Stakeholder Engagement & FPIC 101 Workshop

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World Bank

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THE WORLD BANK
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NLC

World Bank and NLC Welcome

- World Bank, Satoshi Ishihara

- Network of Learning Centers, Rimun Wibowo

House Rules

Housekeeping

- Silence mobile phones
- If must speak on phone, please take it outside

Session Rules

- In-person discussion group selects own facilitator, scribe, reporter
- For online discussion group the online facilitator will direct discussion while participants use the chat room and one person acts as the scribe/presenter

Workshop Sessions

- One: Who are our Stakeholders and Why Engage Them?

- Two: Indigenous Peoples' Engagement & FPIC

- Three: Challenges & Lessons Learned Engaging with Indigenous Peoples

- Four: Applying Stakeholder Engagement In Indonesia

Session One

Who're Our Stakeholders and Why Engage Them?

Stakeholder Engagement: RI vs. WB/MDB

Your Stakeholder Engagement

- In-person: form groups of 6-7 participants each
  On-line: interact in the online chat room, 2 groups

- In-person: Select a scribe/reporter

  Online: Select a scribe/reporter

- Each person describes their experience implementing RI stakeholder engagement approaches

- Each person describes their experience implementing WB/MDB stakeholder engagement approaches

- Assess similarities/differences between the two: report back

Stakeholder Engagement in Indonesian Policy

Forestry

Regulation	Explanation
MoEF Regulation No. 9/2021 concerning Social Forestry Management	Public consultation is required to obtain Forestry Partnership Approval. In the context of SF business cooperation, participation is one one of principle to be promoted.
MoEF Regulation No. 7/2021 concerning Forestry Planning, Changes in the Designation of Forest Areas and Changes in the Functions of Forest Areas, and Use of Forest Areas	Public Consultation is carried out to socialize the aims and objectives of implementing Forest Area Management activities to the community and other stakeholders.
MoEF Regulation No. 13/2020 concerning Development of Nature Tourism Facilities and Infrastructure in Forest Areas	Public consultation regarding the design of the tourism development must be carried out as a part of preparation stage.
MoEF Regulation No. 2/2020 concerning Procedures for Implementation, Supporting Activities, Providing Incentives, and Guiding and Controlling Forest and Land Rehabilitation Activities	Initial socialisation was carried out to introduce Land and Forest Rehabilitation (RHL) activities to the community. Initial public consultation activities can involve various parties, including hamlet, village, or customary leader.

Environment

Regulation	Explanation
MoEF Regulation No. 17/2012 concerning Community Involvement in the EIA Process and Environmental Permits.	Project proponents are required to provide transparent and complete information through public consultations.

Land

Regulation	Explanation
Law No. 2/2012 concerning Land Acquisition for Development in the Public Interest.	Public consultation regarding the development plan must be carried out at the preparation stage.

Energy

Regulation	Explanation
Ministry of Energy and Mineral Resource No. 39/2017 concerning Implementation of Physical Activities Utilizing New and Renewable Energy and Energy Conservation (EBTKE)	Community has right to propose the implementation of EBTKE to the directorate general in the energy field.

Stakeholder Engagement in WB/MDB Policies

GUIDANCE NOTE FOR BORROWERS

Environmental & Social Framework for IPF Operations

ESS10: Stakeholder Engagement and Information Disclosure

Borrower/Project Proponent are required to:
- engage with stakeholder throughout the project life cycle.
- engage meaningful consultation with all stakeholder

Project Preparation

Identification and Analysis

Of project-affected and other interested parties, paying special attention to identifying disadvantaged or vulnerable groups: WHO

Develop Stakeholder Engagement Plan (SEP)

It identifies the information and types of interaction to be conducted in each phase of the project, considers and addresses stakeholder communication and physical accessibility challenges,: WHAT & HOW

Disclose Project Information

Making available project-related information as early as possible in the project cycle and in a manner, format, and language appropriate for each stakeholder group : WHAT & HOW

Undertake a meaningful consultation

Participation in consultations and the expression of any opinions should not lead to retaliation, abuse, or any kind of discrimination.

Mitigate risk and impact

build upon the channels of communication and engagement already established with stakeholders

Ongoing stakeholder feedback is useful to monitor risks and impacts and to assess the effectiveness of the measures designed to mitigate environmental and social risks and impacts

Conduct SEP

Continue to engage and provide information

provide regular updates to stakeholders on project performance and changes in scope or schedule

Project Implementation

IFC Performance Standards on Environmental and Social Sustainability

Stakeholder Engagement (PS 1)

Stakeholder engagement is an ongoing process that may involve, in varying degrees, the following elements: stakeholder analysis and planning, disclosure and dissemination of information, consultation and participation, grievance mechanism, and ongoing reporting to Affected Communities.

Community Engagement (PS 5)

Community engagement is used at the land acquisition process. The project proponent shall engage with Affected Communities, including host communities, through the process of stakeholder engagement described in PS1. Disclosure of relevant information and participation of Affected Communities and persons will continue during the planning, implementation, monitoring, and evaluation of compensation payments, livelihood restoration activities, and resettlement to achieve outcomes that are consistent with the objectives of this Performance Standard

PS7/ESS7: Free, Prior, and Informed Consent
FPIC: An extension of Stakeholder Engagement
(BCS, Meaningful Engagement, FPICons)

FPIC Concept

- Free

- Prior

- Informed

- Consent

FPIC Principles/Values

- Transparency

- Inclusion

- Mutual Respect

- Power Sharing

Project Experiences

Effect of Embracing / Rejecting FPIC Approaches

On Social & Environmental Conflicts affecting Indigenous Rights

Tampakan Gold-Copper (RP)

Conflicts / Issues

- Indigenous B'laan protests
- Armed conflict in area; "Investment Defense Force"
- Downstream lake and upstream marsh pollution, damaging farms/fisheries
- Risk of erosion, siltation, flash floods and landslides
- HR violations: culture/religion, livelihood, violence
- Local ban on open-pit mining

Consultation Approach

- HRIA: "incoherent information," lack of meaningful participation
- CCCS Scoping Mission (2012) to determine stakeholder engagement situation:
  - Hostile project attitude to B'laan leadership
  - Refusal to negotiate with church
  - Resolute opposition to FPIC, despite IPRA

Weda Bay Nickel (Indonesia)

Conflicts / Issues

- Majority group IP or not?

- Pollution and sedimentation control (esp., impact on local water resources)

- Land acquisition and compensation schemes

- Biodiversity conservation & sustainable NRM

- Cultural heritage preservation

- Also: Isolated and uncontacted Forest Tobelo indigenous group

Consultation Approach

- Originally: mostly informational sessions (OD 4.20 for most)
- Company wavering on PS7/FPIC: No/Yes/No
- SIA (by CCCS) combined with consultations focused on grievances to date & hopes for future development
- Cultural heritage consultation
- Forest Tobelo FPIC outreach plan implemented by CCCS
- 2013: Project slow-down

Minas Conga (Peru)

Conflicts / Issues

- EIA approved (2010)—and then suspended (2011)

- Risks to ecosystem and water sources particularly; replace Andean lakes with reservoir; decreased water for non-mine uses

- Land purchases, forced sales, inadequate compensation

- Mercury spill – poisoning

Consultation Approach

- Consultation efforts under duress

- Regional strike by local organizations led to State of Emergency; police violence

- Consent not obtained nor obtainable

- Indigenous protests stopped project (loss @USD2mil/day)

- Project abandoned in 2016

Freeport Copper/Gold (RI)

Conflicts / Issues

- Tailings dumping (copper, arsenic, cadmium, selenium) rivers and estuaries

- Sedimentation

- Acid rock drainage from waste dump sites

- Displacement of indigenous communities

- *Transmigrasi* in-migrants

- Labor disputes

Consultation Approach

- Alliance w/ Indonesian military

- Began operations 1973, first agreements in 1974 and 1997

- Agreements basically with Indonesian government and military

- Labor disputes in 2011 handled with violence by military/police proxies

Sepon Mine (Lao PDR)

Conflicts / Issues

- IFC Category A; but Oxiana refused due to safeguards

- Acidic water spill

- ESIA: increased sedimentation, cyanide, acid run-off

- Community displacement: forest degradation and river pollution

- No storage / monitoring of mining tailings

- Forced sedentarization

Consultation Approach

- In context of government-organized socialization meetings; 10% Lao PDR share

- Consultation mostly informational sessions

- No FPIC; built cultural heritage centre

- Sold to Chinese firms after many environmental and social problems

Vedanta Resources (India)

Conflict / Issues

- Bauxite mine in sacred area in heart of Kond tribal homeland in Orissa

- Danger to wildlife habitat

- Plans for forced relocation

- Deforestation of proposed project area

Consultation Approach

- No effort to put in place adequate consultation process (UK govt)

- Indian Supreme Court ruled in favor of Kond Indigenous People; Kond rejected project

- Vote respected; project dead

Sakhalin-2 LNG (RF)

Conflicts / Issues

- Pipeline crossing deer breeding areas of Uilta (Oroki)

- Potential oil spills in salmon-spawning areas (Nivkh, Evenk)

- Inadequate social development benefits

- No collaborative stakeholder engagement

- Public protests shut down operations—January 2005

Consultation Approach

- Original informational only consultations

- CCCS new approach: Tripartite Working Group (WG); Sakhalin Indigenous Minorities Development Plan agreed to Dec 2005

- FPIC for SIMDP2 (2010), SIMDP3 (2015), SIMDP4 (2020): pioneer for private sector

- "Sakhalin Model": GFN/WG, Tripartite, 3rd Party, FPIC

So? Possible Correlations?

Poor Community Engagement / Resist FPIC

- Continuing conflicts
- Slowdowns and possible suspension of project
- Financial losses:direct and to share price
- FPIC probably not obtainable

FPIC-like Approaches

- Heightened likelihood to decrease conflicts
- Social risk reduction
- Avoid financial losses
- Increase likelihood of acceptable compromises leading to consent

OK, so FPIC is potentially useful

Any tips for implementing a project approach leading possibly to Consent?

New IP-Project Stakeholder Paradigm

IP Participation & Partnership Paradigm: integrates an FPIC-approach to project-indigenous community interaction from project preparation (including FPIC) through Project implementation (including FPIC-standard IPPs)

Co-designed by Nepal Federation of Indigenous Nationalities (NEFIN)

& Cross-Cultural Consulting Services (CCCS)

Proposal for a New Paradigm: Based on Some Lessons Learned Implementing FPIC

Consent Achieved

- **Upper Trishuli-1 HEP (UT-1; Nepal):** MDBs, 2018

- **Sakhalin Energy LNG (RF):** private, 2010, 2015, 2020

- **Upper Arun HEP (Nepal):** WB, 2022

FPIC Initiated

- Standard Gauge Railway Project (Tanzania): IFC+; in process, 2020-

- Horn of Africa Highways (Ethiopia): WB; in process, 2020-

- Dudh Koshi SHEP (Nepal): ADB/EIB; in process, 2022-

Nivkh community, on Strait of Tartary, Trambaus, Sakhalin, RF

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Himalayan Hillside
Village, Rasuwa, Nepal

New Paradigm needs a New Stakeholder Engagement Strategy: the *IP Participation & Partnership Paradigm (PPP)*

- FPIC spirit as guiding principle with participation and partnership throughout the project lifecycle

  - from preparation through operations

  - from FPIC process, through Indigenous Peoples Plan (IPP) preparation through IPP implementation

- The Indigenous Peoples Plan (IPP) governance structure must be re-conceptualized to accommodate the FPIC spirit

  - Preparing IPP: Collaborative w/IP

  - Implementing IPP: governance, monitoring, evaluation with IP

- Tripartite IPP implementation: Indigenous communities, project, government

The IP Participation & Partnership Paradigm (PPP)

- Ideally initiated early on in project planning the PPP can assist projects address effectively past and present contentious issues or challenges (through, for example, a Mitigation Matrix or a legacy issues document)

- For projects already under preparation the paradigm can act as a "reset button" to deal with simmering conflicts and misunderstandings

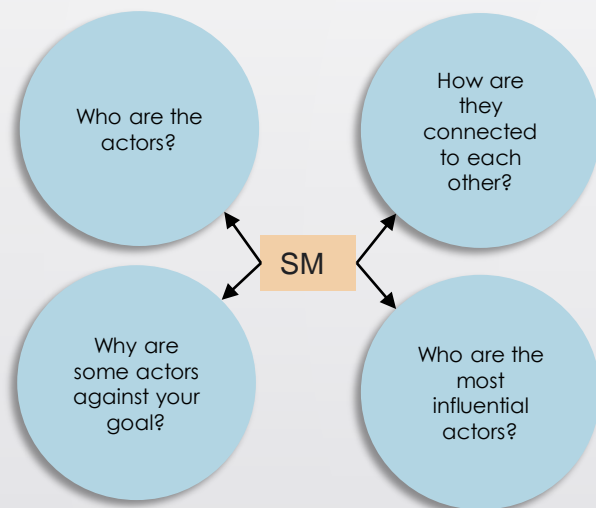- A win-win-win for projects, indigenous communities, and local governments

Stakeholder & Community Mapping

Who are Our Stakeholders? Who represents "the community"?

Stakeholder Mapping: Why Bother?

Stakeholder mapping helps to **proactively anticipate stakeholder challenges and plan mitigation strategies**.

- Who are the actors?
- How are they connected to each other?
- SM
- Why are some actors against your goal?
- Who are the most influential actors?

Urgency of Conducting SM

- Maintain a constructive relationship
- Assess stakeholder interest in the project
- Promote and provide FPIC and inclusive principles
- Mitigating social and environmental risks and impacts
- Manage issues and complaints that are raised and respond in a proper & correct way

Benefit of Conducting SM

- Reducing resistance from the community to the project
- Develop collaborative partnerships
- Identify key influencers in the community
- Support produces a social safety net
- Support reduces social and environmental risks
- Supports reduce complaints and complaints
- Legal compliance

Scope of Stakeholder Mapping

Local — Local Leader, Local Institution/Body, NGO/CSO, Community (Individual/Group), Vulnerable Group, Local Media, Indigenous People.
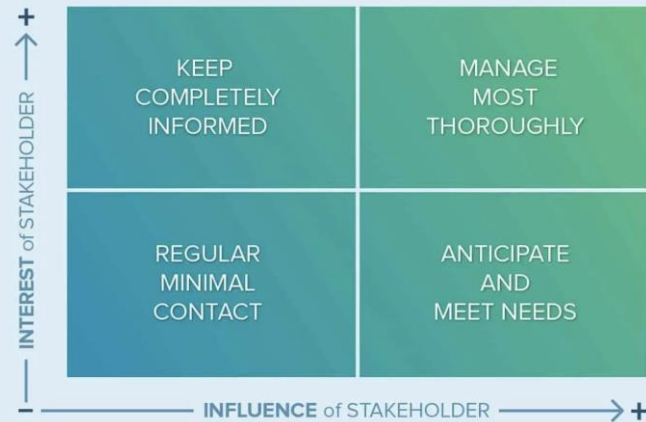
National — Ministry/Body, NGO/CSO, National Media, University,

International — International NGO, Funding Agency (WB, ADB, MDB), United Nation

Community Mapping: Needs & Wants

Stakeholder Map: Who Needs What?

+ INTEREST of STAKEHOLDER

KEEP COMPLETELY INFORMED	MANAGE MOST THOROUGHLY
REGULAR MINIMAL CONTACT	ANTICIPATE AND MEET NEEDS

— INFLUENCE of STAKEHOLDER → +

Community mapping must be carried out carefully, to use diverse methods and identification, and to follow system and processes that fosters the accountability of those identified as community representatives. Good practice suggests that as long as a stakeholder group offers a perspective relevant to the project, its views should be considered.

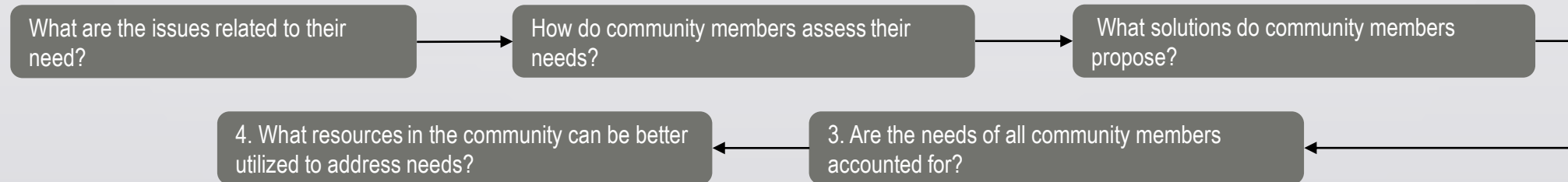**Data is necessary to support evidence-abased decision.**

Qualitative Data	Quantitative Data
Information includes the number of women, men, youth, children, parents, ethnic background, and population.	customary territory, participatory, livelihood, land right holder, ulayat land, cultural/traditional heritage, traditional decision-making process

Identify through a bottom-up needs assessment:

What are the issues related to their need? → How do community members assess their needs? → What solutions do community members propose?

4. What resources in the community can be better utilized to address needs? ← 3. Are the needs of all community members accounted for? ←

Community Mapping: Diversity & Representation

Take me to Your Leader!

- Decision-making styles

- Elected/administrative officials

- Gender diversity

- Organizations

- Vulnerable groups

Who speaks for the community?

- Recognizing diversity

- Respecting authority

- Giving voice to the marginalized

- Following cultural norms + MDB policies: what if they conflict?

Consultations & Information-sharing

Consultations/Reporting: A Continuum

Consultations

1. Information sharing: Project Information Disclosure

2. Consultation with Questions

3. Consultation with Questions and Suggestions

4. Consultation with Participatory Planning

5. FPIC Consultations (Partnership)

Reporting

1. Reporting: Information only before project initiation

2. Reporting: Continuous and periodic during project implementation

Main Goal for Stakeholder Engagement?

- Achieve and Maintain a *Social License to Operate*!

Session Two

Indigenous Peoples' Engagement & FPIC

Indigenous Peoples Policies & FPIC: Origins

Indigenous Peoples Emergence on the World Stage

- 1923 & 1925: Indigenous leaders attempt to speak to League of Nations

- 1957 ILO Convention 107: assimilationist

- 1968 IWGIA - International Work Group for Indigenous Affairs - is a global human rights organisation dedicated to promoting, protecting and defending Indigenous Peoples' rights. Originally Amazon, then LAC, then Asia, since 1980s AFR and RF

- 1972 Cultural Survival

- 1981 Martínez Cobo Study; IP as having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories

- 1982 Working Group on Indigenous Populations (WGIP) was established as a subsidiary organ to the Sub-Commission on the Promotion and Protection of Human Rights, UN. The Working Group provided an opportunity for indigenous peoples to share their experiences and raise their concerns at the UN.

- 1982 World Bank OMS 2.34 "**Tribal Peoples** in Bank-Financed Projects"

- International Year (1992), then International Decade (1993), of Indigenous Peoples--UN

- 2000 Permanent Forum on Indigenous Issues, advisory body to EcoSoc, UN

A New Paradigm in Indigenous Peoples-Project Engagement is Needed. Why?

Because the world has changed since the first Indigenous Peoples Policies were formulated and **FPIC** has been adopted:

- 1982 World Bank OMS 2.34 "**Tribal Peoples** in Bank-Financed Projects"

- 1989 ILO Convention No. 169: consultation, with the objective of achieving agreement or consent

- 1991 World Bank OD 4.20 on Indigenous Peoples: **from tribal to global**

- 2000 United Nations Permanent Forum on Indigenous Issues: FPIC key demand

- 2007 United Nations Declaration on the Rights of Indigenous Peoples: **FPIC**

- *2008-Today: MDB Indigenous Peoples policies incorporate FPIC (e.g., WB ESS7)*

FPIC as Game Changer

- While "not a veto" FPIC does empower groups designated as Indigenous Peoples by giving them sole control over a valued commodity: their consent

- FPIC requires new paradigm of stakeholder engagement: continuing the paradigm shift from i) "safeguards (do no harm)" to ii) "meaningful consultation/BCS" and benefit-sharing to iii) a new FPIC-infused engagement strategy; heightens likelihood of obtaining "social license to operate"

- *N.B.:* Inclusion of FPIC in MDB policies increases value of a group being designated as Indigenous Peoples

- Likely to spur more demands from groups to be recognized as Indigenous Peoples

Indigenous Rights

- Inclusive of all Human Rights
  - ➤ UN Charter
  - ➤ Universal Declaration of Human Rights
  - ➤ International human rights law

- Specific Rights as Indigenous Peoples
  - ➤ UNDRIP (2007)
  - ➤ Self-determination
  - ➤ FPIC

Indigenous Peoples Concept

Challenges of the concept: from Amazon to Kalimantan

Which groups are indigenous? "Indigenous Peoples" not defined by UN, others

Amazon / Latin America

- Peoples resident in the "New World" prior to European conquest and forced migration of African people

- *"Indigena"; OMS 2.34*

Globally: MDB 4 criteria

- Self-identification

- Collective attachment

- Customary and distinctive institutions

- Distinct language/dialect

But many, many groups possess those 4!
So how to narrow down its applicability?

Some say:

- Apply the "salt water test": living descendants of pre-invasion inhabitants of lands now inhabited by others

- In line with LAC experience

While others broaden it:

- Groups whose relationship to dominant groups roughly parallel the experience of marginalization and vulnerability characterizing the *indigena* of LAC

Practical Solutions to IP ID

Easiest

- Government acknowledges such groups exist in the country, permitting IFIs to apply IP policies to similarly marginalized groups

Use Ethnographers

- Try to "objectively" apply the four characteristics (*see next slide*); expert judgment

- Pressures to decide one way or another: "judgment" calls

- Use "distinct" to imply geographically distinct origins?
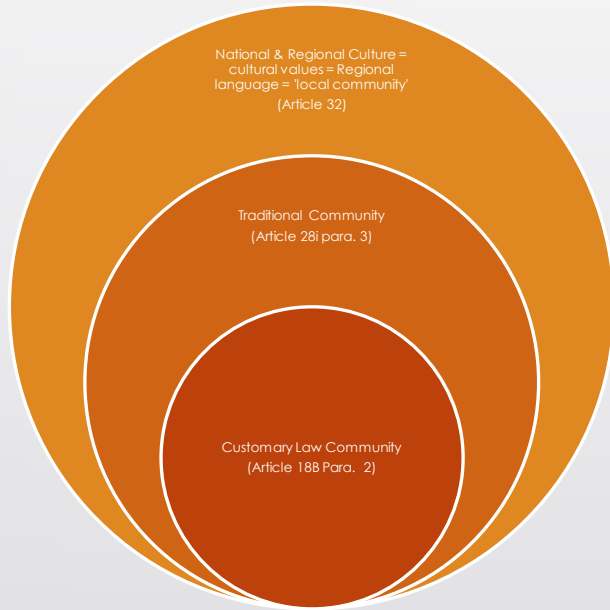
Are there IP in Indonesia?

Masyarakat Hukum Adat

- Community exists as a law community
- Political adat institutions
- Clearly defined adat law territory
- Community collects forest products for daily needs
- *1999 amended Basic Forestry Law, art. 67*

Masyarakat Adat: AMAN

- Communities living on ancestral land in a specific adat territory
- Possess sovereignty (*kedaulatan*) over land and natural resources
- Social and cultural life ordered by adat law
- Adat institutions guide social life

Get to Know Indigenous People in SE

National

National & Regional Culture = cultural values = Regional language = 'local community'
(Article 32)

Traditional Community
(Article 28i para. 3)

Customary Law Community
(Article 18B Para. 2)

International

The factor of existence of indigenous peoples (IFC PS 7):

- Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;

- Collective attachment to geographically distinct habitats or ancestral territories in the project area and the natural resources in these habitats and territories;

- Customary cultural, economic, social, or political institutions that are separate from those of the mainstream society or culture; or

- A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.

The following criteria, adjusted to take account of local specific conditions, are proposed to be used for the identification of stakeholders:

| Liability | Influence | Partnership | Dependency | Representation | Expressed Interest |

Are Javanese Indigenous?

What's your experience applying the Indigenous Peoples concept in RI?

What's your experience applying the Indigenous Peoples concept in RI?

- In-person: form groups of 6-7 participants each
  On-line: interact in two online chat room

- Select facilitator (for in-person groups), scribe, reporter

- Online group select scribe/reporter

- Each person describe their experience applying the IP concept

- Each person describe their experience applying the *masyarakat adat* concept

- Assess similarities/differences between the two: report back

FPIC Defined

Free, Prior, & Informed Consent: Corollary Principles

Respect

- Indigenous Project-Affected People are treated with full respect: Recognizing Project is in their home and they must live with all impacts

- Indigenous culture should permeate Project-IP interactions.

Self-Determination

Affected indigenous communities collaborate with other project stakeholders to determine their own indigenous development trajectory

Recipe for Success: Free

- Non-interference in indigenous politics; IP decide on own participation format and representatives

- Letting Project-affected Indigenous people determine what's "sustainable" and how to handle controversies without coercion

- Shared decision-making: Government, Project, Indigenous Peoples

Maintaining the core approaches of mutual respect and capacity-building

Recipe for Success:
Prior & Informed

- Intensive Consultation: Multiple Rounds extending over a year

- Meeting on indigenous home grounds

- Participatory approach: Working Group of IP, Govt, Project representatives

- Engagement and giving voice: Soliciting all concerns to understand (and delimit) scope of redress

  → Common ground; collaborative interactions

  → Enable IP to be seen and taken seriously

  → Enable Project to respond systematically

Recipe for Success:
Good Faith Negotiation

- Both sides come to the table ready to listen to and respect the other side's positions

- Both sides recognize that the other side has its own values, goals, and ways of doing business

- Both sides are willing to change their initial positions in the interest of achieving common goals and the best possible agreement for all sides

- Project middle management is empowered to make concessions to reach an agreement with Indigenous communities

When to Apply FPIC?

- Impacts on Customary lands and resources (noting that customary land boundaries on often contested)

- Relocation of Indigenous Peoples form Traditional or Customary (unititled) Lands

- Cultural heritage significantly affected

FPIC in Project Cycle

Project Preparation

EARLY

- Meaningful consultations for initial community engagement [ICP]

LATER

- GFN process to decide on i) FPIC process (consent to the terms of consent), and ii) project contractual offer [i.e., mitigation/benefits package; FPIConsent]

Loan Negotiations / Implementation

- Mitigation/benefits package covenanted

- Consent cannot be revoked or suspended over dissatisfaction regarding non-contractual issues

- GFN invoked if complaints of contractual non-performance

A New Paradigm: Building on Lessons Learned "*Sakhalin Model*" + *UT-1 Experience*

Additional Elements

- 3 rounds of FPIC consultations, including FPIC mobilization
- Bottom-up Needs Assessment & Legacy Issues review
- IP Advisory Council from 1st FPIC Consultations onwards
- Working Group (WG) to co-prepare FPIC documents
- Capacity-building critical, during FPIC & IPP implementation
- FPIC Facilitator Organization (FFO)
- FPIC Specialist

Additional Documents

- **Consent Process Agreement (CPA)**: FPIC communities decide on the specifics of how the consent process will be played out and agree on this early in the FPIC process
- **Consent Set** of Documents (4 in 1, as appropriate)
    - A. Statement of Consent
    - B. FPIC-Standard Indigenous Peoples Plan (IPP)
    - C. Legacy/Outstanding Issues Agreement (as necessary)
    - D. Tripartite IPP Implementation Agreement

Why do we need consent? Why a project benefits from achieving social license to operate

- In-person: form groups of 6-7 each participants
  On-line: interact in two online chat rooms

- Select facilitator (for in-person groups), scribe, reporter

- Each person describes their interpretation of what a "social license to operate" would look like on the ground

- Each person describe their assessment as to whether a project can truly obtain a social license to operate as described above

- Assess similarities/differences between the two: report back

Operationalizing FPIC

FPIC Step by Step

FPIC, GFN and the need for 3rd parties

- "FPIC" refers to both (i) a process of seeking consent; and (ii) an outcome in terms of a decision and should include documented proofs of both. FPIC expands the process of meaningful consultation and is established through good-faith negotiations.

- GFN: (i) willingness to engage in a process and availability to meet at reasonable times and frequency; (ii) provision of information necessary for informed negotiation; (iii) exploration of key issues of importance; (iv) use of mutually acceptable procedures for negotiation; (v) willingness to change initial position and modify offers where possible; and (vi) provision of sufficient time for decision making.

- How to make this a true negotiation recognizing the reality that indigenous communities often approach negotiations from a weaker position as regards governments and project developers?

- Need qualified independent social experts to assist in conducting and documenting the GFN and FPIC processes and some MDBs require "independent monitors" of negotiations.

- It is often useful to engage a neutral third party (an IPO/NGO) to facilitate the GFN. As well as an FPIC Specialist.

FPIC Step by Step Template: Preparatory Actions

- Select FPIC Facilitation Organization (FFO)

- Select FPIC Specialist

- Conduct capacity-building assessment of local communities to participate in FPIC process*

  - *Possibly useful for this is the prototype tool "FPIC360" developed by Equitable Origin, a prominent NGO and advocate for indigenous rights, for use by all parties in monitoring compliance of the project with the principles and requirements of FPIC. The FPIC360 tool increases indigenous peoples' ownership over FPIC processes and allows them to participate more equitably, while facilitating dialogue between indigenous peoples' communities and project developers.

FPIC Facilitator Organization (FFO)

• Develop and implement the FPIC in a transparent and effective manner.

• Assist communities in determining and selecting community representation in the FPIC process.

• NGO/IPO: critical to engage an FFO that is trusted by the local indigenous communities—while commanding the confidence of the client and external observers.

• A neutral player in facilitating the FPIC process being neither for nor against the project or the project activities upon which the FPIC consultations and negotiations will be based.

• Familiarity with the cultures and languages of the affected indigenous peoples communities will be a key requisite in the selection of the FFO.

FPIC Specialist

- Role of the FPIC Specialist is not to facilitate negotiations but rather to act as an advisor in framing and overseeing the FPIC process.

- This specialist would work closely with the client and the lenders and other parties to the negotiations — local communities, local governments, and the FFO) — to provide advice and ensure that the FPIC process stays on track while ensuring that applicable IP policy requirements are carried out faithfully and in accordance with GIP (as much as possible).

FPIC Step by Step Template: Carrying out the Process

- Mobilization of communities by FFO (intro to FPIC, the project, ? of representation)

- First Round Consultations (needs assessment: all grievances, all requests; consent strategy: CPA)
  - 1st AJAC, 1st WG develop draft Agreement[s] (mitigation, benefits plans, etc.)

- Second Round Consultations (critique of draft Agreement[s], v1)
  - 2nd AJAC, 2nd WG revise draft Agreement[s] (incorporate critique)

- Third Round of Consultations (critique of draft Agreement[s], v2)
  - 3rd WG finalize documents prior to consent decision by AJAC

- Consent decision process implemented (according to CPA) [approval of draft Agreements, v3?]

- Successful? Congrats! If not: Continue GFN

On Sakhalin, the "3 Partners" carried out the community consultations, led by the indigenous council head

Nepal Village FPIC
Mobilization by NEFIN (FFO)

3 Rounds of Consultations

Each Round:

- FFO organized consultations in each community
- Advisory Council meeting of all community Representatives
- Working Group meeting to systematize and incorporate AC decisions

Voting by Adibasi Janajati Advisory Council, Rasuwa, Nepal

Centrality of FPIC to Stakeholder Engagement with Indigenous Peoples

- Want to lower project social risk?

- Want to avoid negative publicity for project sponsors?

- Want to further empower local indigenous communities to determine their own futures in a project context?

➢ *What can we learn from project experiences?*

➢ *What can we learn from formal complaints to accountability mechanisms?*

➢ *How could an FPIC approach affect project outcomes?*

Session Three

Challenges and Lessons Learned Engaging with Indigenous Peoples

Challenges & Lessons Learned

What Challenges have you faced working on projects with Indigenous Peoples?

- In-person: form groups of 6-7 participants each
  On-line: interact in two online chat rooms

- Select facilitator (for in-person groups), scribe/reporter

- Each person describes the challenges they encountered working on projects with Indigenous Peoples. With FPIC.

- Report back

Lessons Learned: Indonesia, Ulumbu Mataloka

Lessons Learned: International

- ✓ **Gender issues** best tackled by local community if directly raised by facilitators

- ✓ Be aware of **Class**, **Caste**, and **Ethnic Cleavages; Political factions**

- ✓ **Embrace Legacy Issues**: good for short-run (FPIC) & long-run (Social License)

- ✓ Key roles of **IPO/FFO** and of **Senior Project Management**

- ✓ Interpret everything through **local culture**

- ✓ Keep **Involuntary Resettlement** issues separate

- ✓ **Infuse FPIC & PPP Spirit into the IPP**

Keys to Success for UT-1 Hydro (Nepal)

- **True Good Faith Negotiation (GFN)**

  ➡ At critical moment(s), key concessions by all sides

- **Three GFN Partners**

  - *FFO:* NEFIN (both national/local) as FPIC Facilitation Organization credible 3rd party
  - *Company:* Senior management empowered middle management to negotiate & embrace outstanding/legacy issues
  - *Community Representatives:* inclusive self-selection process: Advisory Council & WG

- **What made GFN possible?**

  ➡ A few months of collaboration built on mutual respect & trust-building

New Paradigm = Learning Curve

So Capacity-Building is Critical

| For project developer social teams | For MDB social teams, if necessary | For FPIC communities | For IPOs involved |

Need for Process to be Culturally Embedded

Local Communities Set the Tone: Respecting Spiritual and Social as well as Economistic, Bureaucratic, and Engineering Imperatives

Nivkh Welcoming Call at Consent Meeting

Tamang lamas consecrating the FPIC agreements

What Challenges have you faced implementing FPIC?

- In-person: form groups of 5-7 each participants
  On-line: interact in the two online chat rooms

- Select facilitator (for in-person groups), scribe, reporter

- Each person describes the challenges they've face implementing FPIC

- Report back

FPIC Implementation Challenges

Bringing Senior Project Management on Board   Suspicions!

Bringing Local Government on Board   Suspicions!

Bringing Local IPOs/Communities on Board   Suspicions!

How to Build Trust

➢ Between **IPO/FFO** and **MDB**

➢ Between **Project** and **IPOs**

➢ Between **IPO/FFO** and **Communities**

➢ Between **local govt** and **FPIC process**

Project Sponsor Issues

- Resistance to sharing decision-making power with non-project actors

- Abundance of caution regarding release of information, particularly regarding land purchase/lease

- Reluctance to allocate internal resources to build internal capacity to address IP/Community issues

- Assuming Project technical expertise should always trump IP/community preferences, values, approaches

Government Issues

- Reluctance to sharing decision-making power with non-government actors as regards IP/community issues

- Attempts to use Project/Company development plans to fill government budget gaps

- Desire to select the indigenous representatives the government has previously worked with as the FPIC representatives

- Objection to confidentiality & anonymity of some community consultations

Indigenous/Community Issues

- Mistrust of Project & Government as reliable partners

- Mistrust of information received from Project & Government as regards impacts and risks, especially environmental

- Fear "consent" once granted will be misconstrued into an open-ended yielding of future claims and rights

- Fear of inappropriate pressure applied by Project & Government

- Internal IP/community conflicts over control of promised resources (benefits package)

- Unfamiliarity with bureaucratic procedures such as FPIC/PS7

FPIC documents

Initial Document: Consent Process Agreement--
Defining Consent within Each Project Context

- "How will we decide we've given our 'Consent'?"
  - *Who will be authorized to grant consent?*
  - *What will be the process of considering the consent decision?*
  - *When will the process be conducted? And where?*

- FPIC Facilitator Organization (3rd party) manages the process
  - Discussion at local level and among interested parties; FPIC communities decide
  - Produces a written agreement, the CPA

Consent Set of Documents before the "UT-1 FPIC & IPP Working Group"

The documents on the table:

- A draft of the Statement of Consent ("A")

- A draft of the Indigenous Peoples Plan ("B")

- A draft of an "Outstanding/Legacy Issues" document ("C"; issues not accommodated by an IPP)

- A draft of a "Tripartite IPP Implementation Agreement" ("D"; project, IP communities, local gov't)

Consent Set of Documents (CS)

•The Statement of Consent (SC) sets out the parameters of the agreement resulting from the GFN and the multiple rounds of FPIC consultations and negotiations. ***Document "A"***

•An **Indigenous Peoples Plan** (IPP) comprised of a package of mitigation measures and benefits that includes a plan governance structure built around plan co-management by local community representatives, the project, and local governments. ***Document "B"***

•A **legacy issues document** [LID] (where relevant) that addresses outstanding community-client issues which could not be incorporated into the IPDP but which the community wants to retain as topics of future discussion with the project (and possibly local governments). ***Document "C"***

•A **Tripartite Implementation Agreement** (TIA) among the parties (the local communities' representatives, the project, and local governments, if they are amenable) spelling out each party's responsibilities to carry out the agreements comprising the SC. ***Document "D"***

The Key Document:
the Statement of Consent (Document "A")

- Details who (which communities) are giving their consent

- Specifies for what consent is being given (i.e., certain documents such as the IPP and an implementation agreement and/or for the project as a whole)

- Identifies who is authorized to make a commitment on each of the partner's behalf

Carrying FPIC into the Project Future: the Indigenous Peoples Plan (Document "B")

Typical Sections

- Project Description

- Risks

- Mitigation Measures

- Proposed Benefits

FPIC-Standard IPP Additions

- Local bottom-up needs assessment

- Co-preparation of IPP

- IPP Governance: IP predominant

- Mitigation Matrix (updated regularly)

BONUS: IPP becomes preeminent IP-project communication channel (during project implementation)

Legacy Issues Document ("C"): Dealing with the Past

- Often projects have experienced cases of misunderstanding, conflicts, and unfulfilled expectations; this document seeks to capture current community understandings of those issues and ways forward.

- This may take the form of a "Demands Framework" or "Legacy Issues Document" which incorporates community priorities for future development, not all of which were captured in the IPP.

- This is an aspirational document and not an agreed upon list of project promises. It does however give voice to community priorities and can be discussed with the project, government, and other stakeholders as the project is implemented.

Tripartite IPP Implementation Agreement ("D"), Sakhalin 2015

*Company,
Government,
IP Council*

The roles, responsibilities of the three partners to implement the Plan

91

At the Sakhalin consent meeting
one community votes as a block
against the majority

In Nepal, Signing the
Consent Statement ("A")

Consent Achieved

- At the very spot aside the Trishuli River where the intake tunnel will be placed, the NWEDC CEO (r) receives the consecrated FPIC documents ("A, B, C, D") from the chair of the Adivasi Janajati Advisory Council (himself a former critic of the project), 2 November 2018

Operationalizing FPIC: 3 Approaches

Implementation approach varies according to risk ranking, nature of project, brownfield vs. greenfield status.

Is there more than one FPIC Process Approach?
Definitely! When the Scope Needs Adjustment

Decreasing Scope

- In some projects, FPIC may be required only in relation to specific portions of land or aspects of a project.
Examples:
(a) linear projects that pass through multiple human habitats, which may require FPIC for the component that traverses [indigenous peoples'] lands;
(b) projects comprising multiple subprojects, some of which are located on [indigenous peoples'] lands, which may require FPIC for the subprojects located on those lands; and
(c) projects involving an expansion of ongoing activities, which may require FPIC for the new project activities
(World Bank ESS7 Guidance Note 7: 24.2).

Increasing Scope

- When IP groups to whom the requirement applies live among those (non-IP groups) to whom it does not, or

- when some Indigenous people are subject to one of the three FPIC-requiring circumstances but other Indigenous people are not.

In cases such as these, all members of the project-affected communities could be incorporated into the FPIC process with negotiation mitigation and benefits enhancement measures applying to all.

Other FPIC Approaches:
A Continuum as per project type and level of risks

"FPIC-lite"

- For projects whose likely effects and risks are quite modest, e.g., linear projects, a slimmed-down set of consultations and documentation may be appropriate
(e.g., HOA highway project)

"FPIC-like"

- For brownfield projects affecting IP--or high-risk or high-profile projects not affecting IP--when the goal is community buy-in and decreased risk, most of the FPIC elements—but not all—can be utilized. (e.g., TZ Railway project)

Stakeholder Engagement & FPIC 101 Workshop

Greg Guldin & Adi Prasetijo, Presenters

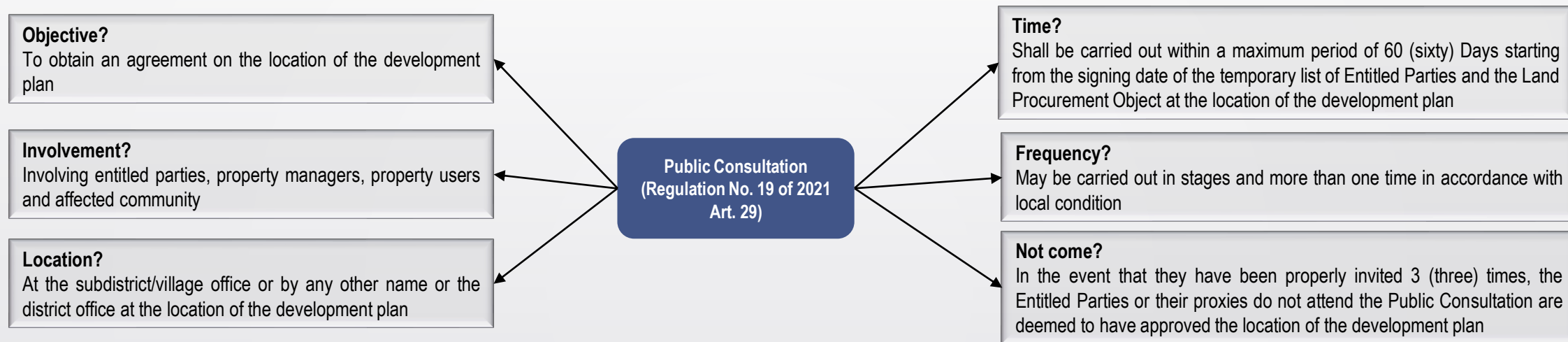World Bank Indonesia Office

February 16 & **17**, 2023

Session Four

Applying Stakeholder Engagement in Indonesia

Stakeholder Engagement links with other project documents/requirements

Stakeholder Engagement as land acquisition preparation

Objective?
To obtain an agreement on the location of the development plan

Involvement?
Involving entitled parties, property managers, property users and affected community

Location?
At the subdistrict/village office or by any other name or the district office at the location of the development plan

Public Consultation (Regulation No. 19 of 2021 Art. 29)

Time?
Shall be carried out within a maximum period of 60 (sixty) Days starting from the signing date of the temporary list of Entitled Parties and the Land Procurement Object at the location of the development plan

Frequency?
May be carried out in stages and more than one time in accordance with local condition

Not come?
In the event that they have been properly invited 3 (three) times, the Entitled Parties or their proxies do not attend the Public Consultation are deemed to have approved the location of the development plan

1. Decision-making processes related to resettlement and livelihood restoration should include options and alternatives, where applicable.
2. Disclosure of relevant information and participation of Affected Communities and persons will continue during the planning, implementation, monitoring, and evaluation of compensation payments, livelihood restoration activities, and resettlement to achieve outcomes that are consistent.
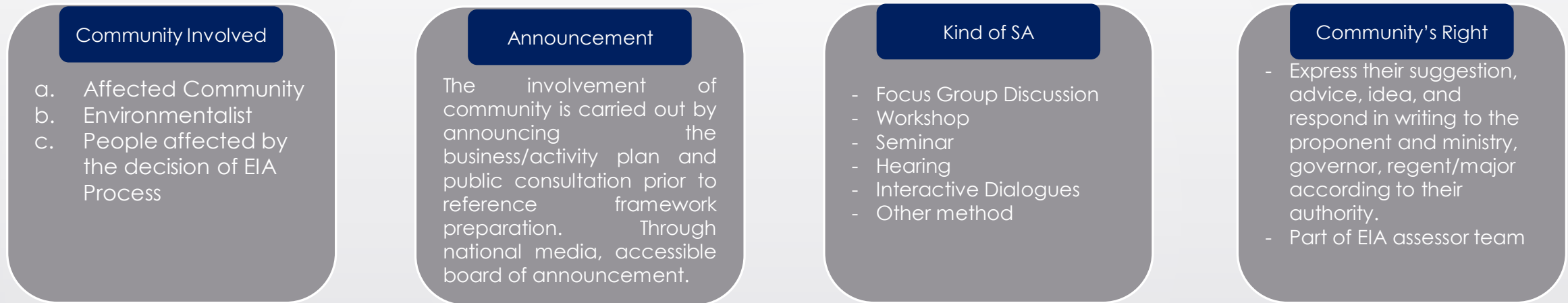
IFC PS 5

Stakeholder Analysis and Engagement Planning
identify the range of stakeholders that may be interested in their actions and consider how external communications might facilitate a dialog with all stakeholders

Disclosure of Information
The project proponent will provide Affected Communities with access to relevant information

Informed Consultation and Participation
Will conduct an Informed Consultation and Participation (ICP) process that will build upon the steps outlined above in Consultation and will result in the Affected Communities' informed participation
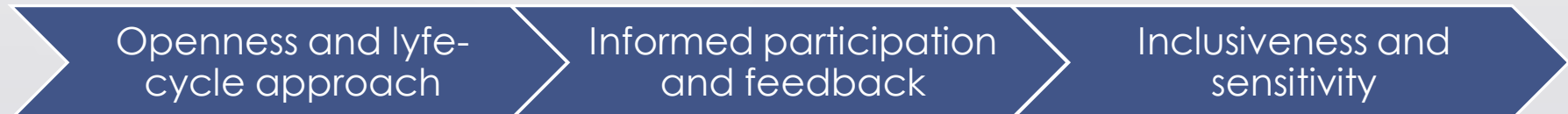
Indigenous Pople
For projects with adverse impacts to Indigenous Peoples, the client is required to engage them in a process of ICP and in certain circumstances the client is required to obtain their Free, Prior, and Informed Consent (FPIC).

Stakeholder Engagement as Regulatory EIA (baseline data and public consultation) preparation

Community Involved

a. Affected Community
b. Environmentalist
c. People affected by the decision of EIA Process

Announcement

The involvement of community is carried out by announcing the business/activity plan and public consultation prior to reference framework preparation. Through national media, accessible board of announcement.

Kind of SA

- Focus Group Discussion
- Workshop
- Seminar
- Hearing
- Interactive Dialogues
- Other method

Community's Right

- Express their suggestion, advice, idea, and respond in writing to the proponent and ministry, governor, regent/major according to their authority.
- Part of EIA assessor team

Ref.: Appendix of the MoEF Regulation No. 17 of 2012

MAIN PRINCIPLES → Openness and lyfe-cycle approach → Informed participation and feedback → Inclusiveness and sensitivity

CSR: Link with Benefit-sharing programs

Corporate Social and Environmental Responsibility is the commitment of a Company to participate in sustainable economic development in order to enhance the quality of life and environment that are beneficial for the Company itself, local communities, or the public in general. (Article 1 No. 3 Law No. 40 of 2007)
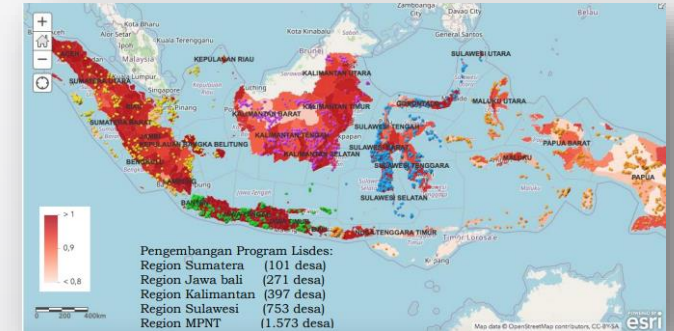
➤ Minister of Energy & Mineral Resource regulation No. 16/2020 concerning Strategic Plan of the Ministry of EMR in 2020-2024 has reflects that household that cannot access electricity will be supported by CSR PT PLN (Persero)

Location Map of Distribution of Roadmap 2021 PLN Village (taken from appendix of Minister of energy and Mineral Resource Decree No. 188/2021 on approval of PT PLN electricity supply business plan 2021 to 2030

Minister of Energy & Mineral Resource Decree No. 1824/2018 concerning Guidance for the Implementation of Community Development and Empowerment.

➤ Governor with local government, IUP/IUPK holder, academics, and community shall prepare a blueprint for PPM (community development and empowerment) for 5 years ahead.

Desktop Review   Field Study   Inspire CSR
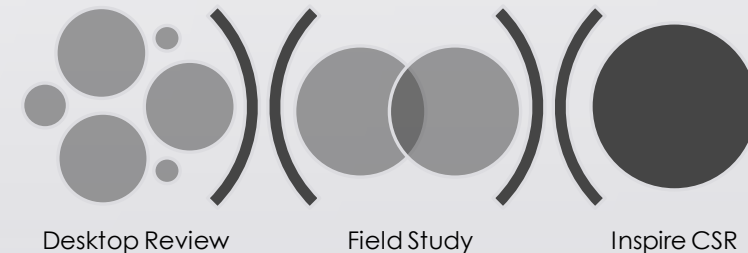
CSR can be given during the project as an SE strategy and encourage the economy and social life of the community.

Designing Stakeholder Engagement & FPIC Approaches in Indonesia

Designing a Stakeholder Engagement Plan

Plan out the steps to prepare a Stakeholder Engagement Plan following the IP PPP

- In-person: form groups of 6-7 participants
  On-line: interact in two online chat rooms

- Select facilitator (for in-person groups), scribe, reporter

- Using the materials provided, each group collectively i) sequences the most critical steps in preparing such a SEP, and ii) selects the three most important issues contributing to SEP/FPIC/PPP success

- Report back

New Paradigm as SE/Project Bonus

IP Participation & Partnership Paradigm:

Is it Worth It?

Greater Inputs

More time and resources up front

- 3 consultation rounds vs. standard
- FFO & FPIC Specialist
- IPP Governance costs: ongoing
- IPP probably more generous

Greater Returns

- Project meets lender policy requirements
- Lowered social risks throughout the project
- Increased likelihood of effective social plans
- Good PR for project & lenders: anticipates rising attention and awareness among all stakeholders

FPIC Approach as Project Bonus: Beyond a Requirement

A Comprehensive Risk-Reduction Strategy

- **Meets Present Needs (Written Agreement):** Not only enables positive financing and administrative approvals—the immediate goals — but also:

- **Addresses the Past (a reset button):** Project embraces and addresses outstanding/ legacy issues

- **Prepares for the Future (IPP, Implementation agreement):** Provides Long-term Value for the Project, a mechanism in place—the FPIC-Standard/Inspired Community Development Plan--for maintaining Social License

- **WARNING!!** *Project has to keep up with Consent Set agreements or license could expire!*

Centrality of FPIC-like Stakeholder Engagement

- Want to lower project social risk?

- Want to avoid negative publicity for project sponsors?

- Want to truly empower local indigenous communities to determine their own futures in a project context?

➢ *Experience Teaches:*

Embrace—and not Resist—FPIC approaches to lower substantially project social risk, protect project sponsor reputation, and facilitate indigenous community self-determination

In Sum…

Politics, Power, and Participation

FPIC Lessons Learned:
From Conflicts to Consent

- Combat Negative Relations → "Meaningful" Consultation

- Meaningful Consultation → "Meaningful" Participation

- Meaningful Participation → Shared Decision-Making (incl. FPIC)

A Theoretical Note: FPIC as a Modest Indigenous Peoples (Community) Empowerment Tool

- Explicit Recognition FPIC is Political
  - ➢Politics = Power to make decisions
- Without shared decision-making, no "meaningful" consultation/participation
- To achieve FPIC, GFN best seen as aiming at shared decision-making, including on consent

Employing the PPP as a Stakeholder Engagement Strategy

Objective: to achieve and maintain / renew social license to operate

Open Discussion

- Remaining Questions

- Suggestions for Next Steps

Closing:
SE/FPIC/PPP as Project Bonuses to Maintain Social License