



- Challenges:
  - Legal and Institutional Gaps: Lack of clear guidelines and enforcement mechanisms for FPIC.
  - Power Imbalances: Communities often lack the power and resources to assert their rights effectively.



# Public Hearings in Environmental Impact Assessments (EIA):

- Required for projects likely to have significant environmental impacts.
- Process:
  - Public hearings conducted by the Environmental Protection Agency (EPA).
  - Community input is sought, but its influence on final decisions is often limited.





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- Small-Scale Mining Committees and District Offices:
  - Role in monitoring and regulating mining activities.
  - Challenges:
    - Limited capacity and resources to engage effectively with all stakeholders.



# B. Challenges in Stakeholder Engagement

- Insufficient Mechanisms:
  - Public hearings and consultations often occur too late in the decision-making process.
  - Lack of legal requirements for ongoing consultation throughout project lifecycles.



# Absence of Alternative Dispute Resolution (ADR) Mechanisms:

- Current legal framework does not adequately provide for ADR in environmental disputes, limiting the ability of communities to resolve conflicts outside of court.



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