



USAID Guidance on Monitoring Free, Prior, and Informed Consent (FPIC)

December 2021

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LIST OF ACRONYMS

| | |
|--------|--|
| CDCS | Country Development Cooperation Strategy |
| CLA | collaborating, learning, and adapting |
| EIA | Environmental Impact Assessment |
| EPs | Equator Principles |
| ESS | Environmental and Social Standard |
| EBRD | European Bank of Reconstruction and Development |
| FPIC | Free, Prior, and Informed Consent |
| IDA | Inclusive Development Analysis |
| IEE | Initial Environmental Examination |
| ILO | International Labour Organization |
| IFC | International Finance Corporation |
| JES | Joint Explanatory Statements |
| MDB | Multilateral Development Bank |
| MEL | Monitoring, Evaluation, and Learning |
| OU | Operating Unit |
| PACPs | Project-Affected People and Communities |
| PAD | Project Appraisal Document |
| PRO-IP | Policy on Promoting the Rights of Indigenous Peoples |
| SIA | Social Impact Assessment |
| UNDRIP | United Nations Declaration on the Rights of Indigenous Peoples |

I. USAID'S POLICY ON PROMOTING THE RIGHTS OF INDIGENOUS PEOPLES

This guide to the Free, Prior, and Informed Consent (FPIC)-360° Tool serves as a resource for understanding when FPIC is required by the U.S. Agency for International Development (USAID) and how it must be incorporated into the program cycle. The FPIC-360° Tool provides step-by-step guidance on how to implement a thorough FPIC process for operating units (OUs) and implementing partners. The FPIC-360° Tool aligns with USAID's Policy on Promoting the Rights of Indigenous Peoples ([PRO-IP](#)), which was approved in March 2020.

PRO-IP reflects USAID's commitment to supporting inclusive and sustainable development and advancing human dignity by protecting and empowering Indigenous Peoples while safeguarding the environments in which they live. The policy positions USAID to strengthen and expand on the decades of support it has committed to Indigenous Peoples around the world. PRO-IP offers guidance on the robust engagement and partnership with Indigenous Peoples to help USAID programs align with the communities' own development priorities and ensure that USAID staff and implementing partners safeguard against unintended, adverse impacts.

PRO-IP strongly encourages USAID staff and implementing partners to engage with Indigenous Peoples across USAID's program cycle. It is critical to listen to the voices of Indigenous Peoples to identify shared or diverging goals in order to reach consensus on the objectives and approaches of a development activity. This deepened engagement by OUs throughout the program cycle is explained in detail in Sections V and VI of the PRO-IP. There are, however, a few notable situations when culturally relevant and sensitive approaches as well as the potential for conflict should be taken into account, such as when a community has rejected contact or decided to live in voluntary isolation. In these cases, there are often legal conditions that would guide (or perhaps prohibit) engagement, and, at a minimum, government officials and local Indigenous organizations must be consulted. It is important to recognize that in some Amazon countries, legal restrictions prevent "trying to approach" Indigenous People in Isolation and Initial Contact populations, given their unique vulnerability and other factors.

USAID's PRO-IP states, "When Indigenous Peoples are present in or have a collective attachment to the project area and there are either: (i) risks of possible adverse impacts on their human rights, livelihoods, and/or culture; (ii) the potential for adverse impacts on their lands and territories, natural resources, or sacred sites (whether the land is under traditional ownership title or based on customary use and occupation); or (iii) threats that might result in physical relocation from those lands, then Operating Units (OUs) **must seek the free, prior, and informed consent** (FPIC) of the Indigenous Peoples' communities themselves for the implementation of the project or activity (including mitigation measures), in accordance with international standards."

Box 1: Identifying Indigenous Peoples

The identification of Indigenous Peoples can be challenging. Not all countries in which USAID works recognize the rights, or even the existence of, Indigenous Peoples. PRO-IP gives seven criteria for identifying Indigenous Peoples, and an example methodology is available in this FPIC-360° Tool (see "Optional Toolkit for Identifying Indigenous Peoples" and [PRO-IP](#) Section II: Identifying Indigenous Peoples for further guidance).

ENGAGEMENT STRATEGIES AND BEST PRACTICES

Engagement is an important and mandatory component in cases of potential impacts on Indigenous Peoples. Community engagement is also critical for development, and it allows USAID and implementing partners to understand and address the goals, concerns, and challenges facing people who are affected by, and partnering with, development projects.

Box 2: Inclusive Engagement

USAID's toolkits on community engagement promote a partnership approach to engagement: "[Project-Affected People and Communities] PAPCs serve as equals in the design of a project or activity, and/or its implementation, monitoring, and evaluation. By establishing these partnerships, PAPCs have genuine decision-making authority." In addition, [USAID promotes a nondiscriminatory, inclusive, and integrated development approach](#) to ensure that all people have the opportunity to participate. For this purpose, USAID has issued policy documents detailing its commitment to inclusive development including, but not limited to, the [Gender Equality and Female Empowerment Policy](#); the [Youth in Development Policy](#); the [Democracy, Human Rights and Governance Strategy](#); [LGBT Vision for Action](#); and the [Nondiscrimination for Beneficiaries Policy](#).

It is important to conduct community engagement using culturally sensitive approaches with consideration of groups that have the potential to be marginalized in engagement processes. Customary decision-making mechanisms and election of community representatives, for example, do not always allow for the meaningful participation of women. In these cases, an alternative method of engaging women in the process should be developed, without compromising traditional social structures (reference the FPIC-360° Tool Tab 4: Gender). This may require consulting with women to determine the appropriate approaches, including format, timing, and location, to enable their meaningful participation.

USAID's guidance and toolkits on community engagement offers best practices for robust engagement with the diverse communities that interact with USAID projects in all sectors, termed here Project-Affected People and Communities (PAPCs). Among the levels of engagement with PAPCs (see Figure 1), consultation and FPIC are two crucial focus areas. As discussed in PRO-IP, [consultation should be two-way flow of information whereby USAID shares details of an activity with Indigenous Peoples/stakeholders, and these stakeholders provide informed feedback freely on the activity before implementation](#). Consultation is used to provide information about process, objectives, and proposed strategies and interventions to identify potential impacts, whether they are positive or negative, develop mitigation measures for negative impacts, gather feedback on the proposed intervention or strategy, and determine the level of support.

FPIC is a heightened standard for consultation with Indigenous Peoples, conducted in accordance with international standards and pursuant to USAID's PRO-IP. Some countries may already have FPIC laws and frameworks in place. If this is the case, they should work with the resident officer to ensure that the Mission aligns with the country's legal requirements. Otherwise, Missions should follow the PRO-IP process, in which community consultations should reach FPIC as necessary, or move toward co-creating local projects with Indigenous Peoples. Ensure that USAID Missions are implementing proper due diligence and consult with communities as required in the PRO-IP.

FPIC is based on the principle that before an action can take place that would affect Indigenous Peoples, positively or negatively, the affected persons or community must give approval for the activity to move forward ("consent").

Indigenous Peoples may be considered PAPCs:

- If Indigenous Peoples are intended targets or are part of communities that are intended targets of USAID assistance
- If Indigenous Peoples may be affected by USAID projects, for example by living in a target area, or are affected by an action taken as a result of USAID investment

In these cases, OUs must carry out a written analysis of impacts (see PRO-IP Operating Principle 4) that considers the potential impact of proposed development activities and that involves direct engagement with affected Indigenous Peoples. [USAID identifies three levels of community engagement.](#)

- **Informing**—PAPCs are informed about current considerations or actions that have been or may be taken. This level of engagement may be focused on communities and other stakeholders not closely affiliated with the project or for general awareness (e.g., health messages). These are usually informal processes that must be carried out with cultural sensitivity.
- **Consulting**—PAPCs are consulted on their perspectives and preferences for alternatives, decisions, or actions. Consulting may be most appropriate for planning. This could be an informal process or built into agreements with communities, depending on the PAPCs’ preferences. Informal exchanges involve “an exchange of information between USAID and Indigenous Peoples/project stakeholders that could enable the Agency to learn about the interests, priorities, challenges, and opportunities of the group, but does not yet include any concrete details about USAID’s proposed activity or program.” Consultations should meet the standards for community engagement laid out in USAID’s Consultation Handbook. It is important to note that informal consultations should take place before the Country Development Cooperation Strategy (CDCS) and the design of a project or activity. Informal consultations should at least include documented minutes. FPIC implementers should be clear about consultation follow-up actions so that PAPCs are not frustrated after providing input and not seeing it reflected in the project. When there is uncertainty regarding an activity, it is important for FPIC implementers to manage expectations. If expectations are raised, the relationship with the communities may be at risk.
- **Decision-making**—Collaborative, two-way communication and effective partnering should include PAPCs in all relevant activities and phases of the decision-making process, including identifying opportunities and challenges, gathering information, formulating alternatives and exploring their potential consequences, implementing activities, and evaluating the program, including a gender and intergenerational analysis. This level is recommended for robust community engagement and ownership of project actions and results. It can involve both formal (memorandums of understanding, grants, joint work plans) and informal processes. For example, informal conversations may be necessary to make initial contact with Indigenous Peoples who are stakeholders. Although such informal conversations could provide USAID with relevant information to begin to design a project, stakeholders should not only learn the details about a project through such conversations. Capacity-building, mentoring, or other support are often needed for effective co-decision-making and to reduce power inequalities.

These levels of engagement with PAPCs should be completed in conjunction or in collaboration with the OUs' engagement with local partner governments.

Box 3: Use of the Term "Consultation" with Indigenous Peoples

According to the PRO-IP, "an informal conversation is an exchange of information between USAID and Indigenous Peoples as stakeholders that may enable USAID to learn about the interests/priorities of the group, but does not yet include any concrete details about USAID's proposed activity or program."¹ Formal consultations are a two-way flow of information, whereby USAID shares details of planned activities and stakeholders provide informed feedback freely on the activity before implementation. This should not be the first contact with PAPCs. Discussion and dialogue must first be conducted to establish rapport and learn the rules of engagement. Consultation implies some level of relationship or even commitment and, in the context of Indigenous Peoples' rights, may imply legal obligations and community expectations to seek consent. It is critical to develop a framework for consultation, in collaboration with Indigenous communities, including determining the level of consultation that communities can and wish to undertake, if any, and whether communities have already established their own protocols for consultation.²

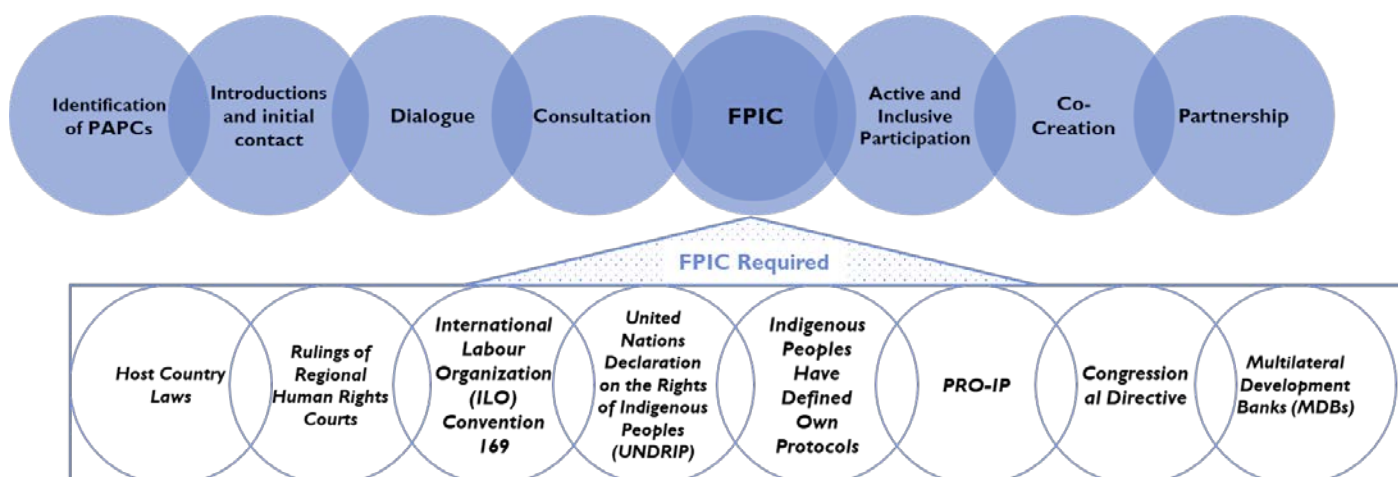
For example:

- USAID Brazil requires close consultation with Indigenous Peoples during project design and implementation. This requires review and feedback from any major assessments and reports in all cooperative agreements that work in Indigenous territories and ensures that Indigenous communities and representatives themselves are part of a board that reviews the project and provides feedback.
- USAID Guatemala's Indigenous Peoples' Engagement Strategy is designed to create innovative and substantive partnerships between Indigenous entities, government, and the private sector; to increase awareness, knowledge, and recognition of Indigenous peoples' rights, culture, history, and knowledge systems; and to increase the participation of Indigenous women and men in development interventions.

FORMS OF ENGAGEMENT

Figure 1 illustrates the spectrum of forms of engagement as described in the USAID's toolkits on community engagement. It is best practice for all OUs and implementing partners to engage communities in and around project areas, even if FPIC may not be required. The diagram also shows the conditions in which an FPIC process may be required, based on the context or impacts of the project.

Figure 1. Forms of engagement and conditions when FPIC may be required



¹ USAID Policy on Promoting the Rights of Indigenous Peoples

² USAID's guidance and toolkits on community engagement

Consultations should be centered on the human rights of Indigenous Peoples, including the right to FPIC and self-determined development, especially in instances in which significant adverse impacts are likely. Throughout the consultation process, OUs must pay special attention to the following:

- Protecting human rights, including economic, social, and cultural rights
- Identification, avoidance, and mitigation of potential adverse impacts to lands or natural resources
- Respect for Indigenous Peoples' traditional governance institutions and decision-making processes

Box 4: Respecting Traditional Authorities and Indigenous Decision-Making Processes

The International Labour Organization Convention No. 169 stipulates that Indigenous Peoples' own institutions should be respected in decision-making as well as their customs and customary laws. Cultural norms play a key role in how decision-making takes place within any particular community and how consent is expressed and validated. These need to be taken into consideration and adhered to if the community so wishes. For consent to be meaningful, it should be provided through procedures acceptable to and agreed upon by the community and not according to imposed norms of decision-making or for assessing people's views. Consultations with traditional authorities should be done in parallel or in collaboration with consulting with the local government, where applicable.

[USAID's Guide to Community Engagement for Power Projects in Kenya](#) is a helpful tool that highlights the key steps to effectively conduct community engagement, including planning, engagement, documentation, monitoring, and evaluating, and provides a Master Checklist of Community Engagement Activities and Considerations.

II. INTRODUCTION TO FPIC

WHAT IS FPIC?

FPIC is a standard for consultation with Indigenous Peoples and conducted in accordance with international standards and pursuant to USAID's PRO-IP. The principle of FPIC refers to the idea that before an action can take place that would affect Indigenous Peoples, positively or negatively, the person or community must give approval for the activity to move forward ("consent"). However, the person or community must have full information regarding the activity; otherwise, the consent is meaningless, as it is not based on adequate information about the proposed activity and its potential impact ("informed"). The community must provide consent before the activity begins ("prior"). It is also critical that the community not feel any pressure or coercion to agree to the activity ("free").³

It is a best practice that FPIC always be carried out and obtained by implementing partners for USAID projects using land or resources belonging to or used by Indigenous Peoples. Note that it is important to include Indigenous Peoples during the FPIC process and make sure that they are being included as stakeholders. Although it may not be required in all situations, FPIC is an important process for inclusive development and can prevent legal and reputational risks for USAID, projects, and partners, as outlined

³ USAID Draft Community Engagement Guide (2020)

below. Specifically, the Joint Explanatory Statements (JES) accompanying the fiscal year 2020 and 2021 appropriation bills require USAID to carry out due diligence with respect to how Indigenous Peoples and affected local communities are engaged and impacted by USAID investments in protected areas and national parks. In some cases, FPIC is mandated by local or national law.

FPIC IN INTERNATIONAL LAW

FPIC is a well-established principle in international law, articulated in the [International Labour Organization \(ILO\) Convention No. 169 on Indigenous and Tribal Peoples](#) and [the United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#). FPIC is conceived as an expression of the fundamental right of Indigenous Peoples to self-determination. Note that self-determination addresses the broader autonomy and self-governing status of Indigenous Peoples, while FPIC pertains specifically to consultation prior to undertaking particularized decisions and policies that may impact Indigenous Peoples. Both concepts are important aspects of respect for Indigenous Peoples, but they are distinct. International human rights laws and business best practices recognize that even though national legal frameworks may provide weak or nonexistent protections of customary rights to land, development activities that may affect Indigenous communities should not take place without first obtaining consent and allowing communities the recognition of their prior rights to the land and of their right to control what happens on that land.

[The U.S. Government's statement on the UNDRIP](#) specified that: "The United States is therefore pleased to support the Declaration's call to promote the development of a new and distinct international concept of self-determination specific to indigenous peoples. The Declaration's call is to promote the development of a concept of self-determination for indigenous peoples that is different from the existing right of self-determination in international law. The purpose of the Declaration was not to change or define the existing right of self-determination under international law. Further, as explained in Article 46, the Declaration does not imply any right to take any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States. For the United States, the Declaration's concept of self-determination is consistent with the United States' existing recognition of, and relationship with, federally recognized tribes as political entities that have inherent sovereign powers of self-governance. This recognition is the basis for the special legal and political relationship, including the government-to-government relationship, established between the United States and federally recognized tribes, pursuant to which the United States supports, protects, and promotes tribal governmental authority over a broad range of internal and territorial affairs, including membership, culture, language, religion, education, information, social welfare, community and public safety, family relations, economic activities, lands and resource management, environment and entry by non-members, as well as ways and means for financing these autonomous governmental functions. Federal agencies are engaged in a wide range of activities to enhance tribal self-determination in areas crucial to the well-being of tribal members."

Some of the key articles in these international laws are as follows:

- The right to FPIC prior to the approval of any project affecting Indigenous Peoples' lands or territories and other resources, particularly in connection with the development, use, or exploitation of mineral, water, or other resources (UNDRIP Article 32)

- The right to lands, territories, and resources that Indigenous Peoples have traditionally owned, occupied, or otherwise acquired; the right to own, use, develop, and control the lands, territories, and resources; the right to maintain and develop their political, economic, and social systems or institutions; and the right to redress (UNDRIP Articles 25, 26, 27, 29, 32; ILO 169 Articles 7, 13, 14, 15)
- Indigenous Peoples shall not be forcibly removed and no relocation shall take place without their FPIC; and the right to restitution and redress (UNDRIP Articles 10, 11, 20, 28, 32; ILO 169 Article 15)
- Representation through the right to participate in decision-making in matters that would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions (UNDRIP Articles 18, 19; ILO 169 Article 6)
- By virtue of the right to self-determination, Indigenous Peoples have the right to freely determine their political status and freely pursue their economic, social, and cultural development. (UNDRIP Articles 3, 4, 20, 23, 32; ILO 169 Article 6, 7, 23)

III. USAID AND FPIC

THE FPIC REQUIREMENT

OUS MAY BE REQUIRED TO OBTAIN THE FPIC OF INDIGENOUS PEOPLES TO IMPLEMENT A PROJECT OR ACTIVITY BASED ON THE FOLLOWING CRITERIA:

- *Host country laws:* USAID officers should review the laws of the host country or consult with their general counsel or regional legal advisor to determine whether there is a legal requirement to obtain FPIC of Indigenous Peoples who are impacted by a project or activity. Refer to the Mission's environmental officers as a resource.
- *Rulings of regional human rights courts:* USAID should conduct an assessment of rulings by applicable regional human rights courts to determine whether the court has ruled on Indigenous Peoples' right to FPIC.
- [ILO 169](#): If the host country is a signatory of ILO 169, the country is obligated to obtain the FPIC of Indigenous Peoples prior to engaging in an activity that could impact Indigenous Peoples' territories, resources, lives, identity, religion, institutions, economic development, education, civic participation, and health activities. Such countries may have domestic legislation that extends the obligation to obtain FPIC to nonstate actors and activities.
- *UNDRIP:* If the host country is a signatory of UNDRIP, although it is not legally binding, it does carry a moral imperative to obtain FPIC.
- *Protocols defined by Indigenous Peoples:* Indigenous Peoples may have already established protocols for consultation and decision-making regarding activities that will impact them or their territories. This

is the case, for example, in Brazil, in USAID's activities involving Indigenous and Quilombola Peoples; they require close consultations during the design and implementation of the project. They require written letters from communities, with consent, review, and feedback from any major assessments and reports. This was the case in a baseline study in Quilombola communities for the social progress index. Working with one of the partners, the communities were socialized in advance of the project, letters of consent were gathered from every community, all data were shared back in community meetings, and feedback was incorporated as part of the process.

- *USAID's PRO-IP:* When Indigenous Peoples have been identified pursuant to the USAID criteria, are project stakeholders, and are likely to be significantly impacted by the planned USAID project activities, but where neither host country laws, regional courts, nor ILO 169 creates a legal obligation to obtain FPIC, OUs should still have a strong interest in obtaining FPIC from Indigenous Peoples to reduce risks, mitigate impacts, and produce positive development outcomes.
- *Congressional directive:* FPIC is also required to be included in awards for parks and protected areas by a directive to USAID and the Department of State included in the JES accompanying the Department of State, Foreign Operations and Related Program Appropriations Act 2020. The JES requires that awards for parks and protected areas contain provisions requiring that:
 - a) Information detailing the proposed project and potential impacts is shared with local communities and FPIC of affected Indigenous communities is obtained in accordance with international standards.
 - b) The potential impacts of the proposed project on existing land or resource claims by affected local communities or Indigenous Peoples are considered and addressed in any management plan.
 - c) Any eco-guards, park rangers, and other law enforcement personnel authorized to protect biodiversity will be properly trained and monitored.
 - d) Effective grievance and redress mechanisms for victims of human rights violations and other misconduct exist.
- *Multilateral development bank requirements:* Many international financial institutions have adopted requirements for respecting the rights of Indigenous Peoples, including the principle of FPIC, as part of their safeguard policies. If these institutions are co-financiers of USAID programs and projects, these requirements need to be met (see Annex I).

Box 5: Human Rights

Human rights are identified by USAID as a key development objective.

- Human rights include the right to be free from violations of physical integrity (such as torture, slavery, and illegal detention); the collective rights of all citizens to enjoy political rights and civil liberties; and equality of opportunity and nondiscriminatory access to public goods and services.
- Human rights defenders are people who, individually or with others, act to promote or protect human rights, including civil and political rights as well as the promotion, protection, and realization of economic, social, and cultural rights. This encompasses environmental human rights defenders, whistleblowers, complainants, and community spokespersons.

See also USAID's [Human Rights Landscape Analysis Tool](#) for guidance on identifying key issues and entry points for human rights programming and [USAID's Conflict Assessment Framework](#).

Box 6: Risk Assessment

Ensuring that a rights-based FPIC process has been carried out or is in the process of being carried out is an effective way to build trust with local communities and reduce risks. Increasingly, international institutions as well as private companies are being publicly judged on their policies relating to Indigenous Peoples. OUs and programs can face risks if FPIC processes are not followed, including the following:

- *Legal risks:* U.S. Government directives require that USAID-funded programs ensure that agreements with implementing partners include provisions for FPIC of Indigenous communities in accordance with international standards. Also, in some countries, prior consultation and FPIC with Indigenous Peoples is required by law for certain types of development. OUs should ensure that implementing partners understand any applicable regulations and that program design and implementation activities meet national legal requirements.
- *Reputational risks:* The integrity of the organization or the program and USAID may be questioned if Indigenous Peoples are not consulted on the design or included in the implementation and monitoring of program activities. This could cause delays and prevent effective program implementation and impact whether there is resistance from the local community.
- *Programmatic risk:* There is a programmatic risk for OUs if communities are not consulted and have not consented to a program, as the program may not achieve its intended impacts and may not be sustainable. Furthermore, community objections could lead to the suspension or termination of some or all program activities.

FPIC AND THE USAID PROGRAM CYCLE

Engagement with Indigenous communities should happen as early and as often as possible throughout the USAID program cycle to facilitate the co-creation of projects and activities. USAID's Draft Community Engagement Guide defines co-creation as an approach to designing projects and activities that brings people together to produce a mutually valued outcome by using a participatory process that assumes some degree of shared power and decision-making. This approach is a time-limited process that focuses on generating a specific outcome, and it can be implemented at various points throughout the USAID program cycle.

As soon as the OU identifies that a potential program may occur in an area where there are Indigenous Peoples, the OU should make initial contact and begin informal conversations to establish the basis for consultation, co-creation, and partnership with Indigenous Peoples. During this process, it is important to implement a conflict sensitivity approach, understanding that Indigenous Peoples may have different ways of interpreting commitments. Consultation with Indigenous Peoples can inform the CDCS, Project Appraisal Document, and project design. Such consultations are also an opportunity to develop communication channels that should be maintained throughout the life of the project.

USAID should defer to traditional authorities for issues of representation and decision-making. This will allow communities to have a voice and promote their contributions in the decision-making process. It is important to promote a [“nondiscriminatory, inclusive, and integrated development approach that ensures that all people, including those who face discrimination and thus may have limited access to a country’s benefits, legal protections, or social participation, are fully included and can actively participate in and benefit from development processes and activities.”](#)

The following sections outline the opportunities for consultation and FPIC at each stage of the USAID program cycle.

I. Development of the CDCS

The CDCS defines the highest-order goal and development objectives or, in the case of a Regional Development Cooperation Strategy, regional development objectives that each OU, in collaboration with its development partners, will work to address during the strategy period.

[The CDCS development process entails three phases:](#)

1. *Initial consultations and parameter-setting:* This phase should include Indigenous Peoples, where they have been identified.
2. *Development of a results framework:* This phase should consider desired outcomes for Indigenous Peoples, based on their input, where potential impacts have been identified.
3. *Preparation and approval of the CDCS:* This phase may include provisions for assessing the need for and conducting FPIC in project design and implementation.

An FPIC process cannot start until the exact area of project implementation is known and the specific PAPCs are identified. Because the exact project location is not always known until after a project has been designed, OUs may delegate the responsibility for obtaining FPIC to the implementing partner. This must be part of the application process and the evaluation of applications and proposals to establish an implementing partner. The following scenarios provide examples of how OUs may approach FPIC:

- If the exact location of a project and PAPCs are known at the time of a CDCS/Regional Development Cooperation Strategy, this would be the best time to conduct an FPIC process to ensure that this overarching strategy document is co-designed with or informed by affected stakeholders, to the extent possible.
- If the specific geographic location is not yet known, then the FPIC process should be integrated into the implementing partner’s work plans; the Monitoring, Evaluation, and Learning Plan; and the Environmental Mitigation and Monitoring Plan, carried out at the first stage of the program cycle. It is particularly important to ensure that OUs can easily revise their strategy or designs if FPIC is not obtained and to ensure that time is allocated for a new FPIC process if PAPCs are

present in the proposed new location.⁴ See also in this guidance Section 2: Project Design and Implementation.

[Inclusive Development Analysis \(IDA, see Annex of linked document\)](#) is an analytic tool that helps OUs conduct relationship mapping of communities, assess the legal landscape in which stakeholders exist, identify drivers of marginalization of certain groups, and identify any security threats that communities may face. Indigenous Peoples should be included as early as possible in project development, design, and decision-making. Including Indigenous Peoples in the IDA can help OUs:

- Understand the differential impacts of their policies and programs on Indigenous Peoples
- Identify structural barriers and processes that exclude Indigenous Peoples from participating fully in society and development programs
- Examine differences in access to assets, resources, opportunities, and services
- Lead to specific recommendations on how to design these programs and empower Indigenous Peoples
- Create opportunities for co-creation and partnerships with Indigenous Peoples

The consultations that OUs conduct with Indigenous Peoples to understand the development priorities and plans of their communities should be included as part of the Gender Analysis or the [IDA](#). This will help the OUs structure the consultations and report on results in a way that can be easily used to help OUs develop their strategies.

2. Project Design and Implementation

After the area of project implementation has been established, OUs should identify potential impacts on Indigenous Peoples through impact assessment processes, seek their feedback on mitigation measures, and provide opportunities for co-creation in project design and implementation. If FPIC is necessary, it may be done through consultation and consent-seeking processes integrated throughout the program cycle (see Figure 2).

Some OUs may designate staff members to be responsible for engaging with Indigenous Peoples. [An inclusive development advisor](#) can help identify collaboration opportunities and synergy and contribute to the FPIC process through their functions and responsibilities, including the following:

- Developing and implementing a strategy/action plan for integrating Indigenous voices across OU activities
- Serving as a resource to assist teams in conducting consultations with Indigenous Peoples throughout the program cycle

⁴ USAID Draft Community Engagement Guide (2020)

The [Initial Environmental Examination \(IEE\)](#) is a mandated process per 22 CFR 216 and is typically developed by the USAID program or environmental officer staff. The IEE should be completed and approved prior to the solicitation of a project. The IEE seeks to provide a preliminary review of the reasonably foreseeable effects of proposed USAID interventions on the environment. If the interventions may have impacts on Indigenous Peoples, OUs should engage affected Indigenous Peoples to solicit input, and the results of the IEE should be shared with them. If a positive environmental threshold determination is identified in the IEE, then an *Environmental Impact Assessment (EIA)* is required by 22 CFR 216 (reference FPIC-360° Tool Tab 16: Impact Assessment).

[The EIA is a formal process for identifying the likely effects of activities or actions on the environment and on human health and welfare; it also identifies the means and measures to mitigate and monitor these impacts.](#) Indigenous Peoples should be included in the early planning and implementation of the EIA to ensure that environmental considerations that could impact Indigenous livelihoods or resources are taken into account during activity planning and early design. In some instances, Indigenous Peoples may hold unique and traditional knowledge regarding the local environment and ecosystem and could provide valuable input into the EIA process. Results of the EIA should be shared with Indigenous Peoples, as relevant, and opportunities provided for participation in environmental monitoring and mitigation (reference FPIC-360° Tool Tab 16: Impact Assessment).

[The Social Impact Assessment \(SIA\)](#) includes the processes of analyzing, monitoring, and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions. A similar approach is required in the Gender Analysis. It is good practice to conduct an SIA before completing an activity design to understand the potential impacts (negative or positive) that the activity may have on Indigenous stakeholders. When conducting an SIA, it is critical to consider the types of issues that are particular to (if not unique to) Indigenous Peoples. Consultations with Indigenous Peoples should be conducted to inform the impact assessment and identify potential risk mitigation measures—particularly those based on Indigenous knowledge. The USAID Optional SIA Framework (Section V) further outlines baseline elements specific to Indigenous Peoples that should be considered in the SIA process (reference FPIC-360° Tool Tab 16: Impact Assessment).

3. Activity Design and Implementation

There are important differences between the design and implementation phases of a project. For instance, the design phase is based on evidence and existing understanding of the local context, whereas the implementation phase involves interventions that have direct impacts that may be long term and irreversible. For this reason, it is critical that the design phase is informed by a consultation process that is as comprehensive as possible, and the implementation phase should include community members who can best identify and assess the program's impact. Box 7 describes potential scenarios in which FPIC may be triggered at different stages in the design and implementation processes. Implementing partners should demonstrate and document using the FPIC-360° Tool how they have provided meaningful opportunities for Indigenous Peoples to participate in decision-making about the design and implementation of project activities and interventions through consultation processes agreed upon or established by the affected Indigenous communities, and how consent was established (reference FPIC-360° Tool Tab 10: Collaborative Design of FPIC Process Tool). If FPIC was not conducted in earlier

stages, there may be opportunities to build in consultation and consent processes in implementing partner oversight mechanisms.

The following scenarios explore how FPIC may be applied after the start of a project that affects Indigenous Peoples.

Box 7: FPIC Scenarios in Design and Implementation

Scenario: *What if the project is already awarded, but the OU did not consult affected Indigenous Peoples, and there are no known disputes?*

Even if the project is already awarded, the OUs can still compel the implementing partner to incorporate FPIC through award amendments and award monitoring and evaluation mechanisms. For example, if the status of land rights is not clear, OUs can implement participatory mapping to help identify whether there are any local communities in the area of interest and consult with the communities' traditional leaders and decision-making institutions. Through this, OUs can identify the relevant stakeholders and rule out any preexisting conflicts. Affected Indigenous Peoples should be consulted and their consent sought through the annual monitoring and evaluation processes, allowing them to inform revisions to the design and implementation of future activities and interventions.

Scenario: *What if the project is already established, but the OU did not consult affected Indigenous Peoples, and there are pending or ongoing disputes?*

If project activities have already begun, the implementing partner should have already established and been able to provide proof of adequate, culturally appropriate dispute resolution and grievance management mechanisms. The project should be paused to allow for an assessment of impact. Disputes should be addressed through those mechanisms, including consultation with affected Indigenous Peoples on future project activities and interventions. The implementing partner should engage representative organizations and enter into negotiations to ensure that there is consent to the outcomes of disputes and grievances and the planned activities and interventions. These processes should be monitored by the OU and established as conditions in the annual review of the implementing partner award.

Scenario: *What if the project did not properly implement local or national FPIC laws or regulations?*

Implementing partners must show that they have engaged in an agreed-upon process of negotiation to ensure that consent is informed and agreements are upheld according to national or local FPIC laws. This is an opportunity for OUs to compel implementing partners to establish agreements with Indigenous Peoples, subject to Indigenous Peoples' consent. Agreements should be developed in consultation with Indigenous Peoples and shared with them in their own languages. Through a negotiation process, implementing partners may sign a memorandum of understanding or an agreement letter with the Indigenous community that must be monitored and evaluated, ideally by an independent third party, to ensure that agreements are being upheld. OUs may also recommend revising and evaluating agreements annually to incorporate additional requirements.

Scenario: *What if a project was established by a host government, donor, or private sector actor long before a USAID project was designed and awarded, and legacy issues have caused negative impacts on Indigenous Peoples?*

This is an opportunity for OUs to compel new implementing partners to adhere to the USAID's PRO-IP and any local FPIC and national laws that are in place to ensure land rights and that Indigenous Peoples' rights are being respected. If there are any ongoing disputes, they should be settled appropriately. If the initial project design did not consult with Indigenous Peoples, the OUs should determine whether the planned activities and interventions are influenced by or are addressing the impacts of legacy issues predating USAID's involvement, and whether there are opportunities for addressing the legacy issues themselves.

- *Understanding the local context and history:* The OUs should conduct research and analysis to determine the extent of the conflict between Indigenous Peoples and other stakeholders. A robust political and social economy analysis is recommended to best understand the drivers of conflict, outcome scenarios, and whether it is feasible for the OUs to address legacy issues through the planned interventions. Some issues might include involuntary resettlement, economic displacement, and land-grabbing in the area of the project. OUs should also identify whether Indigenous Peoples and their traditional and customary rights, including land rights, natural resource management, customary rights, and other associated rights that are recognized by the government, are being taken into account. If so, OUs should perform a historical analysis to understand whether there are legacy issues that may require specific interventions. If there are interventions in place to remedy the impacts of legacy issues, then the OUs should determine whether the proposed interventions are addressing the root causes of those issues and whether there are ongoing negative impacts on Indigenous Peoples. There may be opportunities for the implementing partner to incorporate additional interventions in consultation with affected Indigenous Peoples to address the impacts of legacy issues through, for example, implementing livelihood projects, ensuring access to traditional lands, preserving cultural or spiritual heritage, and providing opportunities for Indigenous Peoples to benefit from the project.

- *Programs that do not intersect with existing legacy issues:* OUs should carefully analyze whether it is feasible to pursue or design programs or activities without addressing legacy issues. For example, the OUs may provide education to communities that have been forcibly displaced. If the OUs determine that it is feasible to address legacy issues, then they can support the design and implementation of culturally appropriate activities that consider Indigenous Peoples' customary traditions and that better support communities in strengthening their rights. To address the root causes of the impacts caused by legacy issues, the OUs may consider additional activities and interventions to support Indigenous Peoples on advocacy and civic engagement to enable them to strengthen their rights and responsibilities, including recognition of their traditional and customary land rights by the local government. The OUs should not implement programs that build on existing legacy issues and further entrench the exploitation and abuse of Indigenous Peoples.

OUs are strongly encouraged to explore opportunities to address legacy issues. In complex situations, OUs should consult with the USAID Senior Advisor on Indigenous Peoples to discuss potential strategies and approaches.

OUs should conduct due diligence to ensure that all implementing partners are familiar with the PRO-IP and have the capacity to implement FPIC. When evaluating and selecting potential implementing partners, OUs should undertake due diligence to determine (1) whether the partner has any history of or staff who are working with Indigenous Peoples or has developed projects or operations that affect Indigenous Peoples, (2) whether effective management systems are in place to respect the rights of Indigenous Peoples, and (3) whether the partner has the capacity to carry out rights-based consultation and FPIC processes. The FPIC-360° Tool can be used as a due diligence checklist to evaluate potential implementing partners as part of the selection process.

Box 8: Private Sector Partnerships

The [USAID Private Sector Engagement Policy](#) outlines where the private sector may be involved throughout the USAID program cycle. Private sector engagement can range from philanthropic (funding USAID projects), innovation, expertise (co-creation of projects), market solutions, and investments (private sector-led projects with USAID as the facilitator). If USAID engages with the private sector on projects that could have impacts on Indigenous Peoples, the OUs should undertake an assessment to determine whether Indigenous Peoples will be impacted and, if so, whether FPIC is required and whether the private sector partner has the technical capacity and knowledge to implement appropriate FPIC processes. The OUs should share the FPIC-360° Tool with private sector partners and discuss the need to implement a robust FPIC process. OUs can also use the FPIC-360° Tool to evaluate the effectiveness of the implementing partner's FPIC processes. As part of the [USAID Private Sector Engagement and Due Diligence: Reputational Risk Assessment](#), the OU may also consider whether the partner has negatively impacted Indigenous Peoples' rights through any of their operations or investments. The [USAID Risk-Appetite Statement](#) provides further guidance on the amount and type of risk the Agency is willing to accept, based on an evaluation of opportunities and threats at a corporate level and in key risk categories. The OUs should convene a tripartite discussion between PAPCs, the government, and the private sector to determine whether there are opportunities for collaboration.

4. Monitoring and Evaluation

Monitoring is the ongoing and systematic tracking of data or information relevant to USAID's strategies, projects, and activities. OUs must consider their needs for data and information during planning and design and at any point in the program cycle (ADS 201.3.5). Evaluation uses systematic data collection and analysis of information about the characteristics and outcomes of one or more organizations, programs, policies, strategies, projects, and activities as a basis for judgments to improve effectiveness and timed to inform decisions about current and future programming (ADS 201.3.6).

If projects and activities impact Indigenous Peoples, their rights, lands, resources, or cultural or spiritual heritage, Indigenous Peoples should be consulted on the design of monitoring and evaluation indicators.

Indigenous Peoples should also be consulted on the development of monitoring and evaluation approaches, including participatory monitoring, to provide them the opportunity to conduct monitoring of projects and activities that affect them. Results of monitoring and evaluation should also be shared with Indigenous Peoples in culturally appropriate formats.

Provisions for inclusive and participatory approaches to monitoring and evaluation should be included by the OUs in their monitoring and evaluation plans and should also be considered when establishing monitoring and evaluation responsibilities of implementing partners and contractors commissioned to conduct monitoring and evaluation studies.

5. Collaborating, Learning, and Adapting (CLA)

Strategic collaboration, continuous learning, and adaptive management link together all components of the program cycle (ADS 201.3.5.19). Integrating CLA practices in programs that affect Indigenous Peoples should consider opportunities to incorporate the perspectives and participation of Indigenous Peoples in CLA processes through the following:

- *Collaborating:* Are there opportunities to collaborate with Indigenous Peoples in the CLA process?
- *Learning:* Are we asking the most important and culturally appropriate questions and finding answers that are relevant to how Indigenous Peoples can participate in decision-making regarding programs and activities that affect them?
- *Adapting:* Are we using the information that we gather through collaboration and learning activities to make better decisions and make adjustments as necessary to improve opportunities for Indigenous Peoples to participate in program design, implementation, evaluation, and monitoring?

6. USAID Grievance and Redress Mechanism

Box 9: Grievance Mechanism Effectiveness Criteria

The United Nations Guiding Principles on Business and Human Rights define the following effectiveness criteria for nonjudicial grievance mechanisms (Principle 31):

- Legitimate
- Accessible
- Predictable
- Equitable
- Transparent
- Rights-compatible
- A source of continuous learning and, for operational-level mechanisms, based on engagement and dialogue

Implementing partners should establish and socialize a grievance and redress mechanism from the outset of project activities. OUs should ensure that implementing partners have culturally appropriate, operational-level grievance mechanisms in place that meet the effectiveness criteria of the United Nations Guiding Principles on Business and Human Rights.

[Grievance mechanisms](#) should fully acknowledge the status of Indigenous Peoples as collective rights-holders under international law. Indigenous Peoples should be consulted on the design of the grievance mechanisms to ensure that they are trusted, culturally appropriate, responsive, and accessible. Accessibility includes physical access to file and submit complaints and to the place and timing of proceedings. It also includes linguistic and cultural accessibility. Grievance mechanisms should be accompanied by the provision of adequate means of technical and legal assistance to Indigenous communities seeking redress. This may include legal counseling, translation, and communication. Remedies for grievances should also be rights-based, culturally appropriate, and prioritize full restitution.

Figure 2: Integrating FPIC Across the Program Cycle

| USAID Program Cycle | | | | | | | | | | | |
|--|----------------|---|--|---------------------------------------|-----------------|-------------------------|---|------------------------------------|--|--------------------------|----------|
| FPIC Processes <i>To be carried out by OU or implementing partner, as appropriate</i> | FPIC-360° Tab | Country Development Cooperation Strategy (CDCS) | Inclusive Development Analysis (IDA), Environmental/Social | PAD/Project Design and Implementation | Activity Design | Activity Implementation | Implementing Partner Solicitation and Selection | Implementing Partner Annual Review | Monitoring, Evaluation, and Learning (MEL) | Mission Portfolio Review | Training |
| Identify Indigenous Peoples | 5 | X | X | | | | | | | | X |
| Identify legal and contractual FPIC obligations | 14 | X | | X | X | X | | | | | X |
| Identify representative Indigenous organizations and leaders | 3 | | | | | | | | | | X |
| Identify information-sharing channels | 9, 10 | | | | | | | | | | X |
| Provide information to Indigenous Peoples | 15 | X | X | X | X | X | X | X | X | | |
| Collaborate with Indigenous Peoples to identify impacts | 16 | | | | | | | | | | |
| Collaborate with Indigenous Peoples to design programs | 10, 16 | | | X | X | X | | | | | |
| Collaborate with Indigenous Peoples to identify benefits | | X | X | | | | | | | | |
| Identify Indigenous decision-making processes | 13 | X | X | | | | | | | | X |
| Enter into consultations | 4, 5, 7, 9, 10 | | | X | X | X | | | | | |
| Develop agreements | 10, 16, 18 | | | X | X | X | X | | | X | |
| Implement and monitor agreements | 19 | | | X | X | X | | X | | X | X |

| | | | | | | | | | | | |
|--|------|--|--|---|---|---|---|---|---|---|---|
| Identify capacities of partners to implement FPIC | 6, 7 | | | | | | X | | | | X |
| Incorporate FPIC responsibilities into awards | | | | | | | X | X | | | |
| Incorporate Indigenous Peoples in Monitoring, Evaluation, and Learning (MEL) | | | | | | | | | X | | |
| Establish and implement a grievance mechanism | 19 | | | X | X | X | X | X | X | X | X |

| | | | |
|--|-------------------------------|--|--|
| | Operating Unit responsibility | | Operating Unit & implementing partner responsibilities |
|--|-------------------------------|--|--|

ANNEX: FPIC IN MULTILATERAL DEVELOPMENT BANK SAFEGUARDS

[Equator Principles \(EPs\)](#): The EPs are a risk management framework adopted by financial institutions for determining, assessing, and managing environmental and social risk in projects. The EPs have been officially adopted by more than 100 global financial institutions. The fourth version of the EPs, known as EP4, became effective on October 1, 2020. The main changes to the framework include enhanced due diligence requirements, including the need to seek FPIC from Indigenous Peoples impacted by proposed projects. As a result, there will be more involved due diligence and monitoring processes required under the EPs when considering the impact of projects on Indigenous Peoples.

[World Bank](#): In 2016, the World Bank approved a new Environmental and Social Framework that expands protections for people and the environment in World Bank-financed investment projects. The Environmental and Social Framework includes an [Environmental and Social Standard \(ESS\) 7 on Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities](#), which introduces the principle of FPIC. ESS7 adopts the principle of FPIC in projects affecting Indigenous Peoples' territories, natural resources, or cultural heritage, or those requiring involuntary resettlement. ESS7 also provides further guidance on Indigenous Peoples in urban areas and Indigenous Peoples living in voluntary isolation.

[International Finance Corporation \(IFC\)](#): IFC's Performance Standard 7 on Indigenous Peoples requires that companies carry out due diligence (e.g., impact assessments) and an FPIC process (according to a set of actions stipulated in the standard) if the project will have a negative impact on lands and natural resources under traditional ownership or customary use (clause 14). Companies shall avoid relocation, and if that is impossible, they should only proceed with the project if they obtain FPIC (clause 15). The same applies if a project has a significant impact on critical cultural heritage (clauses 16 and 17).

[European Bank of Reconstruction and Development \(EBRD\)](#): The EBRD's Environmental and Social Policy, updated in 2019, states that FPIC of affected Indigenous Peoples is required in circumstances in which a project: (i) affects their customary lands or resources, (ii) relocates them from their traditional or customary lands, or (iii) affects or proposes to use their cultural resources ([EBRD Performance Requirement 7: Indigenous Peoples](#)).

[IDB Invest](#) follows the IFC Performance Standards. If a proposed project triggers the Performance Standard 7 requirement of FPIC of Indigenous Peoples, IDB Invest reviews the FPIC process conducted by the client as part of the environmental and social due diligence of the project carried out prior to approval.

[Inter-American Development Bank](#): The Inter-American Development Bank's Operational Policy on Indigenous Peoples and Strategy for Indigenous Development ([OP-765](#)) recognizes the principle of FPIC as a way for Indigenous Peoples to exercise their rights and decide their own priorities for development. When OP-765 is triggered or applicable (if Indigenous communities could be affected by the project activities), an Indigenous Peoples Plan is required to prevent or mitigate direct or indirect adverse impacts on Indigenous Peoples or their individual or collective rights or assets.

[Asian Development Bank](#): The Asian Development Bank’s Safeguard Policy Statement includes Safeguard Requirements for Indigenous Peoples (Safeguard Requirements 3), which outlines the conditions for consultation and participation, social impact assessment, planning, information disclosure, grievance mechanism, and monitoring and reporting.

[African Development Bank \(AfDB\)](#): The AfDB does not have a stand-alone policy on Indigenous Peoples, although it recognizes the importance of integrating the concerns of vulnerable groups such as the Indigenous Peoples in its operations. The AfDB has a “[Development and Indigenous Peoples in Africa](#)” document prepared by the Compliance and Safeguards Division of the AfDB that sets ground to guide the AfDB in future discussions on this issue. The document also formulates a basis to undertake certain plans and actions relative to Indigenous People when carrying out development work in Africa.