



## International Gorilla Conservation Programme

The International Gorilla Conservation Programme (IGCP) is a coalition programme supported by WWF and FFI, with the objective of ensuring the conservation of mountain gorillas and their regional Afromontane forest habitat in Rwanda, Uganda and the Democratic Republic of Congo (DRC). However, although IGCP's principal focus is securing the future for mountain gorillas, IGCP is also aware that its conservation work can have impacts on indigenous peoples and/or local communities neighbouring mountain gorilla habitats, many of whom are poor and/or marginalised, and seeks to ensure its activities respect the rights indigenous peoples and local communities and create long term sustainable solutions to biodiversity conservation.

Informed by the Conservation Initiative of Human Rights, which sets out the commitment of a number of conservation organisations to respect human rights, as well as by the policies of its coalition partners WWF and FFI, IGCP recognises that the moral, practical and legal reasons which require it to commit to the respect of human rights. This is not only consistent with growing international legal consensus and best practice; in addition, working in trust and good faith with local communities is essential to achieving the IGCP's long-term objectives.

One of the key protections available to indigenous peoples and local communities whose lands, territories or resources may be affected by conservation projects (or other types of projects) is the right of free, prior and informed consent. As part of its commitment to respect the human rights of indigenous peoples and/or local communities in all its work, IGCP commits not to support, contribute to or participate in projects or activities which would involve a violation of the principle of free, prior and informed consent (as understood within this policy document). In the context of conservation work, the principle of free, prior and informed consent arises primarily in relation to the lands and natural resources customarily owned, occupied or used by indigenous peoples and local communities, although we acknowledge that the principle of FPIC can also arise in protection of other rights (such as ownership and use of traditional knowledge or genetic resources).

IGCP works closely with the Governments of Rwanda, Uganda and DRC on their respective conservation projects focussed on mountain gorillas, for which IGCP is asked to provide technical, financial or other support. IGCP recognises that its collaboration with or support to projects or activities that involve violations of human rights – even where IGCP is not the lead proponent – may mean IGCP is contributing to human rights violations caused by that project or activity. IGCP will strongly encourage governments and other actors with whom it works to integrate the principle of free, prior and informed consent in projects or activities which they propose; but where IGCP is not satisfied that governments or other project proponents are adequately implementing this principle in their projects, IGCP will decline to provide (or withdraw) financial, technical or other support.

### **IGCP's understanding of Free, Prior and Informed Consent in the context of land and resource rights**

#### ***What is Free, Prior and Informed Consent?***

Free, prior and informed consent (FPIC) in the context of land and resource rights is the principle that a community has the right to give or withhold its consent to proposed projects that are likely to affect the lands and resources it customarily owns, occupies or otherwise uses. FPIC is derived from a number of binding international human rights law instruments and was originally developed as a protection for indigenous peoples, but it is increasingly being extended both in law and practice to include the statutory and customary rights of other traditional or local communities to their lands, territories and resources.

The right to FPIC arises whenever a project is likely to have a material effect, whether direct or indirect, on the lands, territories and resources of a community, or on the community's use and access to them. Examples might include negative environmental effects from activities proposed nearby, proposed restrictions on access to or use of lands or natural resources. Any proposed activities involving the major restrictions on use or access, the loss of lands or forced displacement are considered to have a particularly serious effect on indigenous peoples and local communities, and an FPIC process is unquestionably required.

Under FPIC, negotiations between governments, companies or other project proponents (including conservation organisations such as IGCP) and local communities must be **free** from force, intimidation or other pressure. Consent must be sought from communities **prior** to decisions being taken or authorisations given by other bodies (e.g. government issuing of licenses), and before any activities are undertaken that may affect them. The form of the **consent** will be context specific and should be sought at various stages of a project, rather than as a one-off. Communities must be given sufficient time to decide whether they will agree to the project or not. They need to have a full and accurate understanding of the implications for them and their lands so that they can make an **informed** decision *according to the decision-making process of their choice*.

Information provided by project proponents should cover at least the following aspects:

- The nature, size, pace, scope and reversibility of any proposed project activity.
- The purpose and duration of the activity.
- The location of the areas that will be affected.
- A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and the proposals and possibilities for fair and equitable benefit sharing. This should include assessment of the potential differential impact of any project activity on different social groups, such as women, indigenous peoples, the elderly, disabled people etc.
- The personnel likely to be involved in the execution of the proposed project including private sector staff, research institutions, government employees, community members and others.
- The procedures (e.g. valuation and expropriation of land, administrative procedures, requirements for permits to obtain access to Park areas, etc) that the project may entail.

***How does FPIC relate to consultation, negotiation and participation?***

There are many steps on the hierarchy, or ladder, of participation. Awareness-raising or providing information to community members is the lowest step. Consultation – meaning a process to inform and receive feedback from people about a proposal or project – is the next step up. Consultation by itself does not usually imply that those consulted have a say in the final decisions. The 'consent' element of FPIC is additional to consultation, and defines the right of community members to make their own decisions i.e. to either give or withhold their consent (or to give their consent on the basis of agreed conditions)

It is likely that consultations and consent will be needed at several points in a project cycle. If consent is not obtained on the basis of initial proposals, project proponents may enter into negotiations with communities to try to establish under what conditions agreement may be reached. Negotiation is where conditions are proposed and compromises are made by the different parties involved. Even if a negotiation process is entered into, *consent* still remains the point at which affected communities have the power to say 'yes' or 'no'. Provision of objective and balanced information, consultation, negotiation and participatory engagement with communities are therefore the means by which consent is sought.

***When and how do we start an FPIC process?***

Respecting the right to FPIC cannot be reduced to a 'tick-box' exercise. For indigenous peoples and other peoples, the right to give or withhold their consent to developments on their lands and territories is part of their collective right to self-determination. This includes the right to determine the process by which consultation and decision-making take place. In all cases, communities should be able to participate through their own freely-chosen representatives, and customary or other institutions.

IGCP recognises that women and other marginalised groups may not always be well represented in either traditional or modern decision-making institutions and processes in many rural communities. Given the importance of respecting the equal rights of women and men, IGCP will make extra efforts to address the barriers to women's participation in culturally appropriate ways. This, in itself, may require a negotiation process based on mutual trust and respect. One of the first steps of an FPIC process is therefore coming to an agreement with the community on the process itself. Given the diversity in the range of histories, institutions and resource management approaches among different indigenous and local communities, the specific details of the process that they agree to are likely to vary from one community to another.

A preliminary stakeholder analysis is needed to identify who is affected by the project, and who has the right to FPIC. It is then important to develop an in-depth understanding of different social and economic groups, including indigenous peoples and other communities in and around the proposed project area. We need to get to know the communities we hope to be working with through formal and/or informal socio-economic research. This includes gaining an understanding of local and cultural norms, social differentiation and diversity, natural resource use and dependency, and customary and modern-day institutions. Permission needs to be secured to undertake this research and engagement with clear information provided on why it is being undertaken.

Such research should pay attention to the different roles, responsibilities, knowledge and aspirations of women and men, as well as of different resource user groups, ethnic or religious groups, elders and youth. It is also important to ensure that the particular circumstances of the poorest and most vulnerable people in a community are clearly understood. This analysis informs the development of a context-specific FPIC process and provides invaluable data to inform project design and social impact assessment.

FPIC is a right. It is not a linear process that ends with the signing of a single binding agreement with a community. FPIC recognises the rights of indigenous peoples and local communities to be treated as the rightful managers of their customary territory and therefore guarantees them a voice in decisions at *every stage* of the planning and implementation of projects that affect them. FPIC should therefore be understood as a right that requires an *on-going and iterative* process of communication and engagement with consent being sought at key stages in the process:

- Consent to discuss the idea of a project that will affect people's lands and resources.
- Consent to participate in developing and determining a detailed plan for the project.
- Consent to project implementation, including resource management and benefit-sharing arrangements.

***How can we fulfil the right to FPIC in practice?***

There are some very practical steps needed to fulfil the elements of Free, Prior and Informed Consent. Many of these are equally applicable to any empowering engagement with communities but those highlighted are additionally fundamental for FPIC.

**Free**

- Discussions with community members are held at an agreed time and location.

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- Meetings are not undertaken in the presence of non-community members who are considered by the community to be coercive or intimidating.
- Project proponents state their commitment not to proceed with the next stage of a project without consent from the community.
- Communities are made aware of their right to withhold their consent and to negotiate the conditions under which they would give their consent. Project proponents have to accept that project plans may have to change – or withdrawn completely – if communities do not agree.
- Communities have enough time to consider the information provided in consultations and negotiations. We cannot always expect agreement at the end of a meeting. Project proponents need to give communities sufficient time to undertake their own decision-making processes; both parties should respect agreed deadlines.
- Those facilitating the process should provide full disclosure of their own interests in the project, sources of funding etc.
- Independent verification confirms that the process was free from coercion.
- If negotiations break down, access is provided to a third party to provide additional information and help mediate resolution. This may include legal advice, if necessary.

### **Prior**

- The first stage of consent is sought at the project identification stage (i.e. development of the concept) and subsequently at agreed points in the project development process before proceeding to the next stage.
- Prior should be well enough in advance to allow communities to reach consensus in their own time.

### **Informed: Who is informed and how?**

- The wider community, not just community leaders, are informed about all aspects of project development. It cannot be assumed that leaders will communicate with the rest of the community, that male participants will discuss issues with female community members.
- Particular efforts are taken to remove the barriers to the participation of marginalised community members such as women, youth and poor and vulnerable groups.
- All information is provided, and all meetings held, in local languages.
- Face-to-face meetings are important and community meetings should include use of creative, visual and interactive methods (such as use of graphics, PRA techniques, role play), particularly where there are high levels of illiteracy.
- Effectiveness of communication methods – and people's understanding of technical information and agreements – should be assessed on a regular basis and adjustments made if levels of understanding are low.

### **Informed: What information needs to be collected, provided and discussed?**

- Information on the right to FPIC should be widely disseminated and include details on the stages at which consent should be sought, as well as agreed decision-making processes.
- Potential *negative* as well as positive impacts of the project, as identified by both parties, should be discussed. This must include both direct and opportunity costs, possible alternatives, areas of risk and uncertainty and the likely outcomes of different scenarios.
- There must be public disclosure of the details of agreements provided in accessible formats (local languages, graphically where literacy is low).
- Information on grievance mechanisms and the right to legal advice if required.
- Community participation in monitoring project implementation helps to increase understanding of project impacts and implications and to inform adaptive (co)management. This should include involvement in analysis i.e. discussing what data collected means, not just being paid to collect it.

- At all stages of the FPIC process indigenous and local communities have the right to independent and objective advice and information. This may or may not include independent legal advice.

Engaging community members in the development of a Theory of Change as part of a Social Impact Assessment process can be particularly helpful to enable mutual understanding of potential costs, risks and benefits. This in turn helps inform both project design and the consent process itself.

**Consent: Who gives consent?**

Consent in FPIC doesn't mean that every single person within a community must agree. Rather, consent is a collective right based on the community's own (often customary) processes of dialogue, deliberation and decision-making. An essential early step is therefore participatory resource, stakeholder and institutional mapping and analysis. This enables identification of the 'rights-holders' – those who have either statutory and customary claims to lands and resources and from whom consent must be sought - and of the community institutions considered to be able to legitimately enter into negotiation with project proponents.

The following points are key to these mapping processes:

- It is good practice to recognise the rights of both indigenous and non-indigenous peoples. This can help to identify and mitigate latent and potential future conflicts.
- Where there are multiple groups with different claims, there may also be differential rights. In such cases, FPIC may only apply to those with the strongest customary, historical or legally supported claims. Other community stakeholders (such as recent in-migrants without land title) with an interest in the project area because their livelihoods are dependent on local resources, might only have the right to be consulted but not the right for their consent to be sought or the right to stop a project by withholding consent.
- Communities' preferred decision-making institutions for FPIC may be customary or more administrative institutions (e.g. state sanctioned village committees). In some cases, communities may decide to form a new institution specifically to manage the decision-making process in order to ensure inclusive representation.
- In many cases, decision-making institutions are likely to need considerable capacity-building support in order both to understand the implications of a project and to effectively represent all their constituents, including women, youth and other marginalised groups.

**Consent: How is consent given and maintained?**

- Identify communities' procedures for giving consent and what form that will take – written, oral, video, formal ceremony etc. Written consent may be a requirement in some instances but may not always be the most culturally appropriate so the form of consent needs to be negotiated and agreed. There may be different forms of consent for different stages of a project. For example, those agreements which have major implications for the wider community, such as changes to the management of community land or common resources, and benefit-sharing arrangements, are likely to need broad-based community consent.
- Consent to each stage needs to be documented and to include information on the next stage at which consent will be sought.
- Independent legal advice should be offered to indigenous and local communities especially in contexts where land lease or sale agreements are being negotiated.
- To maintain consent, a locally appropriate grievance and dispute resolution mechanism needs to be agreed.

**What challenges do we face and how have we tried to overcome them?**

There is often a need for leadership training for community representatives and strengthening of local institutions as part of the FPIC process. We need to be aware of the potential for elite capture and take measures to deal with it including helping the wider community to understand how to ensure

decision-making and resource allocation is transparent and how to hold their leaders and representatives to account. We also need to create an environment where people can express their opinions. Sometimes this will mean that we need to meet with individuals or different stakeholder groups separately – such as holding separate meetings at appropriate times for women or young people.

For those community stakeholders, such as recent in-migrants without land title, who have the right to consultation but not to FPIC, early and active engagement is still important. This can help identify any potential issues and enable measures to be taken to address them. Such stakeholders may still be key to the success of the project, particularly if they are likely to be affected by project activities or are in a position to undermine the project's objectives. In addition, they are also entitled to have their internationally recognised universal basic human rights respected.

Accurate information is key to FPIC and it can be difficult to get the right balance between being open and transparent about a potential project but not raising false expectations or confusing people. It is better to admit where uncertainties lie rather than provide inaccurate information or make commitments that cannot be guaranteed. In addition there are often language difficulties. It is important to use information tools in local languages and in formats relevant to local communities.

It is a challenge to carry out FPIC when the details of the conservation interventions are not known from the start. Understanding that securing the right to FPIC is a process to move step-by-step can help us identify the key points where we will need to seek consent. It is important to keep coming back to the question 'are community rights affected or potentially affected?'

Tenure security and opportunities for livelihoods enhancement and diversification are often key issues. Land and resource use mapping is therefore often a very important component of an FPIC process. Addressing overlapping claims by different groups makes FPIC very challenging. Participatory land and resource mapping processes are an important part of addressing these challenges, which may not be able to be resolved quickly.

It is important to document each stage, including outcomes of meetings and agreements reached. It is likely that there will be a series of small agreements developed over time with community representatives and reference will often need to be made to previous agreements. Wherever possible, if it is culturally acceptable workshop attendees should validate meeting notes and sign minutes of any decisions reached. Sometimes it is useful to video record significant meeting outcomes, again with the permission of the participants.

FPIC takes time and resources – budgets and work plans need to allow for flexibility and uncertainty. Socio-economic expertise needs to be structured in to all levels of project management (field teams, project managers, technical advisers).

Building a relationship of mutual trust and respect between project proponents (and other project collaborators) and communities takes time, but is critical for project success. Partnerships with local organisations with existing relationships with local communities can be invaluable as they often have an in-depth understanding of the local context – but this cannot be taken for granted. It is helpful for some project staff to be based full-time in the field, in order to be as accessible as possible to the communities.

## **Key References**

FFI (2014) *Free, prior and informed consent: Lessons learned from REDD+ and other conservation strategies*. Fauna and Flora International, Cambridge, UK. <https://live-fauna-flora->

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### **Key Resources**

FAO (2014) *Respecting free, prior and informed consent: Practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition*. Food and Agriculture Organization of the United Nations, Rome, Italy, <http://www.fao.org/3/a-i3496e.pdf>

Colchester et al (2015) *Free, Prior and Informed Consent: Guide for RSPO members* Roundtable on Sustainable Palm Oil, Kuala Lumpur.

<https://rspo.org/news-and-events/announcements/free-prior-and-informed-consent-guide-for-rspo-members-2015-endorsed#>