

# Engagement of Indigenous Peoples and other Forest dependent Communities

---

UN-REDD PROGRAMME

---

Working document  
October 2009



## Executive Summary

This Operational **Guidance on the Engagement of Indigenous Peoples and Other Forest Dependent Communities** is intended to inform the design, implementation, monitoring and evaluation of the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme) activities at the global and national level. The Guidance provides background and context on the inclusion of Indigenous Peoples in UN programmes and activities, identifies the guiding principles in order to respect and support the rights of Indigenous Peoples and other forest dependent communities, and outlines the operational guidelines for the design and implementation of UN-REDD Programme activities at the global and national scale. The Guidance also provides best practice advice on how to consult with Indigenous Peoples and other forest dependent communities and links to resources for further information. The Guidance is intended to be used by UN-REDD Programme staff, UN Country Team staff, and national government and civil society counterparts who are involved in any UN-REDD Programme activities that may impact upon the rights and livelihoods of Indigenous Peoples or other forest dependent communities.

## Table of Contents

### Part 1: Background and Context –

The Inclusion of Indigenous Peoples and Other Forest Dependent Communities in the UN-REDD Programme.....	4
--	---

<b>Part 2: Guiding Principles for the UN-REDD Programme</b> on the Rights of Indigenous Peoples and Other Forest Dependent Communities.....	6
---	---

<b>Part 3: UN-REDD Programme Operational Guidelines</b> for the Engagement of Indigenous Peoples and Other Forest Dependent Communities.....	9
--	---

### Annex 1: Best Practice for Consultation –

Ensuring the Engagement of Indigenous Peoples and Other Forest Dependent Communities in the UN-REDD Programme.....	12
--	----

<b>Annex 2: Useful Resources</b> .....	18
--	----

---

This working draft Operational Guidance is based on input received through a number of discussions and dialogues at events in 2008 such as the Seventh Session of the UN Permanent Forum on Indigenous Issues, the Ninth Conference of the Parties to the Convention on Biological Diversity, and the International Union for Conservation of Nature (IUCN’s) World Conservation Congress in Barcelona, Spain. It builds on the summary report and recommendations of the Global Indigenous Peoples’ Consultation on REDD held in November 2008 in Baguio City, Philippines. The Guidance is a working draft, which will continue to be developed and revised over the course of further consultation with Indigenous Peoples and other forest dependent communities in 2009.

## **Part 1: Background and Context - The Inclusion of Indigenous Peoples and Other Forest Dependent Communities in the UN-REDD Programme**

### **United Nations Principles: Participation and Inclusion**

Participation and inclusion<sup>1</sup> are among the human rights principles that guide the United Nations' work at all levels. They include full and effective participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development.

The *UN Common Understanding on the Human Rights Based Approach to Development Cooperation* identifies participation and inclusion as key human rights principles that should guide the programming process and development cooperation<sup>2</sup>. Broad participation is required to promote the views of all stakeholders and ensure country ownership of programmes delivered under the *Common Country Assessment* and the *United Nations Development Assistance Framework*.<sup>3</sup> It is also essential to the strategies for the achievement of the Millennium Development Goals.

The UN General Assembly's *Programme of Action for the Second International Decade of the World's Indigenous People* (UN General Assembly Resolution 60/142), adopted in 2005, specifies that one of the five objectives of the Second Decade is "promoting full and effective participation of Indigenous Peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as Indigenous Peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent."

Likewise, in its *General Recommendation XXIII on the Rights of Indigenous Peoples*, the UN Committee on the Elimination of Racial Discrimination<sup>4</sup> calls upon States parties to "ensure that members of Indigenous Peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent."

The landmark *United Nations Declaration of the Rights of Indigenous Peoples* (UNDRIP), adopted by the UN General Assembly in September 2007, provides a universal framework for action for the international community and States concerning Indigenous Peoples. It sets out the rights that countries should aspire to recognize, guarantee and implement. In Article 19, UNDRIP requires States to "consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

---

<sup>1</sup> *Participation and Inclusion*: Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized. United Nations Development Group (UNDG) (2003).

<sup>2</sup> UNDG 2003. *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies*.

<sup>3</sup> The United Nations Development Assistance Framework (UNDAF) is the strategic programme framework for the UN Country Team (UNCT). It describes the collective response of the UNCT to the priorities in the national development framework - priorities that may have been influenced by the UNCT's analytical contribution. Its high level expected results are called UNDAF outcomes. These show where the UNCT can bring its unique comparative advantages to bear in advocacy, capacity development, policy advise and programming for the achievement of Millennium Declaration/Millennium Development Goals related national priorities. The Common Country Assessment (CCA) is a tool used for strengthening the country analysis. The CCA/UNDAF guide the UN's intervention in the programme country. Therefore, the UN-REDD Programme should ensure it is aligned to the priorities outlined in these documents.

<sup>4</sup> The UN Committee on the Elimination of Racial Discrimination is a body of human rights experts tasked with monitoring the implementation of the International Convention on the Elimination of Racial Discrimination, adopted by the UN General Assembly resolution 2106 of 21 December 1965.

Respecting the rights of Indigenous Peoples and other forest dependent communities is vital for the UN-REDD Programme to successfully carry out its activities. Indigenous Peoples' participation as partners can contribute to and benefit from UN-REDD Programme activities at both the national and international levels.

### **Indigenous Peoples and the UN-REDD Programme: United Nations Policies and Legal Framework**

The UN-REDD Programme partners, UNDP, UNEP, and FAO derive their mandates for engagement with Indigenous Peoples from the Charter of the United Nations, which states: 'We the peoples ... reaffirm faith in fundamental human rights, in the dignity and worth of the human person... (and) promote social progress and better standards of life in larger freedom.' This mandate was reaffirmed in the *Millennium Declaration* in 2000, and most recently and importantly, in the UNDRIP.

UNDP, as a partner to the UN-REDD Programme, derives its corporate policy on Indigenous Peoples<sup>5</sup> (2001) from its history of engagement with Indigenous Peoples at the country level. The key objectives of the policy are: i) to foster an enabling environment that: promotes Indigenous Peoples' participation in all decision-making levels; ensures the co-existence of their economic, cultural, and socio-political systems with others; and develops the capacity of Governments to build more inclusive policies and programmes; and ii) to integrate Indigenous Peoples' perspectives and concepts of development into UNDP work.

These policy objectives are reinforced by the *United Nations Development Group's Guidelines on Indigenous Peoples' Issues* (February 2008), which aim to assist the United Nations system in mainstreaming and integrating Indigenous Peoples' issues in processes for operational activities and programmes at the country level. The UNDG Guidelines set out the broad normative, policy and operational framework for implementing a human rights based and culturally sensitive approach to development for and with Indigenous Peoples.

Furthermore, Article 42 of the UNDRIP states that: "The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration." (For additional references to UNDRIP see Box 1.)

In addition, the *International Labour Organization's Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries* (1989), ratified in twenty countries as of February 2009, provides guidance and overarching principles for engagement with Indigenous Peoples based on a human rights based approach. It is the main legally binding document entirely focused on the rights of Indigenous Peoples. The Convention on Biological Diversity (CBD) (1992) and the International Convention on the Elimination of all Forms of Racial Discrimination (CERD)(1965) are additional international standard-setting instruments that provide provisions for the protection of Indigenous Peoples. For example, Article 8(j) of the CBD is the main instrument for the protection of traditional knowledge<sup>6</sup>.

These documents provide a solid framework for ensuring proper respect and recognition of Indigenous Peoples' rights in REDD initiatives, and for dialogue between the international community, States, Indigenous Peoples and their organizations, other forest dependent communities, local communities, the private sector, civil society actors, and other relevant stakeholders.

---

<sup>5</sup> UNEP and FAO are currently finalizing corporate policies of engagement with Indigenous Peoples. This guidance will be revised to reflect these policies once endorsed.

<sup>6</sup> <http://www.cbd.int/traditional/>

## Part 2: Guiding Principles for the UN-REDD Programme on the Rights of Indigenous Peoples and Other Forest Dependent Communities

The following principles should guide the development, implementation, and monitoring and evaluation of UN-REDD Programme activities that may impact the rights of Indigenous Peoples and other forest dependent communities:

1. All UN-REDD Programme activities, particularly those that may potentially impact Indigenous Peoples and other forest dependent communities, must follow a human rights based approach and must adhere to the *United Nations Declaration on the Rights of Indigenous Peoples*<sup>7</sup>, the *UNDG Guidelines on Indigenous Peoples' Issues*, and the *International Labour Organization Convention No. 169*.

**Box 1. *United Nations Declaration on the Rights of Indigenous Peoples*:** This Operational Guidance responds to the Declaration's articles addressed at member States and the United Nations system, specifically\*:

**Article 19:** States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**Article 26:** Indigenous Peoples have the right to the lands, territories and resources which they have traditionally owned, occupied, or otherwise used or acquired. Indigenous Peoples have the right to own, use, develop and control the lands territories and resources that they possess by reason of traditional ownership and other traditional occupation or use, as well as those which they have otherwise acquired...

**Article 32:** ...States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources...

**Article 41:** The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of Indigenous Peoples on issues affecting them shall be established.

**Article 42:** The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

\* Please note that articles 3, 18, 23, and 25, are also relevant to this Operational Guidance.

---

<sup>7</sup> Adopted by the 61<sup>st</sup> session of the United Nations General Assembly on 13 September 2007.

2. Free, Prior, and Informed Consent must be adhered to, and is essential to ensuring the full and effective participation of Indigenous Peoples and other forest dependent communities in policy-making and decision-making processes within UN-REDD Programme activities. **Box 2** describes elements of a common understanding of free, prior and informed consent.

**Box 2 – Elements of Free, Prior and Informed Consent**

- **Free** should imply no coercion, intimidation or manipulation;
- **Prior** should imply consent has been sought sufficiently in advance of any authorization or commencement of activities and respect time requirements of indigenous consultation/consensus processes;
- **Informed** – should imply that information is provided that covers (at least) the following aspects:
  - a. The nature, size, pace, reversibility and scope of any proposed project or activity;
  - b. The reason/s or purpose of the project and/or activity;
  - c. The duration of the above;
  - d. The locality of areas that will be affected;
  - e. A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit sharing in a context that respects the precautionary principle;
  - f. Personnel likely to be involved in the execution of the proposed project (including Indigenous Peoples, private sector staff, research institutions, government employees and others)
  - g. Procedures that the project may entail.

**Consent**

Consultation and participation are crucial components of a consent process. Consultation should be undertaken in good faith. The parties should establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect in good faith, and full and equitable participation. Consultation requires time and an effective system for communicating among interest holders. Indigenous Peoples should be able to participate through their own freely chosen representatives and customary or other institutions. The inclusion of a gender perspective and the participation of indigenous women is essential, as well as participation of children and youth as appropriate. This process may include the option of withholding consent. Consent to any agreement should be interpreted as Indigenous Peoples have reasonably understood it.

Source: Excerpt from the Report of the *International Workshop on Methodologies Regarding Free Prior and Informed Consent* E/C.19/2005/3, endorsed by the UNPFII at its Fourth Session in 2005.

3. The UN-REDD Programme must ensure that there is broad representation of Indigenous Peoples and other forest dependent communities, including women and youth, at all stages of its activities (policy development, conception of activities, programme and project design, implementation, oversight and monitoring

mechanisms, outreach and communication, closure, and evaluation). Representation of Indigenous Peoples must follow the guidance provided by the UNDG Guidelines on Indigenous Peoples' Issues.

**Box 3. The Saramaka People v. Suriname**

The Inter-American Court of Human Rights November 2007 judgment of the case of the Saramaka people v. Suriname (see Annex 1, Box 4) ruled that Suriname violated the Saramaka's human rights by not consulting and obtaining their consent before Suriname granted logging and mining concessions. The decision sets a precedent in international law that requires States to recognize, secure and protect indigenous and tribal peoples' right to their traditionally owned lands, territories and resources. It also includes the State's obligation to seek the active participation and consent of an indigenous community when a proposed project may have an adverse effect on them. The ruling is a result of a complaint issued by the Saramaka accusing Suriname of violating the 1969 American Convention on Human Rights because it failed to provide legal property title to their traditionally occupied lands.



### **Part 3: UN-REDD Programme Operational Guidelines for the Engagement of Indigenous Peoples and Other Forest Dependent Communities**

The Operational Guidance will be followed in the development, implementation, monitoring and evaluation of all UN-REDD Programme activities that may impact the rights and livelihoods of Indigenous Peoples and other forest dependent communities.

#### **Guidelines for Global UN-REDD Programme Activities:**

##### ***Representation***

- 1) Indigenous Peoples will be represented on the UN-REDD Policy Board by the Chair of the United Nations Permanent Forum on Indigenous Issues or by his/her designate, and by three Indigenous Peoples observers representing each of the three regions: Africa, Asia and the Pacific, and Latin America and the Caribbean.
- 2) The Chair of the Permanent Forum on Indigenous Issues will be a full and equal Member of the UN-REDD Programme Policy Board empowered to guide the direction and content of the UN-REDD Programme in consultation with the three Indigenous Peoples observers.
- 3) Indigenous Peoples and other forest dependent peoples will be invited to engage with the Independent Civil Society Advisory Group to the UN-REDD Programme, which is empowered to monitor activities and provide substantive advice on the Programme to the UN-REDD Policy Board<sup>8</sup>.

##### ***Transparency and Access to Information***

- 4) The UN-REDD Programme will publish meeting reports and official documents on the UN-REDD Programme website.
- 5) The UN-REDD Programme will facilitate and support the development of primers and guidance materials to build the capacity of Indigenous Peoples to fully engage on REDD and, where appropriate, be able to effectively participate in decision-making processes and activities.
- 6) The UN-REDD Programme will participate in international conferences and summits focused on Indigenous Peoples and other forest dependent communities, climate change, and REDD, to report on the activities of the programme and maintain open channels of communication with a wide array of Indigenous Peoples' stakeholders.

##### ***Participation and Inclusion***

- 7) The UN-REDD Programme will provide fora for Indigenous Peoples' and other forest dependent communities' issues to be raised and integrated into the international negotiation process on REDD.

---

<sup>8</sup> As per *Establishing an Independent Civil Society Advisory Group and Transparent Global Learning on Forests, Livelihoods, and Climate Change* document, <http://www.un-redd.org/Portals/15/documents/events/20090309Panama/Documents/UN%20REDD%20IAG%2020Mar09.pdf>

**Guidelines for National UN-REDD Programme Activities:**

**Representation**

1) Indigenous Peoples and other forest dependent communities shall be represented on National REDD Steering Committees or equivalent bodies, where established.

**Participation and Inclusion**

2) In order to be endorsed by the UN-REDD Technical Secretariat for approval by the UN-REDD Programme Policy Board, draft National Programmes (NPs) must submit minutes of a ‘validation meeting’ of National Stakeholders (where established: the National REDD Steering Committee), including Indigenous Peoples’ representative(s).

The representative who participates in the ‘validation meeting’ must subscribe to one of the following criteria:

Option i. Representative(s):

- is selected through a participatory and consultative process;
- has previous experience working with the government and UN system,
- has demonstrated experience serving as a representative, receiving input from, consulting with, and providing feedback to, a wide scope of civil society/Indigenous Peoples’ organizations; or

Option ii. Representative(s)

- participated in a UN-REDD Programme scoping and/or formulation mission and sit(s) on a UN-REDD Programme consultative body established as a result of the mission; or

Option iii. Representative(s)

- is an individual(s) recognized as legitimate representative(s) of a national network of civil society and/or Indigenous Peoples’ organizations (e.g. the GEF Small Grants National Steering Committee or National Forest Programme Steering Committee)

3) The ‘validation meeting’<sup>9</sup> will be one step of a wider consultation and engagement strategy and will be documented as an annex to the Programme Document.

4) The National Programme consultation and engagement strategy should effectively involve Indigenous Peoples and other forest dependent communities, and civil society organizations in all stages, including programme design, implementation, and monitoring and evaluation, adhering to the same guiding principles as mentioned in Part 2. In countries that are also developing programmes under the Forest Carbon Partnership Facility (FCPF), it is encouraged that the UN-REDD Programme and FCPF undertake one collaborative consultation process<sup>10</sup>. See Annex 1 of the *Operational Guidance* on Best Practice for Consultation.

---

<sup>9</sup> The validation meeting is a required step of the National Programme process. A validation meeting with government representative(s) must take place before the National Programme is submitted to the Policy Board, as noted in the Rules of Procedure of the UN-REDD Programme Policy Board.

<sup>10</sup> A collaborative consultation would adhere to the highest standards set out by the UN-REDD Programme Operational Guidance.

5) National Programmes should include activities and resources to support ongoing consultation, engagement and partnership to ensure that national UN-REDD activities take into account current priorities and concerns articulated by representatives of Indigenous Peoples and other forest dependent communities.

6) As addressed in the UN Declaration on the Rights of Indigenous Peoples and ensuring FPIC, National Programmes will assess the impact of UN-REDD Programme activities on Indigenous Peoples' and other forest dependent communities' rights prior to taking decisions on such activities.

***Transparency and Accountability***

7) Outcome documents from consultations such as meeting minutes, reports, work plans, and roadmaps for implementation should be: i) circulated to Indigenous Peoples' organizations for an assessment of their accuracy, ii) publicly accessible, and iii) reflected, as appropriate, in i) National Programme documents, ii) on the UN-REDD website, and submitted to the Policy Board annually.

8) The UN Resident Coordinator will distribute annual reports on UN-REDD Programme activities to Indigenous Peoples and civil society networks through the Indigenous Peoples' and other forest dependent community's representative on the National UN-REDD Steering Committee in order to ensure transparency and accountability.

9) The UN Resident Coordinator is responsible for ensuring that the National Programme abides by the UN's Standards and Declarations. As an additional safeguard, a complaint mechanism (to be elaborated in more detail and build upon existing grievance mechanisms, where they exist) will be established by the Technical Secretariat to ensure that activities supported by the UN-REDD Programme do not result in the violation or erosion of the rights of Indigenous Peoples and other forest dependent communities. The procedure and contact information for making complaints will be posted on the UN-REDD Programme website.

## **Annex 1: Best Practice for Consultation - Ensuring the Engagement of Indigenous Peoples and Other Forest Dependent Communities in the UN-REDD Programme**

Consultation can serve multiple purposes such as: i) stakeholder capacity development; ii) awareness raising; iii) information sharing and dissemination; iv) participation and engagement in design, implementation, monitoring and review of projects. Consultation can also provide the opportunity for Indigenous Peoples and other forest dependent communities to share their common experiences, and strengthen their networks. Moreover, it could serve to avoid “top down” approaches to programming and to prevent possible conflicts (for example, within the communities, among various stakeholders and/or between them and the government).

Consultation is a mechanism to facilitate dialogue and coordination. It should not be seen as a goal within itself. It is part of a process towards ensuring the participation of core stakeholders, facilitating the exchange of information to assist in making informed decisions. The consultation process seeks to ensure decision-making is more inclusive, transparent and accountable. It is important to note that ensuring the participation of Indigenous Peoples and other forest dependent communities is a long-term process of building capacity for dialogue on all sides. Consultation should be one pillar of a set of institutionalized platforms and fora for continuous dialogue, involving men and women, youth and elders.

As stated in its framework document, the UN-REDD Programme will i) engage in stakeholder consultation and awareness raising especially among resource owners, groups with traditional rights and economic agents; and ii) ensure stakeholder participation in the establishment of REDD payment distribution structures, especially with Indigenous Peoples and other forest dependent communities at the local level. Dialogue and consultation is one of the UN-REDD Programme’s key areas of support at the national level.

In particular, consultation can be central in a variety of the UN-REDD Programme initiatives including: formulating and designing programme activities; developing the capacity of all stakeholders; designing land and forest policy with Indigenous Peoples and forest dependent local communities; creating mechanisms for inclusion and participation of these groups within official processes; and engaging these groups in activities to address the drivers of deforestation.

### **Box 4: The Case of the Saramaka People v. Suriname: *Right to consultation, and where applicable, a duty to obtain consent***

In the Inter-American Court of Human Rights’ judgment of the Case of the Saramaka People v. Suriname, (November 28, 2007) the Court addressed and defined consultation as follows:

“The Court has stated that in ensuring the effective participation of members of the Saramaka people in development or investment plans within their territory, the State has a duty to actively consult with said community according to their customs and traditions. This duty requires the State to both accept and disseminate information, and entails constant communication between the parties. These consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement. Furthermore, the Saramakas must be consulted, in accordance with their own traditions, at the early stages of a development or investment plan, not only when the need arises to obtain approval from the community, if such is the case. Early notice provides time for internal discussion within communities and for proper feedback to the State. The State must also ensure that members of the Saramaka people are aware of possible risks, including environmental and health risks, in order that the proposed development or investment plan is accepted knowingly and voluntarily. Finally, consultation should take account of the Saramaka people’s

traditional methods of decision-making.”<sup>11</sup>

[http://www.forestpeoples.org/documents/s\\_c\\_america/suriname\\_iachr\\_saramaka\\_judgment\\_nov07\\_eng.pdf](http://www.forestpeoples.org/documents/s_c_america/suriname_iachr_saramaka_judgment_nov07_eng.pdf)

### **Key stages in the Consultative Process**

#### **Box 5. Principles for Consultation and Engagement:**

##### **Consultations should:**

- Occur freely and voluntarily, without external manipulation;
- Recognize existing Indigenous and local authorities, institutions and processes;
- Start as a first step in the programme design;
- Be an ongoing process, facilitating input into programme design, implementation, and verification based on FPIC, not a one-off meeting;
- Take place within a reasonable amount of time agreed to by the stakeholders;
- Disseminate information and ensure the timely exchange of all relevant information between stakeholders;
- Engage diverse and relevant stakeholders;
- Use effective communication channels;
- Recognize the right of Indigenous Peoples and other forest dependent communities not to participate in consultations or associated activities;
- Allow for independent verification.

##### **Preparatory work:**

Prior to organizing the consultation, UN-REDD Programme staff should undertake the following preparatory work:

- Identify relevant existing national legal and policy frameworks vis-à-vis Indigenous Peoples and forest dependent communities, land tenure, natural resource management, protected areas, and national parks of the selected pilot country. Identify all constitutional, customary and case law.
  - Identify customary rights, and which ones are protected legally?
  - What is the relationship between customary law and statutory law?
- Identify the international conventions the country has ratified, i.e. ILO Convention 169, Convention on Biological Diversity and Human Rights Treaties, etc.
- Reach out to national Indigenous Peoples’ and forest dependent communities’ networks to assess Indigenous Peoples’ and forest dependent communities’ awareness and capacity to engage with REDD discussions. For example, through questionnaires, surveys, focus group discussions, and/or workshops.

---

<sup>11</sup> In *Maya Indigenous Communities of the Toledo District v. Belize*, the Inter-American Commission observed that States must undertake effective and fully informed consultations with indigenous communities with regard to acts or decisions that may affect their traditional territories. In said case, the Commission determined that a process of “fully informed consent” requires “at a minimum, that all of the members of the community are fully and accurately informed of the nature and consequences of the process and provided with an effective opportunity to participate individually or as collectives”. Cf. Inter-American Commission on Human Rights, *Report 40/04, Merits. Case 12.052. Maya Indigenous Communities of the Toledo District*, *supra* note 84, para. 142.

[http://www.forestpeoples.org/documents/s\\_c\\_america/suriname\\_iachr\\_saramaka\\_judgment\\_nov07\\_eng.pdf](http://www.forestpeoples.org/documents/s_c_america/suriname_iachr_saramaka_judgment_nov07_eng.pdf)

- Identify community-based organizations (CBOs) and non-governmental organizations (NGOs) working with or representing forest dependent communities and/or forest dependent community issues.
- Learn how the country's i) MDG strategy and ii) national forest programme (policy, legislation and institutions) work with/address forest dependent communities.
- Identify and tap into existing civil society participatory structures at the country level, for example, CSO Advisory Committees, the Global Environmental Facility Small Grants Programme's National Steering Committees, and/or civil society/indigenous peoples focal points.
- Assess the need for independent social/cultural and environmental impact assessments prior to project implementation (as recommended in the *UNDP Indigenous Peoples Policy of Engagement*) to safeguard against potential negative effects on Indigenous Peoples, their communities and livelihoods. The *Akwe: kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities* were adopted by the seventh Conference of the Parties of the Convention on Biological Diversity. The *Akwe: kon Guidelines* apply "whenever developments are proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities<sup>12</sup>." It is a helpful checklist and guide that may help prevent potential adverse impacts of proposed developments on Indigenous Peoples and local communities' livelihoods. Failure to use the *Akwe:kon Guidelines* could raise serious questions about whether an environmental social impact assessment (ESIA) conforms to international best practice and standards.<sup>13</sup>

#### **Box 6. Social and environmental impact assessments**

Issues to consider and address in the independent social and environmental impact assessment could include: the customary rights of Indigenous Peoples both individual and collective pertaining to ancestral domains, lands or territories; the cultural and spiritual values that Indigenous Peoples attribute to those lands and resources; sacred sites; Indigenous Peoples' natural resource management practices and systems; human rights assessment; and the legal situation of land tenure and government recognition of indigenous territories. It is also advisable that community members participate as partners rather than informants in the social assessments. This will allow for greater engagement and understanding of the issues, stakeholders, and indigenous social structure and institutions.

- Identify civil society organizations (CSOs) and/or institutions with extensive experience in working with Indigenous Peoples and/or on indigenous issues. Be mindful that those will not and may not replace proper indigenous representation.
- Tensions may already exist or may arise between Indigenous Peoples and other forest dependent communities vis-à-vis the UN-REDD Programme's activities. Bearing this in mind, it is recommended that decisions made among all interested stakeholders regarding who will organize, or lead the consultative process take place with plenty of time. As noted in the Inter-American Court of Human Rights judgment in the case of the Saramaka People v. Suriname (See Box 4), these consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement.

<sup>12</sup> <http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>.

<sup>13</sup> Forest Peoples Programme Indigenous Peoples' Rights and Reduced Emissions from Reduced Deforestation and Forest Degradation: The Case of the *Saramaka People v. Suriname*.

### **Identification of participants**

- Conduct a mapping of Indigenous Peoples' organizations, authorities and institutions, including priority issues, rights, needs and desires. As used in the selection of CSOs, issues of domestic rootedness, demonstrated mandate, legitimacy as claimant, competence and expertise, and accountability will be significant features to consider. It is important to note that UN-REDD Programme staff should be aware that indigenous organizations might represent diverse overlapping and conflicting constituencies and interests. See Chapter Two in *UNDP and CSOs: A Toolkit for Strengthening Partnerships*: [http://www.undp.org/partners/cso/publications/CSO Toolkit linked.pdf](http://www.undp.org/partners/cso/publications/CSO_Toolkit_linked.pdf)
- It is important to identify the appropriate Indigenous Peoples' institutions to partner with. While traditional leaders are recognized as the higher authorities in their communities, representatives of Indigenous Peoples' organizations may have the skills and knowledge to interact with the technical process and are able to articulate the views of traditional leaders. It is important to be open and inclusive to a wide range of Indigenous Peoples' organizations and community-based representatives and to be aware of tensions that may exist among various indigenous groups. The choice of partners should also take into account groups that are often marginalized within their own indigenous communities, in particular women and youth. Assess the situation to make the most appropriate choice and avoid misrepresentations, such as 'government- approved' organizations that may not be representative of the people at large.<sup>14</sup>

#### **Box 7. Indigenous Peoples in Voluntary Isolation**

Special attention should be given to those projects that may affect uncontacted Indigenous Peoples<sup>15</sup>, also known as "peoples in voluntary isolation." These groups are particularly vulnerable and engagement through consultation is nearly impossible. Consistent with other multilateral Indigenous Peoples' policies, such as the Inter-American Development Bank, the UN-REDD Programme commits to respect the right of these peoples to remain in said isolated condition and to live freely according to their culture. In order to safeguard the collective and individual physical, territorial, and cultural integrity of these peoples, projects that may have potential impacts on these peoples, their lands and territories, or their way of life will have to include the appropriate measures to recognize, respect and protect their lands and territories, environment, health and culture, and to avoid contact with them as a consequence of the project.<sup>16</sup>

### **Design and Methodology**

- Establish a clear objective and aim for consultation including indicators of success agreed in partnership with Indigenous Peoples and other forest dependent community participants. Identify the specific issues the consultation will address.
- Indicators for human rights based approaches to development have been established and are to be used by UN-REDD Programme staff to monitor and assess compliance. See *Indicators for Human Rights Based Approaches to Development in UNDP Programming: A Users' Guide*. <http://www.undp.org/oslocentre/docs06/HRBA%20indicators%20guide.pdf>
- How compliance and performance of FPIC will be implemented is to be agreed upon in consensus during the consultations of each pilot programme. Based upon these outcomes a more thorough operational methodology could be designed (after this initial pilot phase) including criteria and indicators to measure results and ensure greater accountability.

<sup>14</sup> *UNDG Guidelines on Indigenous Peoples' Issues* <http://www2.ohchr.org/english/issues/indigenous/docs/guidelines.pdf>

<sup>15</sup> Uncontacted peoples or "peoples in voluntary isolation" are those peoples who have no contact with outside society or, even on being recently contacted, wish to remain isolated. Examples of peoples in voluntary isolation include the Yanomami living on the borders between Guyana, Venezuela and Brazil; and the Ayoreo in the Chaco region of Paraguay.

<sup>16</sup> Inter-American Development Bank Operational Policy on Indigenous Peoples and Strategy for Indigenous Development, <http://www.iadb.org/sds/doc/ind-111PolicyE.pdf>

- Ensure the timeline for the consultation is aligned with the project cycle. Allow for plenty of time bearing in mind that Indigenous Peoples rely on their own institutions, mechanisms and processes to make decisions and reach a consensus.

**Box 8. Indigenous Peoples and Indicators of Well Being**

The UN system and a number of its Member States currently measure their development achievements based on the 18 targets and 48 indicators of the Millennium Development Goals. The formulation of the Goals and the targets and indicators, however, did not include the participation of or consultation with Indigenous Peoples, resulting in a situation where the goals, targets and indicators do not capture or inadequately capture the situation of Indigenous Peoples. At its Fourth Session in 2005, the Permanent Forum stated that "...Poverty indicators based on Indigenous Peoples' own perception of their situation and experiences should be developed jointly with Indigenous Peoples." Since then, workshops have been held to identify indicators that address Indigenous Peoples' perspectives and aspirations. Issues related to the health of ecosystems, ownership, access and use of lands and natural resources, migration and indigenous governance systems were identified as priority and examples of their corresponding indicators were developed. It is important to bear this in mind during the design of the agenda items. See:

[http://www.un.org/esa/socdev/unpfii/en/workshop\\_indic.html](http://www.un.org/esa/socdev/unpfii/en/workshop_indic.html) and  
<http://www.un.org/esa/socdev/unpfii/en/workshops.html>

- Budget adequate resources commensurate with the objective and methodology of consultation.
- Select type of method used to conduct a consultation (workshops at national, regional, or local level; focus groups; advisory groups, etc.).

**Box 9. Jointly Organized Consultation: The Indigenous Peoples' Component of the Human Rights Strengthening Programme HURIST in Kenya**

In Kenya the UNDP/OHCHR Human Rights Strengthening Programme's Indigenous Peoples' project (2004-2005) jointly organized its preparatory workshop with a coordinating committee led by an Indigenous Peoples' organization. The locally based committee was made up of several representatives from a broad range of Indigenous Peoples' organizations. Criteria for selection to participate in the coordinating committee were designed by the organizations themselves. The committee worked with UNDP and OHCHR in identification of participants, agenda setting and facilitation during the workshop. This arrangement was identified as a good practice leading towards enhanced capacity development and building trust.

- Identify facilitators with experience working with Indigenous Peoples and their issues. Plan on co-facilitators with one indigenous representative.
- Ensure the consultation includes a component for evaluation by the participants.
- Share and disseminate the report of the consultation in a timely manner to all stakeholders.

***Communication and Information***

- Open communication, transparency, and access to information throughout the process is key to managing and clarifying expectations and strengthening the outcome of the consultation.
- Culturally appropriate communication is critical, i.e. information needs to be available in appropriate languages and formats (such as non-literacy based formats like video or radio). Many indigenous people, often women and the elderly, do not speak the national language fluently; therefore, attention to language and skilled interpreters need to be provided. The consultation may need to be held in the vernacular language.
- Develop reports and briefings on the process (to be provided to the participants and community at large).



- Identify media and develop communication materials (such as community radio, theater, Internet, flyers, and posters).
- Ensure prior access to information on the intent and scope of the proposed project.
- Provide all relevant information to all stakeholders in a timely manner.
- During the consultation identify the most appropriate feedback mechanism to be used between the participants and the UN-REDD programme staff during the timeline of the project.
- A record of the consultation process should be maintained as part of the project files.
- Ensure information regarding the results of the consultation is shared widely.
- Inform participants how the issues raised will be used and whether the outcomes of the consultation will impact policy and programming.
- Invite member(s) of the Independent Civil Society Advisory Group to participate in the consultation to provide inputs and ensure interaction and feedback at the global level.

## **Annex 2: Useful Resources**

**Report from the Global Indigenous Peoples Consultation on REDD, November 2008** <http://www.un-redd.net/events/GlobalIndigenousPeoplesConsultationonREDD/tabid/551/Default.aspx>

**United Nations Declaration on the Rights of Indigenous Peoples**  
<http://www2.ohchr.org/english/issues/indigenous/declaration.htm>

**ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries**  
<http://www.unhcr.ch/html/menu3/b/62.htm>

**Convention on Biological Diversity:** <http://www.cbd.int/convention/convention.shtml>

**Akwe: Kon Guidelines:** Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities:  
<http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

**International Convention on the Elimination of Racial Discrimination**  
<http://www2.ohchr.org/english/law/cerd.htm>

**Inter-American Court of Human Rights: Case of the Saramaka People v. Suriname**

**Judgment of November 28, 2007**  
[http://www.forestpeoples.org/documents/s\\_c\\_america/suriname\\_iachr\\_saramaka\\_judgment\\_nov07\\_eng.pdf](http://www.forestpeoples.org/documents/s_c_america/suriname_iachr_saramaka_judgment_nov07_eng.pdf)

**United Nations Permanent Forum on Indigenous Issues** <http://www.un.org/esa/socdev/unpfii/index.html>

**United Nations Development Group Guidelines on Indigenous Peoples' Issues**  
<http://www2.ohchr.org/english/issues/indigenous/docs/guidelines.pdf>

**UNDP and Indigenous Peoples: A Policy of Engagement**  
<http://www.undp.org/partners/cso/publications.shtml>

**UNDP and CSOs: A Toolkit for Strengthening Partnerships**  
[http://www.undp.org/partners/cso/publications/CSO\\_Toolkit\\_linked.pdf](http://www.undp.org/partners/cso/publications/CSO_Toolkit_linked.pdf)

**UNDG Toolkit for Improved Functioning of the UN System at the Country Level**  
[http://www.undg.org/toolkit/toolkit.cfm?sub\\_section\\_id=255&topid1=on&topid=1](http://www.undg.org/toolkit/toolkit.cfm?sub_section_id=255&topid1=on&topid=1)

**The Human Rights Based Approach to Development Cooperation:**  
[http://www.undp.org/governance/docs/HR\\_Guides\\_CommonUnderstanding.pdf](http://www.undp.org/governance/docs/HR_Guides_CommonUnderstanding.pdf)

**Indicators for Human Rights Based Approaches to Development in UNDP Programming: A Users' Guide**  
<http://www.undp.org/oslocentre/docs06/HRBA%20indicators%20guide.pdf>

**Web-based guide on How to Engage with the International Human Rights Machinery**  
<http://www.hurilink.org/hrmachinery/english/>