



Guidelines on FPIC

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Guidance to implement six steps of a Free Prior and Informed Consent process

This checklist can be used to determine whether you, at Northern Rangelands Trust (NRT), have effectively obtained free, prior and informed consent (FPIC) from a community before beginning a certain project or activity. You need to obtain FPIC if the project will have any impact on community rights to resources, lands and territories. This includes the rights of local communities to access, use and manage land and resources, and their rights to consume and sell products from the land.

In addition to using this checklist to determine whether FPIC has been effectively sought and obtained, you can use it to develop a standard process for obtaining FPIC. This process should be set down in policy. You can develop that policy by looking at each of these questions, and for each of them, asking yourself, “how will NRT do this?”. Your answers to those questions, written down, will become the standard process for how you obtain FPIC.

Step 1: Identify rights holders and their representative institutions

1.1 Identifying rights holders

- Are you planning an activity that will impact community rights to resources, lands and territories?
- In addition to the communities in your membership, are there any other communities affected by this activity? Do you have a process for identifying such communities, who may be affected, and who should be engaged with to obtain FPIC?

1.2 Identify claims and rights

- Do you have records of all existing claims of rights to resources, lands and territories, of the communities you are working with?

1.3 Examine and record how communities make decisions

Communities’ and peoples’ own institutions and processes

International law requires that indigenous peoples’ own institutions of representation and decision-making are fully respected. This means that communities or peoples should be represented by institutions of their own choosing.

- Do you know how each community ordinarily makes its decisions about issues like the ones you bring to them? Do you have a description of this process written down in your records? (Eg, “The x community makes decisions through a committee of elders, comprising of x men, who decide after calling together the community and hearing their options”, etc)?
NB: These decision-making structures may be:
 - The people’s own customary institutions.
 - Institutions that have been imposed by NRT or the government but later accepted by the people.
 - Novel institutions set up by the people themselves to deal with outsiders.How do you know that the communities chose the people who you are speaking to with, to represent them in negotiations?
- Do you know how the community ordinarily resolves conflicts within itself? Do you have this documented?
- Does your policy describe the usual decision-making and conflict-resolution processes of the community, and specify that decisions relating to NRT activities will be made using the same process?

Make sure process is inclusive

International law requires that the functioning of indigenous institutions should be “in accordance with international human rights standards” and calls for particular attention “to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities”.¹

- Do you have a process in place to ensure that while relying on traditional decision-making practices, you are also making sure the voices of women, youth, people with a disability, and any other marginalised group within the community are heard? Eg, you might:
 - Create a parallel representative community structure - a committee that includes representatives of all stakeholder groups (all ethnic groups, women, elders, youth), and which can feed into or provide its own opinions and decisions to the traditional decision-making structure.
 - Consult with local youth, women’s and other community-based groups.
 - You said you comply with certain regulations in this respect – how do you comply with them?
- Is this process documented in your policy?

Step 2: Provide Information

2.1 Compile and publish information in an understandable and easily accessible way

NRT is required to provide community members with access to information about the projects being planned in their communities.

- Do you circulate information about intended projects carried out in the community conservancies before implementation?
- If you have done a Social and Environmental Impact Assessment, do you communicate the results of this assessment to the community?
- Do you invite comments from community members on the project?
- Do you allow a reasonable time period for the submission of the comments?
- Do you write reports on how due account was taken of any comments that were received?
- Do you take action to ensure the information is able to reach, and is understandable to, everyone in the community? For example:
 - Providing the information in different languages if there are different language groups; or both orally and in writing, if there are different levels of literacy?
 - Ensuring the language used is accessible, and technical or legal terms are explained?
 - Traveling to different areas to transmit the information?
- Do you have a way of determining how far the information has been transmitted?

2.2 Disseminate specific information regarding legal rights, claims, and duties of potentially affected persons

- Does the information you provide about the projects you are undertaking include a section that specifically informs people about any impact these projects will have on their legal rights, claims or duties?

Step 3: Ensure community participation in decision-making

3.1 Undertake consultations

- Once you have first provided communities with information about projects that may impact their rights, do you then call them together for a consultation?
- Do these discussions occur prior to and continue throughout the time the activity is conducted?
- Do you take action to ensure that everyone who is impacted by the project is able to attend these consultations? For example, do you:
 - Hold consultations in in different languages if there are different language groups?

¹ UN Declaration on the Rights of Indigenous Peoples, Arts 34 and 22.

- Have facilitators or co-facilitators at the consultations who are familiar to and trusted by the communities?
- Travel to different areas to allow everyone to participate?
- Do you have a rule that the consultations should be timely, proactive (meaning initiative by NRT, rather than waiting for the community to request them), transparent, and proportionate to scale, intensity and risk of the project?

3.2 Seek and promote free, prior and informed consent

- Do you require that free, prior and informed consent (FPIC) is obtained from communities for projects that will have an impact on their rights and interests?
- Do you make sure communities are able to gain a clear understanding of how they specifically will benefit or be harmed by proposed projects?
- At the consultations, you describe each of the steps in the process at which you think that community consent will be needed before the planning or implementation can proceed to the next step?
- Do communities have the right to withhold consent at decisionmaking points during the project cycle?
- Is your FPIC process based on the community's preferred procedures for consent?
- Have you given community members the opportunity to oppose or propose an alternative consent process?
- If the consent process has been opposed, can you demonstrate that this has been resolved through the normal conflict-resolution processes of that community?
- Does your FPIC take into account the opinions of women and marginalised group, such as youth and people with disabilities? Do you have mechanisms in place to bring these groups into the conversation?
- Do you have a way of ensuring that that women, youth, and other marginalized groups are satisfied about the way they are represented by the existing decision-making institutions and processes?
- Does your process recognise different levels of consent? Eg:
 - Consent to enter into conversations or negotiations about beginning a project.
 - Consent for part of the project to go ahead.
 - Consent for a pilot project.
 - Consent for the project in its entirety.
- Does the form of consent and who gives it vary depending on the stage involved?
- Is sufficient time and support given so that community representatives can consult within their communities?
- When consent is eventually given, is this recorded, along with any other relevant details of the consultation?

Step 4: Provide conflict resolution mechanisms

4.1 Establish arrangement for complaints, disputes and conflicts

Despite good intentions and optimal efforts the affected rights holders can have complaints or grievances and NRT and rights holders may have disputes or serious conflicts with each other. NRT should have clear and satisfactory arrangements regarding how to deal with these situations.

- Do you have in place mechanisms through which community members can complain if they believe FPIC was not adequately sought or obtained?
- Is the grievance mechanism able to address potential internal conflicts that can affect the agreement to move ahead with the project?
- Is the grievance processes able to hear and address concerns people have about being excluded from the decision-making process?
- Were these grievance mechanisms established through engagement and with the input of the community?
- Are they based on the way the community ordinarily resolves conflict?
- Do you have a grievance tracking and response system in place?

4.2 Have rules around how to respond to complaints and conflicts

- Do you make clear to communities how complaints will be responded to?
- Do you have a process through which complaints will be investigated?
- Do you have a process through which feedback will be given to complainants?
- Does the grievance process should include provisions and protocols for withdrawing consent if there is community consensus to do so?
- Do you have a rule in place that you will not proceed with a project if there are major conflicts that have not been resolved?
- Is this sentence accurate? 'NRT does not require individuals or communities to permanently waive their legal right to bring a claim through a judicial process as a precondition of raising a grievance through an NRT grievance mechanism, nor will NRT obstruct national judicial processes.'

Step 5: Taking Reasoned Decisions

- Do you have a policy requirement that before a decision on whether to make ahead with a project takes place, the decision-makers must ensure that appropriate consultation has taken place, and FPIC has been legitimately obtained?
- Do you communicate the decision for moving ahead, and the reason for that decision, to all community members? Do you take action to ensure the decision is able to reach, and is understandable to, everyone in the community? For example:
 - Providing the decision in different languages if there are different language groups; or both orally and in writing, if there are different levels of literacy?
 - Ensuring the language used is accessible, and technical or legal terms are explained?
 - Traveling to different areas to communicate the decision to people there?
- If any community members have indicated that they did not want that decision to be made, do you ensure the communication also includes a justification for why the action is going ahead despite their objections?

Step 6: Monitoring and evaluating the process

- Do you have a process in place to monitor the impact of decisions subject to FPIC by communities?
- Does this include a process of engaging with communities, including marginalised community members, to determine their opinions and feelings about both the FPIC process and the projects that have gone ahead?
- Are the outcomes of evaluation exercises communicated back to the community?
- Do you have rules in place specifying what circumstances would re-initiate the consent process and require a re-negotiation of the agreement?