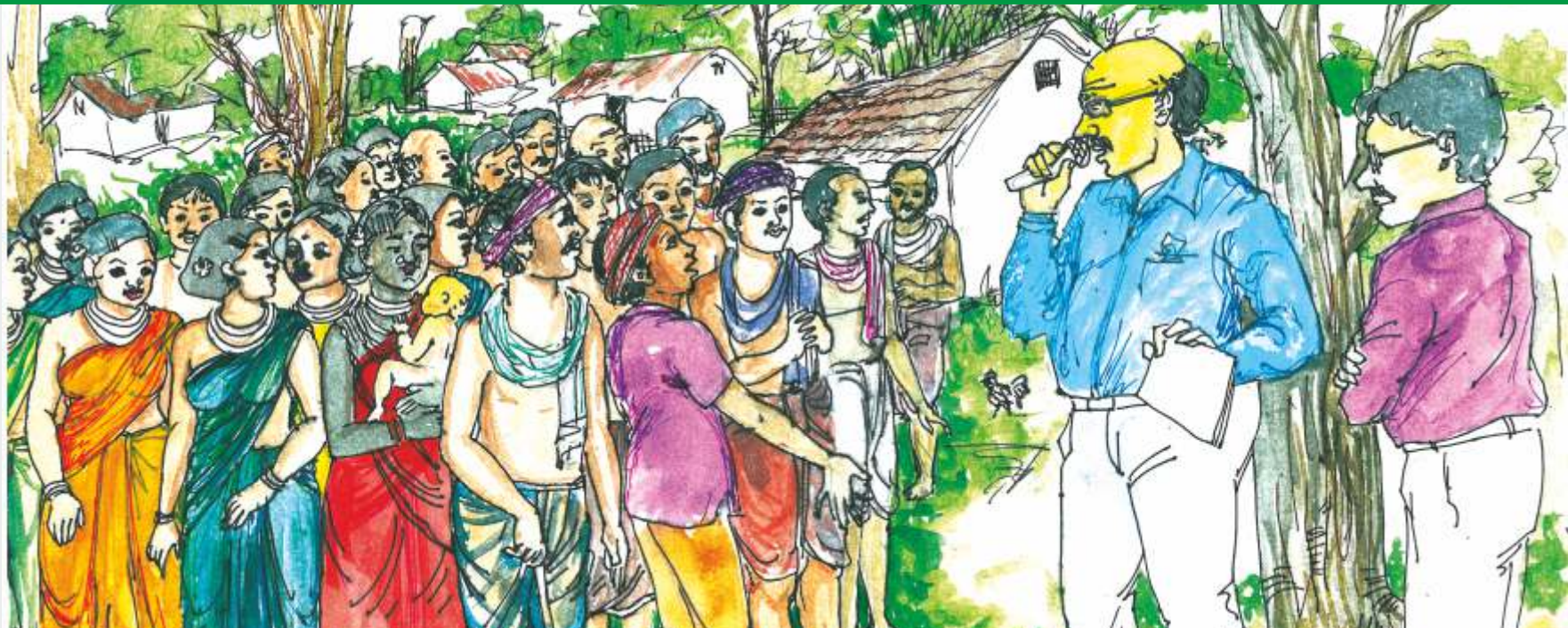


Free, Prior, Informed Consent (FPIC)

A brief manual



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Acknowledgement

The result of globalization and demand for and over exploitation of natural resources across the World has threatened Indigenous Peoples, their livelihoods, territories and related traditional resources. The pressure on their resources has resulted in habitat and biodiversity loss, force displacement and migration. Unfortunately some of these situations have resulted in serious incidents of violence, tensions and conflicts.

Tribal peoples in India constitute 8.6 percent of India's total population, about 104 million people according to the 2011 census. They face various forms of exploitation including eviction from their land due to number of reasons; including mining and industrialization. Indigenous communities everywhere are struggling to protect their land, forest and natural resources. A number of progressive legislations including the 1996 Provision of Panchayat Extension to Scheduled Areas (PESA) and the 2006 Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act have been issued to protect tribal interests. Nevertheless these have not been implemented in true spirit.

In this context, it is useful to refer to international dispositions and rules that refer to Indigenous Peoples' rights. Both International Labour Organization (ILO) Convention 169 and the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP), refer to the need to obtain Free, Prior and Informed Consent (FPIC) from indigenous, Tribal or Adivasi communities before enacting any projects or activities that may have an impact on them and/or on their traditional right over natural resources. Ever since, FPIC has become a fundamental process, it protects local communities' ancestral territories and ensures their agreement with any development activity foreseen or planned in their lands and natural resources.

Food and Agriculture Organization (FAO), Actionaid and partner organizations jointly collaborated on how to incorporate FPIC into the work of each respective organization. The first outcome of this collaboration is in the form of a Manual that details how to implement FPIC process within the work of project practitioners in their projects and programmes, ensuring that Indigenous Peoples' rights are duly considered and respected from the design of a project until its implementation and evaluation.

A brief of the original FPIC manual has been prepared by Actionaid India reflecting the Indian context and its related legal system. The brief manual has been translated into different Indian languages for the benefit of Tribal/indigenous peoples. This is to help practitioners for their ready reference and larger reach out. Adivasi Janjati Adhikar Manch (AJAM) working with different tribal communities across Indian State has played a critical role in making tribal communities understand the concept and assert their rights. We take this opportunity to thank all those who have supported this process.

We thank the Indigenous Peoples Team of the Food and Agriculture Organization of the United Nations (FAO) for shaping the FPIC brief, editing its final version and providing intellectual support. We acknowledge translation support of this document in different languages, Narendra Sharma (Hindi) Vinayak Pawar (Marathi), Nandini (Kannad), Renuka Kastha (Gujarati) Priyabrata, Biren and Ratikanta (Odia), Jalandhara Majhi (Kui), Dr. Belaram Ghogra (Bagadi), Saurabh and Sarad Kumari (Mundari – Minaskhi Munda & Santhali – Sisir Tudu).

Our special thanks to Sandeep Chachra, Executive Director, Actionaid India for his constant support and encouragement.

(Bratindi Jena)

Head, Natural Resource Hub, Actionaid India

Free, Prior, Informed Consent (FPIC)

Major Highlights

Background

In recent years, we have been witnessing unbridled pillage of natural resources and growing outcries by indigenous peoples denouncing the lack of compliance with the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), especially in obtaining their Free, Prior and Informed Consent (FPIC) before the enactment of projects that impact their resources. This is in defense of their ancestral territories and speaking out about abuses by extractive industries encroaching more and more onto indigenous territories that are rich in untapped natural resources.

What is FPIC?



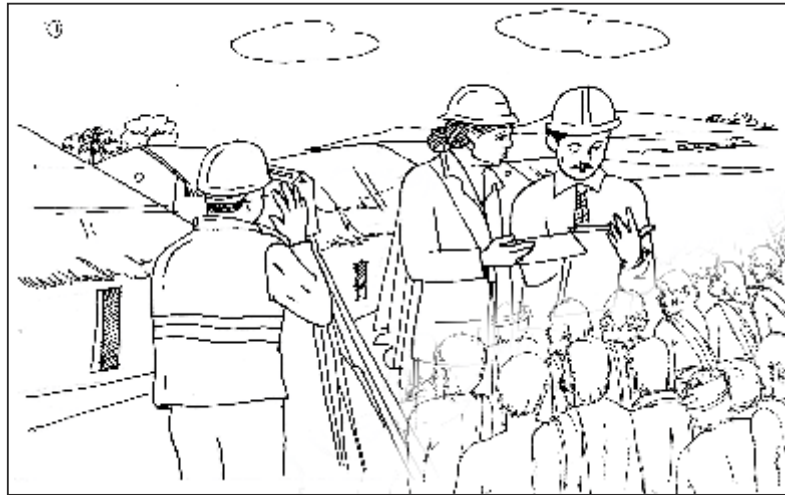
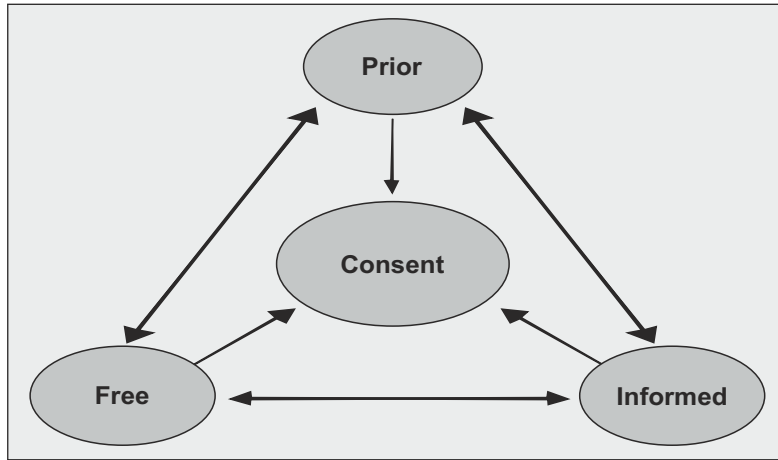
Right Assertion process through public consultation

Free, Prior and Informed Consent (FPIC) is a specific right pertaining to Indigenous Peoples throughout the World. FPIC is a tool/ process which has emerged as an international human rights standard derived from the collective rights of Indigenous Peoples to self-determination and to their natural resources and territories.

FPIC is a right that pertains to Indigenous Peoples and local communities throughout the world. It allows Indigenous Peoples to give or withhold consent prior to the initiation of any project that may affect them. Once given, such consent can be withdraw at any stage, allowing Indigenous Peoples to negotiate the conditions under which the project will be designed, implemented, monitored and evaluated. Indigenous People can also choose not to enter into consultations; this decision should be respected and all contact avoided.

Why is FPIC a Process ?

FPIC is considered a process because a series of steps and iterative phases are needed before the community



Sharing information with the communities

can reach a collective decision of consent or withhold-consent. Moreover its implementation persists throughout the life of the project, from the initial steps of project identification until the closure phase.

Defining the key elements of FPIC

Free refers to a consent given voluntarily, in absence of coercion, intimidation or manipulation. It also refers to a process that is self-directed by the community from whom consent is being sought. Expectations or time lines should not be externally imposed.

Prior means that consent is sought sufficiently in advance of any authorization or commencement of activities, at the early stages of a development or investment plan, and not only when the need arises to obtain approval from the community.

Informed refers mainly to the nature of the engagement and type of information that should be provided prior to seeking consent and also as part of the ongoing consent process.

Consent refers to the collective decision made by the rights-holders and reached through the customary decision-making processes of the affected Indigenous Peoples or communities. Consent must be sought and granted or withheld according to the unique formal or informal political-administrative dynamic of each community. Indigenous Peoples and local communities must be able to participate through their own freely chosen representatives, while ensuring the participation of youth, women, the elderly and persons with disabilities as much as possible.



Getting people's consent on the project



Tribal/Indigenous people are owners of the forest

Benefits of the FPIC process

Developmental activities can be carried out as per the needs and priorities of the local population and Indigenous Peoples which per se represent an incomparable benefit for all stakeholders involved in any given project intervention. A respectful and thorough FPIC process entails full and effective participation of Indigenous Peoples in planning the proposed project.

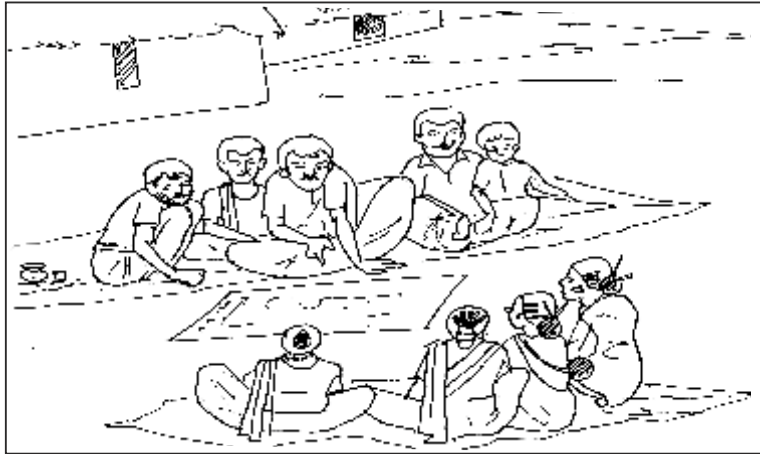
FPIC integration through the human rights-based approach

FPIC is deeply rooted in human rights-based approach as it prioritizes Indigenous Peoples' effective participation in determining how best to achieve meaningful and positive outcomes to meet their needs and aspirations, particularly using parameters that emanate from their respective cultures.

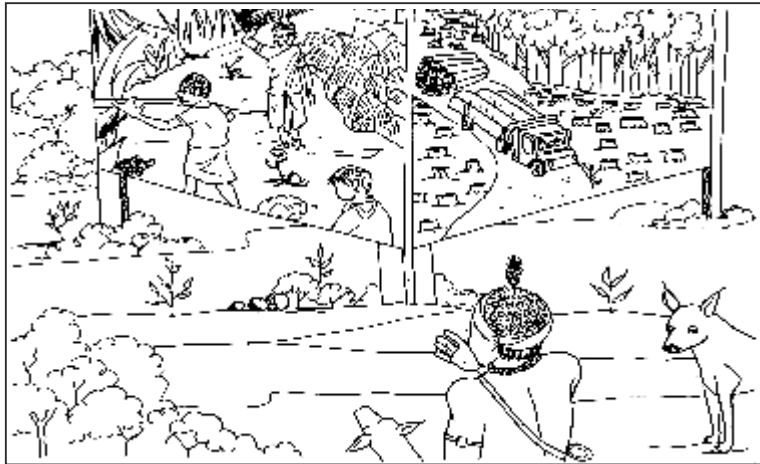
What are the Features of FPIC ?

a. Control of their lands, territories and resources and upholding respect to their cultural integrity

The FPIC process allows indigenous peoples to exercise control and management of their resources, land, territories and respect to their cultural integrity and self-determination, especially on their own development as distinct peoples. Any external entity such as governments, corporations, institutions, organizations, and project proponents need to obtain their consent, agreement and authorization as rights holders before implementing any projects or activities that have impacts on them.



Community asserting their right, mapping natural resources



We can revert the picture through FPIC as a collective decision making process

b. Exercise of the right to self-determination

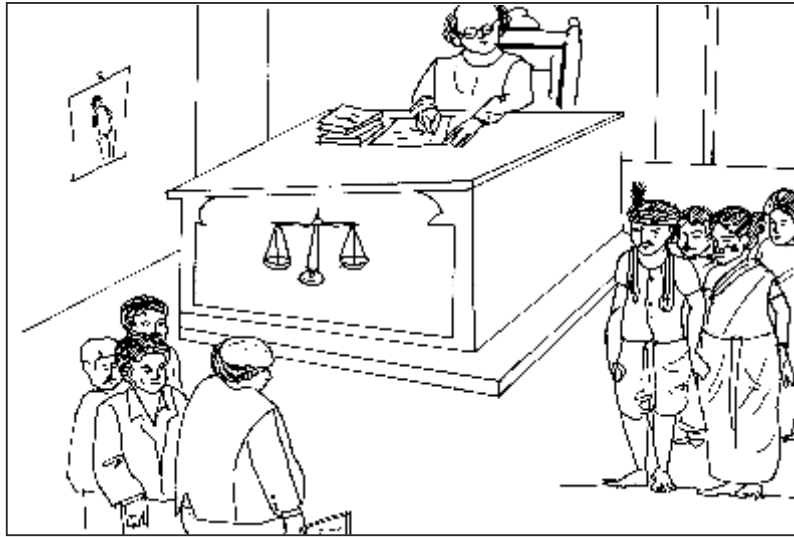
Indigenous peoples have their own traditional systems of governance to manage their own lands, territories and resources. These includes their socio-political systems, customary laws and practices, resource management, and traditional knowledge and cultural practices, which make them distinct from the dominant society. FPIC provides the mechanism to undertake their own collective decision-making as an exercise of self-determination on matters that affect them. This becomes a preventive measure to impositions that may further undermine their self-governance and their own development in managing their lands, territories and resources.

c. FPIC as a safeguard measure

FPIC serves as a safeguard to ensure that potential social and environmental impacts of any project are identified and taken into account from the perspectives of indigenous peoples. This process allows indigenous peoples to voice their concerns on potential adverse impacts of projects, which should be duly taken into account. During this process, clear information should be disclosed from the project proponents and should include any results of feasibility studies as well as comparative studies relating to the project.

d. FPIC as a collective decision-making process

FPIC is not merely a procedural process but a substantive mechanism to ensure the respect of indigenous peoples' right to take decisions, especially in relation to the use, management and development of their lands, territories



FPIC gives right through engage with judiciary and other entities

and resources. It is a collective undertaking of the members of community/ies that shall be involved in collective decisions. Indigenous peoples exist as collectives and thereby rely on each other for their collective survival and development.

e. FPIC as a reiterative 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. As a reiterative process, it requires the implementation of series of consultations, dialogues, exchanges, and interactions between Indigenous Peoples and parties requiring the consent and agreement of Indigenous Peoples. It also requires continuous engagement of Indigenous Peoples throughout the whole project cycle - not only before the project implementation or until the consent is granted.

f. FPIC as a process of 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. In this context, any plan and activity that impact Indigenous Peoples need to engage them in mutual trust (where complete, accurate and comprehensible information is shared) and seek their consent through a process of consultations, dialogues and interactions.

The Principle of FPIC in International and National Legal System

Free, Prior, and Informed Consent, or FPIC, is an emerging principle of international law that entitles indigenous peoples to make free and informed decisions about activities affecting their traditional lands and ways of life.

International Labour Organization (ILO) Convention (No.107) on Indigenous and Tribal Populations Convention, 1957

The convention is for the protection of social, political and cultural rights of Indigenous Peoples. The convention stated that populations concerned shall not be removed without their free consent from their habitual territories

International Labour Organization (ILO) Convention (No. 169) on Indigenous and Tribal Peoples Convention, 1989

ILO Convention 169 stresses the fact that Indigenous Peoples shouldn't be removed from their land and territories arbitrarily. Relocation of these peoples is considered, if necessary, as an exceptional measure, which shall take place only with their Free, Prior and Informed Consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries, where appropriate, which provide the opportunity for effective representation of the peoples concerned in the processes and procedures.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007

UNDRIP is an important standard for the treatment of Indigenous Peoples and a significant tool towards eliminating human rights violations against Indigenous Peoples and assisting them in combating discrimination and marginalization. The declaration also establishes that Indigenous Peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the Indigenous Peoples concerned and after reaching an agreement on just and fair compensation and, where possible, with the option of return.

It again ensured that states shall consult and cooperate in good faith with Indigenous Peoples concerned through their own representative institutions in order to obtain their FPIC before adopting and implementing legislative and administrative measures that may affect them.

Convention on the Biological Diversity (CBD),(1992)

The CBD recognizes the close and traditional dependence of indigenous communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components. The CBD also recognize the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation.

FPIC embedded in the Constitution of India

The Administration of the Scheduled Areas and Scheduled Tribes in States according to the provisions of the Fifth Schedule and Sixth Schedule applies to the tribal areas. The objective of the Schedule area and the Regulations made there under is to preserve tribal

autonomy, their cultures and economic empowerment to ensure social, economic and political justice for the preservation of peace and good Governance in the Scheduled Area.

Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA)

The 1996 Panchayat (Extension to Scheduled Areas) Act ensures customary law, social and religious practices and traditional management practices of community resources. The recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to granting prospective licenses or mining leases for minor minerals in the Scheduled Areas.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA)

The Act aims to reverse the alienation of tribes from their own habitat caused by past policies and laws. It stated that no tribal person is to be evicted from currently occupied land until the process of determining rights is completed. Gram Sabha is the decision taking institution and participation of communities is ensured in every process.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

This Act is to guarantee, in consultation with institutions of local self-government and Gram Sabhas, a humane, participative, informed and transparent process for land acquisition. Public hearing at the affected area after giving proper information is ensured.

The Environment (Protection) Act, 1986

Environment Legislations prohibit and restrict the location of industries; carrying on of processes and operations in different areas and Environment Impact Assessment (EIA) Notification- ensures access to information, public participation and access to justice. Public hearing process for affected people in the environmental impacts of the project or activity is ascertained.

The Biological Diversity Act, 2002

This legislation is to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge with proper consultation process and with prior consent from communities.

Resources required for ascertaining FPIC implementation

FPIC streamlining within an organization requires human resources, building capacities and an established grievance mechanism.

- Establish human resources capacity
- The grievance mechanisms

- Capacity building and guidance

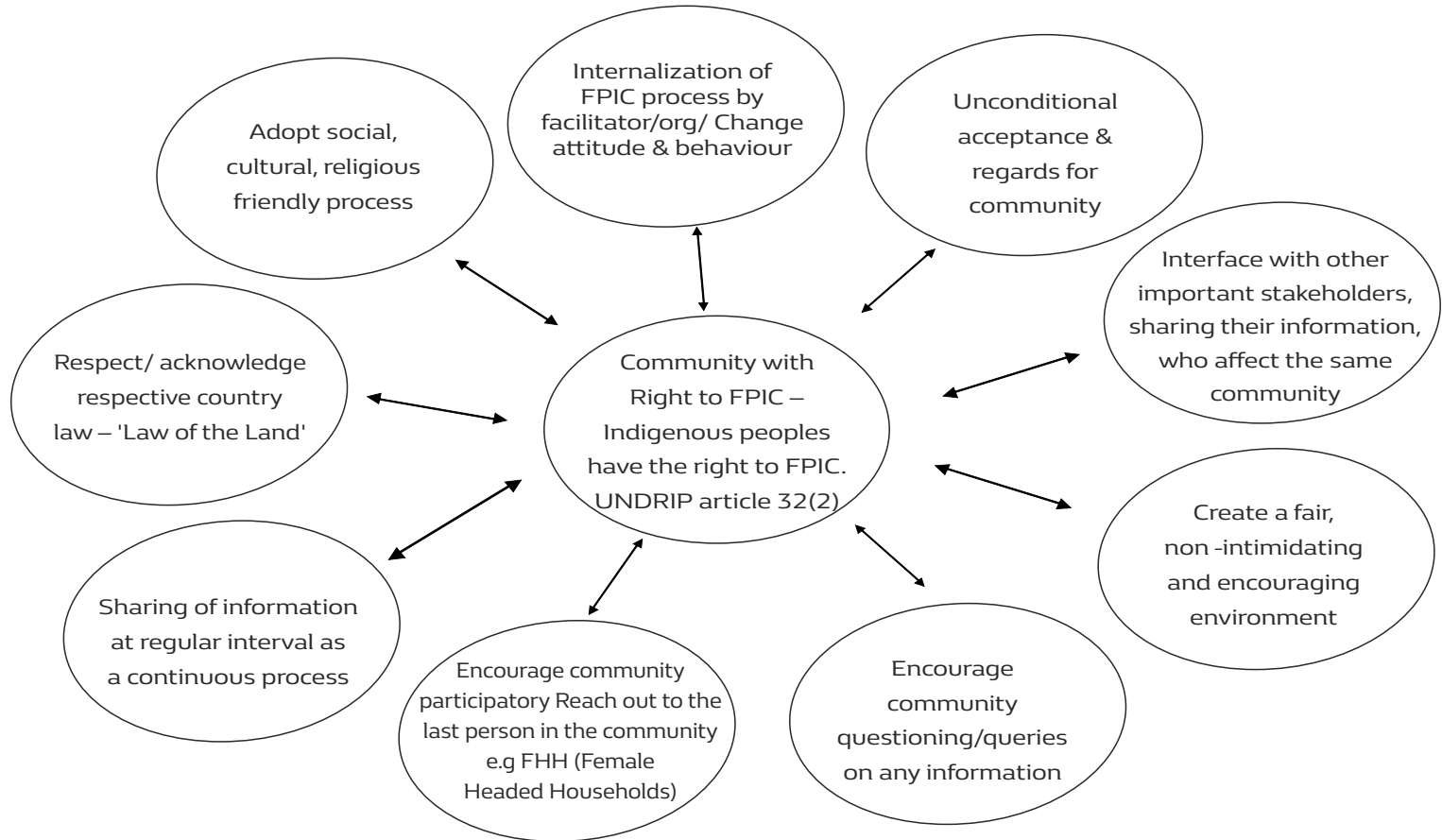
Implementing Free, Prior and Informed Consent (FPIC)

An FPIC process will vary according to the specific local context in which a project is to be developed. FPIC process, it is equally important to assess the qualitative aspects as well as the time devoted to it, with the following key steps that any project manager must consider within different phases of the project cycle:



FPIC towards an empowered Community

Facilitating organization, stakeholders, corporate and state





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