



Human Rights Guide for Working with  
Indigenous Peoples and Local Communities



## TNC Human Rights Guide

# Executive Summary

## Overview

The Nature Conservancy's Human Rights Guide for Working with Indigenous Peoples and Local Communities provides tools, resources and guidance in support of TNC's work to:

- Respect and promote the human rights of Indigenous Peoples and local communities
- Reduce organizational risk to TNC related to human rights and conservation
- Improve the practice of conservation by integrating a human rights approach

The Guide is for TNC conservation practitioners, managers and senior leaders and applies to all scales of work and strategic approaches -- from on-the-ground projects to regional programs to policy interventions. It is useful whether TNC is: a service provider to an IPLC, a full partner with the IPLC, the lead for the initiative, or a member of a multi-stakeholder program. The Guide helps deepen and improve both new and ongoing relationships by centering the experiences, expertise, and autonomy of IPLCs

The Guide is informed by nine Principles and Safeguards that are drawn from TNC's commitments to international human rights law and standards:

- Free Choice and Self-Determination
- Prior Engagement and Collaborative Relationships
- Informed Decision-Making
- Right to Withhold Consent
- Meaningful Consultation
- Equity
- Inclusion
- Accountability
- Overarching Good Faith

A hypothetical case study weaves through the modules to illustrate and help manage complex situations that may arise.

The Guide has been developed by TNC staff, IPLC members, external stakeholders and human rights experts for several years. It is a working document, meant to evolve as our learning and experience progresses. We will continue to field test, iterate and update this guidance.

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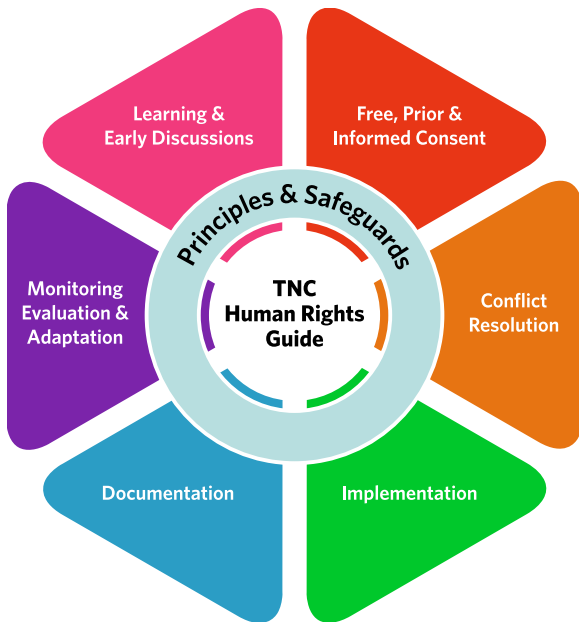
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## TNC Human Rights Guide

# Introduction

In the introduction:

[Understand why a human rights-based approach to conservation is important](#)

[Learn how and when to use this guide](#)

[Review the Nine Principles and Safeguards](#)

[Read the introduction to the Wenland case study that illustrates key points throughout the Guide](#)

**Wenland Case Study Introduction:**

[Welcome to Wenland](#)

**T**he idea that the well-being of all people depends on healthy ecosystems, and that the health of these ecosystems depends on the well-being of those who have stewarded them for generations.

Today, indigenous peoples and local communities manage at least 25 percent of the world's lands,<sup>[1]</sup> 17 percent of global forest carbon<sup>[2]</sup> and vast stretches of freshwater and marine habitats.

Deeply embedded within many Indigenous Peoples' and Local Communities cultures is enduring ecological knowledge, along with profound connections to place and unwavering commitments to protecting their lands and waters. Evidence shows that stewardship led by IPLCs makes for better, longer-lasting conservation results.<sup>[3]</sup> Supporting IPLC leadership is, therefore, one of the most impactful ways to protect critical places, address climate change and build a future in which people and nature thrive.

But IPLCs have long been marginalized and excluded from decisions that affect their territories, cultures, livelihoods and well-being. Their relationship to their lands, waters and natural resources has been disregarded or undervalued by other actors, including conservation organizations. Negative consequences caused by conservation have included:

- expropriation of land
- forced displacement
- denial of self-governance
- lack of access to livelihoods
- loss of culture and spiritual sites
- non-recognition of their own authorities
- denial of access to justice and reparation, including restitution and compensation.<sup>[4]</sup>

IPLCs, and particularly indigenous women, have borne the costs (and received few benefits) of conservation efforts that ignore their knowledge, perspective, leadership and rights.

The struggle against colonialism and structural oppression continues, though IPLCs have gathered collective power in domestic and international political contexts in recent decades. Thirty years ago, the notion of inherent rights for indigenous peoples was barely heard of. In 2007, these rights were affirmed by 144 nations in the **United Nations Declaration on the Rights of Indigenous Peoples**. By 2016, every nation that had objected to UNDRIP in 2007 had reversed course, recognizing the essential nature of indigenous peoples' rights in international and domestic law. Under the most adverse conditions, indigenous peoples have stood together to fight for and protect these rights, including the right to self-determination and the standard of [Free, Prior & Informed Consent](#).

TNC is committed to a human rights-based approach to conservation, standing with indigenous peoples as they protect and exercise their rights.

That commitment is reflected in TNC's Vision, Values, Code of Conduct and fundamental approach to conservation. We recognize the particular importance of Free, Prior & Informed Consent. Respecting and promoting the human rights of IPLCs is both a moral obligation and an enabling condition for sustainable conservation and human well-being. Collaborative conservation supports the work of IPLCs to safeguard their cultures, livelihoods and relationships to place – ensuring a future in which nature and people thrive.

## Purpose

TNC works with indigenous peoples and local communities in 24 countries, with many successful examples of rights-based approaches to conservation rooted in long-term partnerships. To apply this approach more consistently across programs and geographies, TNC has developed this Human Rights Guide for Working with Indigenous Peoples and Local Communities as a resource for TNC practitioners and leaders.

### Purpose of the Guide

This Guide includes modules to help ensure that TNC:

- Respects and supports the rights of IPLCs, aligned to international standards and TNC's Values and Code of Conduct
- Reduces organizational risk at a time of increasing international focus on human rights and conservation

- Improves conservation outcomes for people and nature by integrating human rights into our conservation practice

The Guide is a living document that will evolve alongside our experience working with IPLCs. It provides resources and tools aimed at managing complex situations, but it doesn't have all the answers. Staff should communicate regularly with partners, outside experts and each other for situational advice and to share learnings. For ongoing guidance, [TNC's Network for Strong Voice, Choice and Action](#); [TNC's Global Indigenous Peoples and Local Communities Team](#); and [TNC's Global Diversity, Equity & Inclusion Team](#) are all available.

## Structure

The Guide consists of six modules, each of which highlights the Principles and Safeguards that are foundational to each module.

### Modules at a Glance

#### 1. Learning & Early Discussions

Identify affected IPLCs and engage them in ways that respect indigenous peoples' right to self-determination and build equitable relationships

#### 2. Free, Prior & Informed Consent (FPIC)

Seek and maintain consent for an initiative through meaningful consultation and co-learning

#### 3. Conflict Resolution

Agree on culturally responsive mechanisms to address any misunderstandings, conflicts or disputes

#### 4. Implementation

Apply the Principles and Safeguards and recommendations in this Guide when implementing an initiative

#### 5. Documentation

Document work in ways that are inclusive, transparent and accessible to IPLCs and also meet TNC needs

#### 6. Monitoring, Evaluation & Adaptation

Monitor practices for adherence to the Principles and Safeguards and recommendations in this Guide

Each module follows the same outline:

- Introduction — what staff can expect to learn
- Principles and Safeguards — the values, principles and standards that guide our work
- Guidance — information, tools, templates and resources

- Hypothetical Case Study — a story that brings the learning to life
- Checklist — a short-form list of action items

## How to Use This Guide and When It Applies

### Who Are IPLCs?

“Indigenous peoples and local communities” refers to peoples and communities who possess a profound relationship with their natural landscapes, which they depend on for cultural, spiritual, economic and physical well-being. Original inhabitants and migrants who have a close relationship with the landscape are likewise considered to be IPLCs.

TNC recognizes the collective rights of indigenous peoples as codified in international law.<sup>[5]</sup> In this Guide, “IPLCs” and “communities” are used to refer to all indigenous peoples and local communities.

This Guide has been written for TNC conservation practitioners and leaders, and it applies to all work that may impact indigenous peoples and local communities.

The scope goes well beyond TNC’s IPLC Portfolio in the Shared Conservation Agenda. Project teams should review the [Learning & Early Discussions Module](#) to understand whether IPLCs may be affected by their work, even for initiatives that may not seem like they will generate such impacts.

The nature of TNC staff’s relationship with IPLCs will be different depending on circumstances. See box “How TNC Might Engage with IPLCs” for examples.

### How TNC Might Engage with IPLCs

Roles TNC could play in an initiative:

- TNC is a service provider or technical consultant on an IPLC-led initiative
- TNC co-creates an initiative as a full partner with IPLCs
- TNC leads an initiative involving IPLCs
- TNC participates in a large multi-stakeholder process involving IPLCs

Types of initiatives:

- On-the-ground projects
- Programmatic, regional or country-based strategies
- Policies



Stages of involvement with IPLCs:

- Existing partnerships and engagements
- New or future partnerships and engagements[6]

TNC should strive to co-create respectful, equitable relationships with IPLCs, and this work takes time. Although TNC's engagement will look different in different situations, the responsibility to embody and promote the Principles and Safeguards and practices in this Guide remains constant.

The Guide applies to new initiatives as well as existing ones. New initiatives should start with the Learning & Early Discussions Module. Initiatives that are already underway can use the Guide to identify potential impacts, particularly where they may not have been immediately apparent, e.g., a conservation-focused national policy initiative.

The modules follow a logical flow, though users may enter at any module. In the case of an existing initiative with a longstanding IPLC relationship, the team may be able to jump quickly to the [Conflict Resolution Module](#) if their collaboration is strong but lacks an agreed-upon process for resolving disputes. The Checklists and Documentation to Save sections and the templates given in Appendix VIII capture the major components of each module for easy reference.

Some foundational components of the Guide are important to emphasize:

- [Step One of the Learning & Early Discussions Module](#): Particularly relevant for staff who have less familiarity with human rights issues
- [Documentation Module](#): May be used in tandem with the Learning & Early Discussions Module to document already-completed components for existing initiatives
- [Free, Prior & Informed Consent Module](#): Important for all, as FPIC is a continual process and an organizational requirement for any initiative

This Guide primarily focuses on how TNC should work with IPLCs, starting with the principle of Prior Engagement: engaging with and listening to IPLCs before settling on any fixed plans. TNC believes in the mutual benefits of partnering with IPLCs on conservation, but it is an outsider organization in relation to IPLCs, who have endured eras of colonialism and its harmful impacts.

Following the Prior Engagement guidance will help make sure that TNC's engagement efforts do not frame a situation as a problem and TNC as the solution. Instead TNC should support centering the IPLC's perspective and self-determination from the very beginning.

It's also important and appropriate for TNC to hold other entities accountable to the principles and practices in this Guide. These entities may include:

- grantees
- contractors
- suppliers
- other partners or collaborators

TNC should look carefully at areas where these entities are likely to have a human rights impact on IPLCs and then assess the entity's commitment to human rights and the systems it uses to uphold that commitment. Where a commitment or systems are lacking, and where TNC might be influential, TNC should consider helping the entity improve its human rights practice. If adverse impacts can't be avoided, and credible assessments show such impacts to be likely, TNC should consider ending the relationship with that entity.<sup>[7]</sup>

## Principles and Safeguards

The Guide is built on nine Principles and Safeguards, which should guide all of TNC's work with IPLCs.

These Principles and Safeguards are distilled from existing commitments, including:

- [our Values](#)
- [our Code of Conduct](#)
- our commitment to the [United Nations Declaration on the Rights of Indigenous Peoples](#), especially articles 18-19 and 32 (participation and FPIC), 23-26 and 29 (land rights and conservation), 31 (cultural rights), and 40 (conflict resolution)
- the requirements of Free, Prior & Informed Consent as articulated in the UNDRIP
- [ILO Convention \(No. 169\) on Indigenous and Tribal Peoples](#), and other authorities
- the Guiding Principles of the [Conservation Initiative on Human Rights](#)
- the [Conservation by Design 2.0 Guidance Document](#)

The Principles and Safeguards inform and guide TNC's human rights-based approach to conservation and are referenced as the foundation of each module. The Principles and Safeguards are also an assessment tool and provide the basis for the checklists at the end of each module.

Nothing in this Guide should limit any human rights obligations that TNC may have committed to or be subject to. Rather, **the Guide operationalizes the values, methods and practices through which TNC honors our commitment to respect and promote the human rights of indigenous peoples and local communities.**

### Nine Principles and Safeguards

### Principles and Safeguards

#### Free Choice and Self-Determination:

Respect for indigenous peoples' right to self-determination and autonomy, with zero tolerance for coercion or threats of adverse consequences.

Supported by entering into respectful dialogue with IPLCs and understanding historical and present-day impacts of colonialism, oppression and power imbalances.

#### Prior Engagement and Collaborative Relationships:

Early engagement of IPLCs in any initiative that may impact them.

Supported by centering IPLC leadership and meaningful participation in design and planning decisions, and building trust.

**Informed Decision-Making:**

Active support of IPLC access to all information about activities that may impact them, in settings, languages and formats that meet their needs.

Supported by investing time and resources in capacity building for the IPLC and TNC staff, and a commitment to rigorous impact assessment, transparent communication, respect for multiple ways of knowing and mutual learning as the foundation for decision-making.

**Right to Withhold Consent:**

Respect for indigenous peoples' right to withhold consent to initiatives that they determine may have a significant impact on them.

Supported by honoring indigenous peoples' decision to say "yes" or "no," as well as "yes, but with conditions" and "no, but let's continue to discuss."

**Meaningful Consultation:**

Respect for IPLCs' right to fully participate in a thorough consultation process on any initiative that might impact them.

Supported by consulting the IPLCs' own institutions and representatives, and providing adequate staff time and resources.

**Equity:**

A commitment to fairness and respect for IPLC value systems, world views and decisions.

Supported by sharing power, opportunities, resources and benefits.

**Inclusion:**

A commitment to hearing and valuing diverse voices and contributions.

Supported by using non-discriminatory, culturally responsive and accessible forums, structures and processes to solicit contributions from all social identities.

**Accountability:**

A commitment to transparency, taking responsibility for mistakes and correcting them, resolving conflicts fairly, and monitoring and improving activities and approaches.

Supported by establishing conflict resolution strategies before problems arise, collaboratively implementing and updating plans, and documenting the work in culturally responsive ways.

**Overarching Good Faith:**

A commitment to across-the-board honesty, respect, humility, service and Integrity Beyond Reproach.

Supported by listening, applying learnings from continual discussions, seeking points of alignment and pursuing shared goals in equitable partnership.

# Introduction to the Hypothetical Case Study

The Guide includes a hypothetical case study designed to bring key issues to life. The fact pattern and background for the hypothetical case study are introduced below and carried through the modules in a series of invented “Let’s Say” scenarios with accompanying “Thoughts & Guidance.”

## Wenland Case Study Introduction

### Welcome to Wenland



Wenland is a large subarctic island, the territorial possession of the European state of Albian. The northern half of the island is vast, largely unpopulated permafrost. In the late 19th century, the Wen people, who were nomadic across Europe, were forcibly resettled to the island as part of a surge in nationalism and intolerance across Europe.

[View Case Study](#)

## Notes

<sup>[1]</sup> Garnett, S.T., Burgess, N.D., Fa, J.E. et al. A spatial overview of the global importance of Indigenous lands for conservation. *Nat Sustain* 1, 369–374 (2018).  
<https://doi.org/10.1038/s41893-018-0100-6>

<sup>[2]</sup> Frechette et al. 2018. A Global Baseline of Carbon Storage in Collective Lands: Indigenous and Local Community Contributions to Climate Change Mitigation.  
[https://rightsandresources.org/wp-content/uploads/2018/09/A-Global-Baseline\\_RRI\\_Sept-2018.pdf](https://rightsandresources.org/wp-content/uploads/2018/09/A-Global-Baseline_RRI_Sept-2018.pdf)

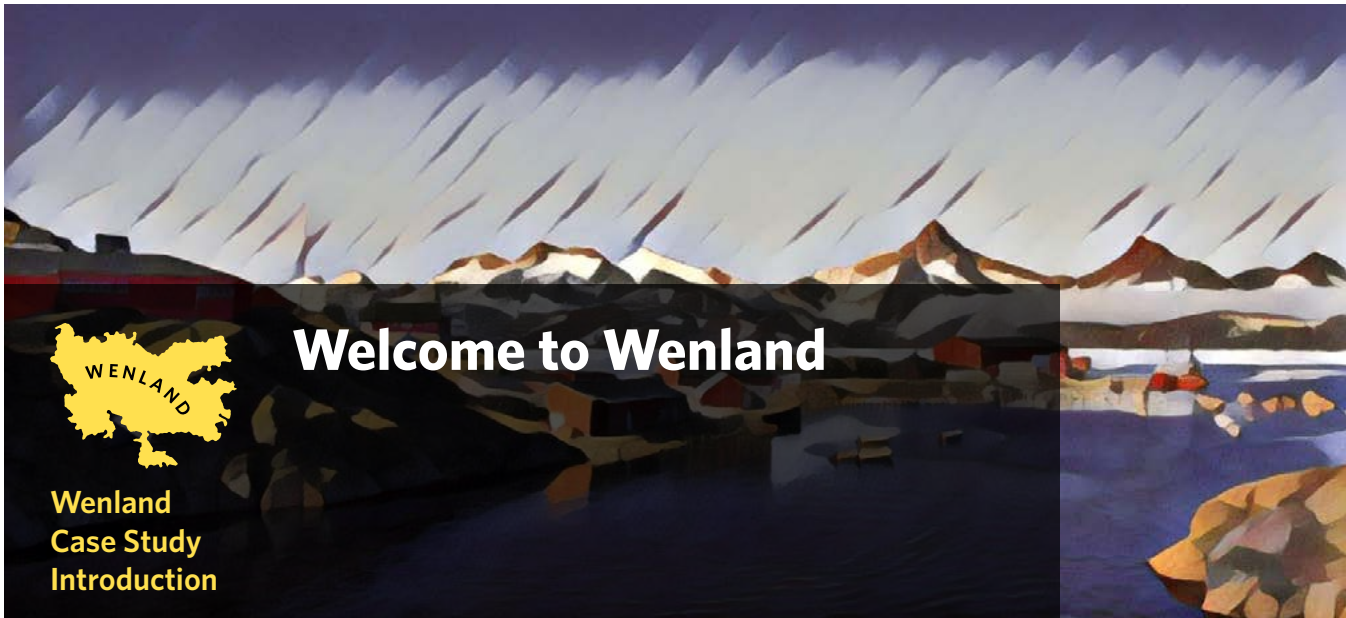
<sup>[3]</sup> The Nature Conservancy. 2017. Strong Voices, Active Choices: TNC’s Practitioner Framework to Strengthen Outcomes for People and Nature. Arlington, VA.  
<https://www.nature.org/en-us/what-we-do/our-insights/perspectives/strong-voices-active-choices/>

<sup>[4]</sup> Tauli-Corpuz, Victoria. 2016. United Nations Special Rapporteur on the Rights of Indigenous Peoples. Conservation and indigenous peoples’ rights. Report to the General Assembly:  
<http://unsr.vtaulicorpuz.org/site/index.php/en/documents/annual-reports/149-report-ga-2016>

<sup>[5]</sup> TNC Global Indigenous Peoples and Local Communities Strategy (2016).

<sup>[6]</sup> A new engagement may come about as a result of a new initiative or a new understanding of the potential impacts of an existing initiative

<sup>[7]</sup> Some of the concepts in the paragraph were taken in part from the United Nations Human Rights Office of the High Commissioner. Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (particularly Principle 17). (2011):  
[https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)



**W**enland is a vast subarctic island. The European state of Albian claimed Wenland as a territorial possession during Albian's period of expansion in the 1600s.

Historically, the Wen people were nomadic, and their traditional lands stretch across Europe from as far back as pre-Roman times. In the late 19th century during a surge in intolerant nationalism across Europe, the Wen were forcibly resettled to Wenland. They settled the southern part of the island, but as Albian immigrants began to travel to Wenland's south coast and settle there, the Wen people were steadily pushed north into the permafrost region, known as the Wend.

In 1934, the Albian government issued a proclamation declaring the Wend as a Wen homeland. They funded the development of Wen self-government, but Parliament never ratified the proclamation. The modern Albian government doesn't recognize the proclamation as legal, perhaps spurred by Albian citizens, most of whom fiercely oppose the idea of a Wen homeland. No one has actively interfered with the Wen's occupancy and use of the Wend, so most Wen people withhold comment and avoid the issue.

In the 1970s, oil companies began offshore extractive operations without consulting with the Wen. Many Albian workers migrated northward and today the largest towns in the Wend are half Albian and half Wen. These towns have integrated economies and workplaces, but social segregation and ethnic tensions are ongoing. A few smaller Wen-only villages are scattered throughout the Wend.

There are three distinct Wen social and lineal groups: Wenna, Wenebe, and Wennec. Collectively, they're called Camps, which alludes to the encampments they built when they first arrived in the Wend in the late 1800s. The Wenna and Wenebe Camps are now based in larger towns, while Wennec consists mostly of small villages that are more self-contained. The three Camps generally cooperate but have sometimes developed rivalries. The Wen Camps speak different dialects of Wennish, although they all speak Albian, too. The Wennec villages are the least proficient in Albian, whereas the Wenna and Wenebe are fluent.

One thing all Wen have in common is defining themselves by their survival in — and connection to — the Wend. They recite how countless peoples came to the Wend through the millennia, but only the Wen listened to the land and learned to live with it in harmony. The Wen hold deep knowledge of the landscape and are committed to protecting it.

Likewise, they're committed to protecting their culture, including their language, traditional dress and ceremonies. A summer celebration draws Wen from all three Camps to sacred sites across the Wend for a month of festivals, cultural immersion and inter-Camp consultation.

The Wen maintain their own institutions of self-government, but they are citizens of Albian and subject to the jurisdiction of the Wenland territorial government.

# TNC Human Rights Guide for Working with Indigenous Peoples and Local Communities

## Principles and Safeguards

### Introduction

The Nature Conservancy envisions a world where the diversity of life thrives, and people act to conserve nature for its own sake and its ability to fulfill our needs and enrich our lives. We're guided by the idea that the well-being of all people depends on healthy ecosystems, and that the health of these ecosystems depends on the well-being of those who have stewarded them for generations.

Today, indigenous peoples and local communities manage at least 25 percent of the world's lands,<sup>[1]</sup> 17 percent of global forest carbon<sup>[2]</sup> and vast stretches of freshwater and marine habitats. Deeply embedded within many IPLC cultures is ecological knowledge, enduring connections to place and unwavering commitments to protecting their lands and waters. Evidence shows that stewardship led by indigenous peoples and local communities makes for better, longer-lasting conservation results.<sup>[3]</sup> Supporting IPLC leadership is, therefore, one of the most impactful ways to protect critical places, address climate change and build a future in which people and nature thrive. But IPLCs have long been marginalized and excluded from decisions that affect their territories, cultures, livelihoods and well-being. Their profound relationship to their lands, waters and natural resources has been disregarded or undervalued by other actors, including conservation organizations. Negative consequences caused by conservation have included:

- expropriation of land
- forced displacement
- denial of self-governance
- lack of access to livelihoods and loss of culture and spiritual sites
- non-recognition of their own authorities
- denial of access to justice and reparation, including restitution and compensation<sup>[4]</sup>

Indigenous peoples and local communities, and particularly indigenous women, have borne the costs (and received few benefits) of conservation efforts that ignore their knowledge, perspective, leadership and rights. The struggle against colonialism and structural oppression continues, though IPLCs have built extraordinary power in domestic and international political contexts in recent decades. Thirty years ago, the notion of inherent collective rights for indigenous peoples was barely heard of. In 2007, these rights were affirmed by 144 nations in the **United Nations Declaration on the Rights of Indigenous Peoples**. By 2016, every nation that had objected to UNDRIP in 2007 had reversed course, recognizing the essential nature of indigenous peoples' rights in international and domestic law. Under the most adverse conditions, indigenous peoples have stood together to fight for and protect these rights, including the right to self-determination and the standard of Free Prior and Informed Consent.

TNC is committed to a human rights-based approach to conservation, standing with indigenous peoples as they protect and exercise their rights.

That commitment is reflected in TNC's Vision, Values, Code of Conduct and fundamental approach to conservation. We recognize the particular importance of Free, Prior and Informed Consent. Respecting and promoting the human rights of IPLCs is both a moral obligation and an enabling condition for sustainable conservation and human well-being. Collaborative conservation supports the aspirations of IPLCs to safeguard their cultures, livelihoods and relationships to place – ensuring a future in which nature and people thrive.



# Principles and Safeguards

The Guide is built on nine Principles and Safeguards, which should guide all of TNC's work with IPLCs. These Principles and Safeguards are distilled from existing commitments, including:

- our Values
- our Code of Conduct
- our commitment to the United Nations Declaration on the Rights of Indigenous Peoples, especially articles 18-19 and 32 (participation and FPIC), 23-26 and 29 (land rights and conservation), 31 (cultural rights), and 40 (conflict resolution)
- the requirements of Free, Prior and Informed Consent as articulated in the UNDRIP
- ILO Convention (No. 169) on Indigenous and Tribal Peoples, and other authorities
- the Guiding Principles of the Conservation Initiative on Human Rights
- the Conservation by Design 2.0 Guidance Document (CbD 2.0)

The Principles and Safeguards inform and guide TNC's human-rights-based approach to conservation and are referenced as the foundation of each module. The Principles and Safeguards are also an assessment tool, as they are the basis for the checklists at the end of each module.

Nothing in this Guide should limit any human rights obligations that TNC may have committed to or be subject to. Rather, **the Guide formalizes and operationalizes the values, methods and practices through which TNC honors a commitment to respecting and promoting the human rights of indigenous peoples and local communities.**

## Nine Principles and Safeguards

### Free Choice and Self-Determination:

**What it is:** Respect for indigenous peoples' right to self-determination and autonomy, with no threats of adverse consequences nor coercion.

**How to support:** Have conversations with IPLCs and understand historical and present-day impacts of colonialism, oppression and power imbalances.

### Prior Engagement and Collaborative Relationships:

**What it is:** Early engagement of IPLCs in any initiative that may affect them.

**How to support:** Center IPLC leadership and meaningful participation in design and planning decisions. Build trust over time.

### Informed Decision-Making:

**What it is:** Active support of IPLC access to all information about activities that may affect them, in settings, languages and formats that meet their needs.

**How to support:** Invest time and resources in capacity building for the IPLC and TNC staff. Commit to impact assessment, transparent communication, respect for multiple ways of knowing and mutual learning as the foundation for decision-making.

### Right to Withhold Consent:

**What it is:** Respect for indigenous peoples' right to withhold consent to initiatives that they determine may have a significant impact on them.

**How to support:** Supported by honoring indigenous peoples' decision to say "yes" or "no," as well as "yes, but with conditions" and "no, but let's continue to discuss."

**Meaningful Consultation:**

**What it is:** IPLCs' right to participate in a thorough consultation process on any initiative that might affect them.

**How to support:** Consult the IPLCs' institutions and representatives, and provide staff time and resources for the discussions.

**Equity:**

**What it is:** A commitment to fairness and respect for IPLC value systems, world views and decisions.

**How to support:** Share power, opportunities, resources and benefits.

**Inclusion:**

**What it is:** A commitment to hearing and valuing diverse voices and contributions.

**How to support:** Use non-discriminatory, culturally responsive and accessible forums, structures and processes to solicit contributions from all social identities.

**Accountability:**

**What it is:** A commitment to transparency, taking responsibility for mistakes and correcting them, resolving conflicts fairly, and monitoring and improving activities and approaches.

**How to support:** Establish conflict resolution strategies before problems arise, collaboratively implement and update plans, and document work in culturally responsive ways..

**Overarching Good Faith:**

**What it is:** A commitment to across-the-board honesty, respect, humility, service and Integrity Beyond Reproach.

**How to support:** Listen. Applying learnings from continual discussions, seek points of alignment, build consensus, and pursue shared goals in equitable partnership.

## Structure of the Guide

The Guide consists of six learning modules, each of which highlights the Principles and Safeguards that are foundational to each module.

### Modules at a Glance:

#### 1. Learning & Early Discussions

Identify affected IPLCs and engage them in ways that respect indigenous peoples' right to self-determination and build equitable relationships

#### 2. Free, Prior & Informed Consent (FPIC)

Seek and maintain consent for an initiative through meaningful consultation and co-learning processes

#### 3. Conflict Resolution

Prepare to address any misunderstandings, conflicts or disputes, relying on culturally responsive mechanisms

#### 4. Implementation

Apply the Principles and Safeguards and the recommendations in this Guide throughout an initiative's implementation

#### 5. Documentation

Document work in ways that are inclusive, transparent and accessible to IPLCs yet also meet TNC needs

#### 6. Monitoring, Evaluation & Adaptation

Monitor practices for adherence to the Principles and Safeguards and recommendations in this Guide

## Notes

<sup>[1]</sup> Garnett, S.T., Burgess, N.D., Fa, J.E. et al. A spatial overview of the global importance of Indigenous lands for conservation. *Nat Sustain* 1, 369–374 (2018). <https://doi.org/10.1038/s41893-018-0100-6>

<sup>[2]</sup> Frechette et al. 2018. A Global Baseline of Carbon Storage in Collective Lands: Indigenous and Local Community Contributions to Climate Change Mitigation. [https://rightsandresources.org/wp-content/uploads/2018/09/A-Global-Baseline\\_RRI\\_Sept-2018.pdf](https://rightsandresources.org/wp-content/uploads/2018/09/A-Global-Baseline_RRI_Sept-2018.pdf)

<sup>[3]</sup> The Nature Conservancy. 2017. Strong Voices, Active Choices: TNC’s Practitioner Framework to Strengthen Outcomes for People and Nature. Arlington, VA. [file:///C:/Users/allison\\_martin/Downloads/Strong\\_Voices\\_Active\\_Choices\\_FINAL.pdf](file:///C:/Users/allison_martin/Downloads/Strong_Voices_Active_Choices_FINAL.pdf)

<sup>[4]</sup> Tauli-Corpuz, Victoria. 2016. United Nations Special Rapporteur on the Rights of Indigenous Peoples. Conservation and indigenous peoples’ rights. Report to the General Assembly: <http://unsr.vtaulicorpuz.org/site/index.php/en/documents/annual-reports/149-report-ga-2016>



## Module 1:

# Learning & Early Discussions

In this module:

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[Learn how to identify potentially impacted IPLCs via desk research and interviews](#)

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[Determine staff capacity for engaging IPLCs](#)

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[Create an Engagement Plan before any project planning begins](#)

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[Agree on the best way to begin dialogue](#)

### Wenland Case Studies:

[1A. TNC in Wenland \(SCENARIO 1\)](#)

[1B. TNC in Wenland \(SCENARIO 2\)](#)

[1C. The Permafrost Crisis](#)

[1D. Wen Self-Government](#)

## Introduction

**T**his module provides guidance, tips, and tools TNC staff can use to: (1) identify Indigenous Peoples and Local Communities who might be affected by conservation activities; (2) determine the most appropriate, equitable way to approach and talk to those IPLCs; and (3) better understand their social and political structures, goals, aspirations and the resources they rely on.

Although most of TNC's work involves place-based projects, this module applies to all types of engagements, including on-the-ground projects; landscape-level projects; programmatic, regional or country-based strategies; and policy initiatives. So it's important to analyze possible impacts on IPLCs even if it's not immediately obvious that IPLCs will be affected, as in a national policy engagement. If analysis reveals potential impacts, TNC staff should continue through the module.

This process might seem most applicable to situations where TNC comes up with a project idea and then approaches IPLCs to seek support. However, TNC projects get started in many ways. TNC will sometimes identify one or more IPLCs who are important natural resource stewards in a certain geography and approach them to develop plans jointly. Or an IPLC might approach TNC for support on a conservation initiative. In these cases, the module will still have useful tips and tools on how to proceed. For example, if IPLCs are the ones approaching TNC, the process of identifying affected IPLCs can be skipped. But TNC should still use the tips in this module to learn about the IPLCs' governance structures, decision-making processes and the resources the IPLC deems most important. This process will also help assess and strengthen established partnerships.

## Principles and Safeguards

The [Introduction](#) includes a discussion of all the Principles and Safeguards that apply to equitable partnerships. Four are particularly important for building relationships in early discussions.

### Key Principles and Safeguards for Early Discussions

#### **Prior Engagement and Collaboration:**

TNC should support the IPLC's central role in designing the initiative and decision-making, rather than bringing a full plan to the IPLC for a stamp of approval.

#### **Equity:**

Fairness and trust-building should be at the forefront, ensuring the IPLC has full access to power, opportunities and resources.

#### **Inclusion:**

Non-discriminatory dialogue is required and should incorporate contributions from all social identities. Provisions should be made for accessibility and physically and emotionally safe forums and processes.

#### **Accountability:**

Accountability can be assured when parties take responsibility for their actions, correcting their mistakes, rebuilding trust and improving approaches going forward.

#### **Overarching Good Faith:**

Showing good faith, respect, humility and Integrity Beyond Reproach from the very first step is critical to building trust. It can be difficult to overcome mistakes in this regard if they are made early on.

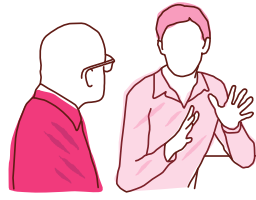
## Guidance

### Step One: Identify Relevant Indigenous Peoples & Local Communities

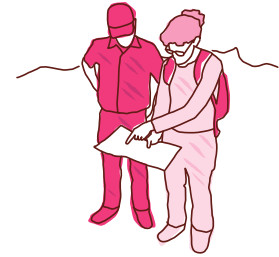
To identify relevant IPLCs, the following three phases are required at a minimum:



**1. Initial Desk  
Research**



**2. Preliminary Expert  
Interviews**



**3. Preliminary Field  
Research**

#### **1. Initial Desk Research**

The TNC team explores existing publicly available information on the potentially impacted IPLCs and relevant issues.

#### **2. Preliminary Expert Interviews**

The team deepens its learning with experts who have broader, longer-term engagements with the IPLCs.

#### **3. Preliminary Field Research**

The team talks with IPLC leaders and representatives to learn how to engage with the IPLCs without yet getting into the substance of consultation, which should occur after an Engagement Plan has been developed.

Staff should create a file for future reference and save helpful information from the following resources:

For the **Initial Desk Research**, staff should consider the resources cited throughout this module, as well as the following:

- Online searches (e.g., Google Scholar, HeinOnline, LexisNexis, ProQuest) using the names of groups, regions, cities, monuments, leaders or notable figures and historical events. Save useful articles for colleagues and future participants.
- Government resources: Make a list of government agencies with any degree of geographic or subject-matter jurisdiction (e.g., departments of environmental protection, natural resources, conservation, energy, interior, development, indigenous affairs, aboriginal affairs, cultural affairs) and search agency websites for reports, agency stakeholder engagement, and applicable regulatory procedures.
- Civil society resources: Make a list of civil society organizations with any history of geographic or subject-matter involvement, ranging from big international peer organizations to small local interest and issue groups, and search websites for reports, advocacy, evidence of past stakeholder engagement processes. IPLCs may also have websites, Facebook pages and other online informational resources.
- Expert and academic resources: Identify names of key scholars from the searches above. Browse faculty bios at local universities. Consult reference librarians at local universities.

For **Preliminary Expert Interviews**, TNC staff should:

- Document each interview.
- Ask about the scope of the expert's work and engagement with the IPLCs, as well as any findings or conclusions.
- Ask who else they know who works with the IPLCs on relevant issues. Map out a network of intersecting individuals and organizations.
- Ask about key resources they rely on in engaging with the IPLCs.
- Ask if they're willing to provide feedback on the questions or concerns identified from your Desk Research.
- Record the expert or scholar's interest or willingness to be consulted in the future.

For **Preliminary Field Research**, TNC staff should remember:

- The point is not to jump into the substance of the project or key issues. The focus is understanding who the IPLCs are and gathering information for the [Engagement Plan](#).
- It's crucial to keep notes on each interview.
- In a contentious environment, the mere act of talking with certain people could be interpreted as taking sides. It's best to reach out to official IPLC associations or institutions first, for example, the IPLC's main governance association, or the natural resources management department. If there are concerns, go slowly. Emphasize that TNC is just listening and open to all stakeholders and rights holders without restrictions.

#### Tip: Lean On In-House Expertise



TNC staff can consult [TNC's Global Indigenous Peoples and Local Communities Team](#), who have a wealth of in-house resources and can connect staff with colleagues around the world in the [Network for Strong Voice, Choice and Action](#).

#### Resource: LandMark Mapping Platform



[LandMark](#) is a mapping platform that provides information on the land and natural resource rights of IPLCs around the world, created by the World Resources Institute and partners.

- LandMark provides more comprehensive information on some parts of the world (Latin America and Southeast Asia) than others (Africa).

### Key Issue: TNC Staff Capacity

It's crucial that TNC staff participating in early stage engagement have the experience, training and capacity they need. Culturally responsive engagement does not come automatically to everyone. Once learned, the skills for cross-cultural and participatory approaches need to be practiced and honed. The [Diversity Learning page](#) on TNC's CONNECT intranet has a number of resources on topics like leveraging differences and facilitating inclusion.

### Key Issue: Who are Considered IPLCs?

There is no single definition of indigenous peoples or IPLCs. However, many definitions reference a set of experiences common to most IPLCs around the world. "According to the UN the most fruitful approach is to identify, rather than define indigenous peoples. This is based on the fundamental criterion of self-identification as underlined in a number of human rights documents."<sup>[1]</sup>

Common IPLC experiences include:

- Self-identification as indigenous peoples at the individual level and accepted by the community as their member
- Historical continuity with pre-colonial or pre-settler societies
- Strong links to territories and natural resources
- Distinct social, economic or political systems
- Distinct language, culture and beliefs
- Being a part of non-dominant groups of society
- Commitment to maintain and perpetuate their ancestral environments and systems as distinctive peoples and communities

It's also important to recognize the negative effects that colonialism has had - and may continue to have - on IPLCs. These experiences include:

- Catastrophic suffering during the colonial and post-colonial eras
- Forcible relocation
- Populations decimated by violence or disease
- Children stolen away to boarding schools

Faced with this reality-based experience, and acknowledging the diversity of indigenous peoples, authorities often avoid defining communities as "indigenous." One of the most important indigenous land-rights cases (*Saramaka People vs. Suriname*) applied indigenous rights principles to a community of African descendants living in South America. The community was founded by enslaved people who had escaped and forged a largely self-contained culture with a profound relationship to the land that sustained them. In many other cases, indigenous peoples who were forcibly removed from their traditional lands are still fighting to get it back.



TNC and many other conservation and development organizations choose to extend the benefits of protection required for indigenous peoples by law to a wider range of potentially affected local communities. Because of the type of work TNC does, our focus is on communities with a profound relationship with their natural landscape.

### Resource: UN Indigenous Peoples Factsheet

For more information on the term “indigenous,” see the [UN Permanent Forum on Indigenous Issues Factsheet](#).

### Resource: Context of the Term “IPLC” at TNC

For context on TNC’s use of the term “IPLCs,” see the [VCA Framework](#) (page 6). TNC uses the term **indigenous peoples and local communities** to refer to peoples and communities who possess a profound relationship with their natural landscapes, which they depend on for cultural, spiritual, economic and physical well-being. Original inhabitants and migrants who have a close relationship with the landscape are likewise considered to be IPLCs. TNC recognizes the collective rights of indigenous peoples as codified in international law. In this Guide, “IPLCs” is used to refer to all indigenous peoples and local communities.

### Key Issue: Scope of Inquiry

IPLCs who might be impacted by the initiative must be identified. If the initiative is place-based, the identification process involves mapping the project’s boundaries and determining whether there are IPLCs that live on, use or value the lands, waters and resources within or in close proximity to those boundaries. Planners should consider nomadic herders or hunter/gatherers who might not be currently present, but who use the land at other times. For work that is not place-based or readily mappable, such as policy initiatives, it’s still important to identify IPLCs who might be impacted.

The initiative boundary map (whether geographical, policy- or strategy-related) should include areas where activities will occur or effects will be felt. The protection of a river’s headwaters could affect a downstream community, or grasslands management in one area may impact grasslands in another area if it changes the grazing patterns of nomadic herders.

The scope of inquiry shouldn’t be limited to present-day land use; historical use should be included. Nor should the inquiry be limited to land to which IPLCs have title or officially documented use rights. Many IPLCs will have customary occupancy or use rights that are not recognized by the state. It can be hard to know whether communities will be affected by an initiative, so staff should take a broad perspective. Activities on a piece of land will affect the community with registered title to the land, and they might affect other communities who have

no legally recognized rights but consider the land sacred or use it for religious or other purposes. Going beyond legal and economic interests is crucial; considering the IPLC's cultural, spiritual, health and, subsistence interests ensures a well-rounded inquiry.

### Resource: Native Land Searchable Map of Territories



[Native Land](#) includes a searchable, interactive map of traditional territories, languages and treaties around the world, as well as resources on territory acknowledgment.

### Key Issue: Conflicting IPLC Views or Rights Claims



It's not uncommon to find two or more IPLCs who claim traditional ownership, access or use rights to the same land. One community might have traditionally used the land for religious ceremonies, whereas another has a long history of grazing cattle there. Or there might be disagreement over boundaries. It's important to identify all relevant IPLCs and understand the distinct nature of each claim.

Staff may decide that the conflicting or competing claims are too numerous or contentious for a project to move forward. In other cases, helping communities work together despite competing claims and bringing them together to pursue conservation goals could lead to a stronger initiative and more sustainable results. However, TNC should not be the arbiter of disputes between communities. That is a complex and difficult role that falls outside TNC's areas of expertise.

### Resource: More on Competing Territorial Claims



For staff who want to learn more about facilitating talks between IPLCs with competing claims, [Namati's Community Land Protection Facilitator's Guide](#) includes helpful chapters on Harmonizing Boundaries and Resolving Land Conflicts (pages 151-166). These chapters cover topics such as how to form teams from each community to take the lead on resolving disputes, how to provide conflict resolution and mediation training, and how to select a good mediator.

## 1A. Wenland Case Study

### TNC in Wenland (SCENARIO 1)



TNC has several offices in mainland Alban and in Alban cities in Wenland.

We have managed and participated in several Alban conservation initiatives since the late 1980s. Our only project in the Wend to date was a coastal conservation easement funded by a private donor in 1997.

[View Case Study](#)

## Step Two: Consultation Plan and Process

### Template: Engagement Plan



[View the Engagement Plan Template](#)

Once IPLCs have been identified, the process of developing an Engagement Plan will help determine culturally responsive and equitable means of interaction. Learning about the customs, social structures, gender relations, power dynamics and hierarchies within the IPLC is crucial. The primary goal of this step is to ensure that TNC works with the IPLC's governance institutions and respects their customs, laws, social norms and traditions. In doing so, staff should also take an inclusive approach that recognizes and engages all social identity groups.

Using the Desk Research, Expert Interviews and Preliminary Field Interviews undertaken in [Step One](#), the TNC team can ask the IPLC whether and how they would like to engage with TNC. The decision-making processes used by the IPLC should be well understood by this point; if not, staff should seek guidance from IPLC leaders and outside experts. If the IPLCs have participated in previous consultation processes, ask them about their experiences, both positive and negative. Staff should ask if engagement protocols or examples of past engagement processes exist and can be shared. Additionally, ask these leaders and experts to assess the IPLC's capacity to engage with TNC.

The Engagement Plan sets the ground rules for the process ahead. It can be a simple summary prepared jointly by TNC staff and IPLC leaders. Or it can be a full Engagement Plan detailing a series of steps or procedures that need to be followed for decision-making affecting different issues or community groups.

In many instances, a one-page document consented to by both TNC and the IPLC, and covering the following topics, should suffice: following topics, should suffice:

#### What

What the IPLC wants to discuss

#### When

The time, place, format of the discussions

#### Who

Who from TNC and the IPLC will be involved in the discussions

#### How

How the IPLC will make decisions and convey them to TNC

- What the IPLC wants to discuss
- The time, place, format of the discussions
- Who from TNC and the IPLC will be involved in the discussions
- How the IPLC will make decisions and convey them to TNC

Because it's important to hold off concept development until the IPLCs are engaged, TNC should be careful in the initial engagement with the IPLC to focus, as much as possible, on who should be involved in discussions and what the discussion will be about at a general level, rather than getting into the details about the work. The initial approach is: "We would like to talk with you about a conservation project or environmental issue. Who should we talk to? How does that work?"

It is best practice to develop an Engagement Plan on how to approach this early phase, even though the initial conversations aren't seeking consent the way later conversations, like those contemplated in the [FPIC Module](#) will. It's also best to get consent for each new engagement. The formality of the consent, and detail of its documentation, will vary. For example, documentation of consent by a village elder to meet with her family might be documented in a simple text exchange or in-person exchange that TNC staff then documents in the file, whereas consent by a council of elders to hold an initial series of community meetings might be documented more formally. See the [Documentation Module](#) of this Guide for more information.

#### Resource: Guiding Questions on Governance

For a helpful set of guiding questions to ask community members about their institutions and governance, see Text Box 2 in Holly Shrumm and Harry Jonas' article, "Understanding and facilitating a biocultural community protocol process." in the Participatory Learning and Action, Issue 65, 2012, 179-183, [Biodiversity and culture: exploring community protocols, rights and consent](#).

#### Resource: Fauna & Flora International's Social Mapping

Fauna & Flora International's Toolkit: [Tools for Participatory Approaches](#) includes social mapping guidance that provides a framework for identifying households, groups, organizations and social structures.

#### Key Issue: Ensuring Inclusion

Engaging people who don't have legitimacy in the eyes of the community they purport to represent leads to mistrust and resistance. An inclusive participatory approach is needed to work through the IPLC's established institutions. Sometimes, approaching all sectors of the IPLC is limited by cultural norms or local governance. Increasing inclusion may be ongoing work as TNC builds trust with the IPLC.

If IPLC structures exclude women, elders, youth, people with disabilities or other social identities, TNC staff should encourage broader participation from those groups. TNC may engage them separately, taking into account their preferred time of day, location, language and format for the meetings. But roadblocks might arise from the IPLC's existing structures. Staff should be transparent about TNC's desire to include participation from all social identities, while acknowledging that this might need time and trust to develop. Staff should ask members of different social identities how they want to be involved. It is critical to take a culturally responsive approach to inclusive participation, to avoid cultural bias and assumptions that TNC might bring, and any unintended negative consequences that may result. For example, TNC staff assumptions of what gender integration looks like in a particular place may not be fully informed or appropriate for that IPLC. Processes to include people from different social identities should be led by the vision and priorities of those people themselves.

### Resource: Questions for Greater Participation



The [Shrumm and Jonas](#) article includes, in Text Box 3, a good set of questions to ask community members to enhance participation from different groups.

### Resource: USAID Guide to Understand Gender Inequalities



Regarding gender:

- [USAID's Guide to Gender Integration and Analysis](#) includes helpful tips for conducting an initial gender analysis to identify and understand gender differences and the impact of gender inequalities within a community.

## 1B. Wenland Case Study

### TNC in Wenland (SCENARIO 2)



Unlike Scenario 1, TNC has a large office in a southern Wenland city and a small office in a northern Wen town, where there are three ethnic Wen on staff. TNC has helped Wenec communities near its northern office fund and manage numerous conservation and community development projects over the years. We have not worked much with the other two Wen Camps.

[View Case Study](#)

## Step Three: Begin Initial Engagement & Dialogue

With an Engagement Plan that reflects understanding of the key institutions, individuals and social identities of an IPLC, TNC should invite the appropriate people to a conversation. The IPLC should set the time and place for these meetings, and the dialogue should happen at a pace and manner of their choosing. The initial focus should be on the IPLC's goals, and to the extent they're willing to share, their vision for the future, including economic development, perpetuation of cultural values, and protection of long-held knowledge about how to steward and manage their lands. This is the foundation for project design, impact assessment and the FPIC process, if the relationship develops.

Early dialogue is more about getting to know one another and finding areas of mutual interest and shared goals. This rationale should be shared with the IPLC so that there's no expectation for agreeing on project scope or design yet, since those details require careful deliberation and learning to inform decisions.

Guidance on this kind of consultation and learning—often part of an FPIC process—is provided in the [FPIC Module](#). Before that happens, TNC must ensure that there is sufficient IPLC interest, support and cooperation to proceed, as described below.

### Tip: Communicate Expectations Up Front



Accurately communicating the purpose and scope of these conversations is key for managing expectations both within the smaller group of initial contacts and the larger community. Doing this up front and throughout the IPLC engagement process can help avoid disappointment and disengagement.

### Tip: Address All Layers of Governance



An IPLC may have multiple decision-making bodies or layers of governance, and different people may need to be consulted at different steps in the project life cycle, such as obtaining consent or addressing grievances. TNC staff will need to confirm they're engaging with the appropriate person or people.

### Key Issue: Scope of Engagement



Again, the purpose of dialogue at this phase is not to agree on details, but simply for the IPLC to learn about TNC and vice versa. An IPLC might begin by inviting TNC staff to community events. Or they might want to use storytelling to explain their values, history and relationship to their lands and waters. Still others might want to show that relationship through a mapping exercise. Note that formal resource mapping usually comes after a long period of relationship building and establishing trust, so it may be more appropriate for the consultation phase discussed in the [FPIC Module](#). Whatever form these conversations take, TNC should approach them humbly, as a listener and learner.

**Tip: Ask for Existing Maps and Databases**

Some IPLCs may already have maps, electronic databases or written records depicting their ownership, knowledge, management and use of resources. These may range from sophisticated GIS products to rudimentary sketches. TNC staff should ask what is already available and not assume the need to start from scratch. At the same time, staff should be sensitive to any hesitation the IPLC may have about sharing resources and respect a decision not to share, or any conditions placed on sharing.

**Tip: Ensure IPLC Can Store and Use Digital Resources**

Make sure that the end product of any mapping process is one the IPLC will be able to store and use. For example, the IPLC might not have a good place to store paper maps or might have technological limitations for accessing and using GIS data. If so, consider financial support to build storage and data management capacity.

**Key Issue: Cooperation Sufficient to Proceed**

IPLCs might be hesitant to share information with TNC, be it historical or ecological knowledge, cultural or spiritual beliefs and practices, maps, data or other information collected or owned by the IPLC. Putting in the time to build relationships and trust is important, as is sharing information about TNC so the learning process is mutual. TNC should not pressure the IPLC for information. Waiting until the relationship is well established will mean the IPLC can consent to the dialogue with an understanding of how it will happen and why.

The IPLC may never be comfortable sharing certain information, and TNC should not put any pressure on them about it. Many IPLCs have been approached by outsiders seeking information for their own self-interest rather than for the best interests of the IPLC, so their hesitation is understandable. TNC should ensure that the shared information will be used to benefit the IPLC

and help advance their goals. TNC needs to clearly articulate how the information will be used, and later, follow through on any assurances the team has given about information sharing. In cases where the IPLC does not want to share information, TNC should respect that decision.

**Tip: Consult on Intellectual Property**

Understand the IPLC's definition of their intellectual and cultural property, and implement a code of ethics that outsiders must observe when recording or transmitting this knowledge in visual, audio or written form. This may require broader agreement from the IPLC, going beyond the smaller representative body engaged in initial conversations. The same applies when photographing indigenous individuals, especially children. Indigenous peoples cannot waive their rights to photos; they always maintain their rights and can always revoke permission for others to use them. When possible, use indigenous peoples' own intellectual property and photo release templates, rather than TNC's, which are likely to be inadequate for this context. Always consult TNC's legal team about intellectual property.

**Resource: World Intellectual Property Organization Brief**

The World Intellectual Property Organization has produced a helpful [background brief](#) on traditional knowledge and intellectual property concerns.

**1C. Wenland Case Study****The Permafrost Crisis**

In July 2019, a groundbreaking study on data gathered from a global network of permafrost test sites confirmed what climate experts had long feared: permafrost throughout the subarctic is thawing and beginning to release massive amounts of stored methane and CO<sub>2</sub> into the atmosphere.

[View Case Study](#)

**1D. Wenland Case Study****Wen Self-Government**

Most Wen live and work alongside the Albian population in Wenland society under the Wenland territorial government, but Wen self-government persists to an extent. The three Wen Camps occupy areas that partially overlap, and they each maintain a quasi-executive Camp Council.

[View Case Study](#)



## Learning & Early Discussions Checklist

### Step One: Identify Relevant IPLCs

- Desk research, expert interviews and field interviews
  - Geographical analysis with upstream/downstream impacts
  - Temporal or historical analysis
  - Resource use analysis, including seasonal use
  - Other impact analysis, especially if the project is not place-based, for example, an overarching strategy or a national policy initiative (see also [Human Rights Impact Assessment](#) in FPIC Module)
  - In addition to environmental impacts, consideration of legal, social, health, subsistence, political, economic, spiritual and cultural impacts
- Cross-check identification results as part of initial contacts with IPLC
- Analysis of competing IPLC claims or interests
- Analysis of IPLC claims or interests disputed by government or other authorities

### Step Two: Develop an Engagement Plan

- Consider TNC team capacity, including language, cultural experience, training needs
- Consider existing or established IPLC engagement processes
- Solicit and defer to IPLC preferences on [Engagement Plan](#) options. Assess if there's sufficient cooperation to proceed
  - Preliminary Inclusion analysis
- Documentation (see "Documentation to Save" below)

### Step Two: Begin Initial Engagement & Dialogue

- Continuous development and adaptation of the Engagement Plan

## Learning & Early Discussions (Continued)

### Step Two: Begin Initial Engagement & Dialogue (Continued)

- Co-learning - TNC learns about the IPLC and introduces itself to the IPLC
- Continuous development of dialogue objectives
- Data sharing and the consideration of limits, conditions and parameters on data

## Documentation to Save

See [Documentation Module](#) for additional context and considerations for documentation

- Research file on the process used to identify potentially impacted IPLCs
  - Notes and list of resources from desk research
  - List of people engaged during screening for IPLC impacts and notes from each of the conversations, including when, where and what was discussed
  - List of people consulted during the engagement planning process and notes from each of the conversations, including when, where and what was discussed
  
- An [Engagement Plan](#) for each IPLC partner and correspondence or notes reflecting how the Engagement Plan was formulated in collaboration with IPLC members and how the final terms were communicated to the IPLC. The requirements of an Engagement Plan will vary, but ideally, plans will include information reflecting:
  - The matters the IPLC would like to discuss
  - How those discussions should occur (time, place, format)
  - Who is involved in those discussions for both TNC and the IPLC
  - How the IPLC will make and convey decisions to TNC
  
- Documentation reflecting agreements on objectives, goals and conclusions as they emerge from Initial Dialogue

## Notes

<sup>[1]</sup> United Nations Permanent Forum on Indigenous Issues. Who Are Indigenous Peoples?  
[https://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf)



## **T**NC has several offices in mainland Albian and in Albian cities in Wenland.

We have managed and participated in several Albian conservation initiatives since the late 1980s. Our only project in the Wend to date was a coastal conservation easement funded by a private donor in 1997.

The donor allocated funding to pay a Wenebe community to steward the land and provide annual reports. The extent of consultation on the project is unknown. The agreement was purportedly signed by a Wen leader that today, no one has heard of. We have no evidence of reports or documentation of any discussions and the funding ran out in the early 2000s.

Soon after, the rapid growth of a nearby town, now populated by more Albian oil workers and their families than Wenebe, led to the construction of an Albian commuter suburb not far from the easement.

### Lets Say

### Thoughts and Guidance

1

**Wenland's TNC team would like to increase conservation activities in the Wend, and has lots of ideas, starting with using the old easement as an inroad. The team knows that it needs to consult the Wenebe and is excited to hear their views. Are there any other considerations?**

*The TNC team can initiate research and early discussions with the Wenebe and should engage in discussion with all three Camps, following guidance in the Learning and Early Discussions Module. However, if the Wen have not actively sought our involvement, TNC needs to exercise special care to make sure the IPLC perspective and right of self-determination are at the center of the process.*

*TNC should acknowledge that as a large U.S.-based conservation organization, we are an outsider (see How to Use This Guide and When It Applies section of the Introduction to this*

*Guide). TNC's identity and privilege could lead to displacing prerogatives that belong to the Wen, since TNC doesn't have deep roots in the Wend or close connections with the Wen people. Before coming in and proposing to help, a more gradual development of these relationships, not in pursuit of any specific initiative, may be more welcome and yield better results.*

2

**As regards the old easement, it seems clear that no FPIC was conducted at the time. Does TNC need to conduct an FPIC process now?**

*FPIC is an evolving standard. It is not necessarily wrong that prior interactions did not adhere to a standard that didn't yet exist. At the same time, TNC's Principles and Safeguards such as Respect for Self-Determination and Overarching Good Faith are forward-looking and not satisfied by technical defenses of past events. If the easement negatively impacts the Wen's right to self-determination, or if there is lingering resentment about the lack of consultation, an FPIC process may be needed.*

3

**A local Albian conservation group, Albian Trust, has contacted TNC to sponsor the Trust's proposal for new government funding to steward the land and expand the easement. Is an FPIC process with the Wen required before TNC can agree?**

*In this case, the legacy project is being updated and reworked. Contemporary standards apply, so yes, an FPIC process is needed.*

4

**Albian Trust's proposal describes the easement as being located on untitled government territory. When TNC says FPIC is needed, the Trust responds that the Wen have no territory and are not indigenous since they came to Wenland at the same time as the Albian. The Trust further notes that the Albian government has decreed that the Wen have no collective or other special land rights and that TNC must respect national law. How should TNC react?**

*It is not for TNC to determine the indigenous status of the Wen people. And while TNC cannot violate national law, we can maintain our own commitments, which include actively supporting indigenous self-determination. The Wen have a profound, ancestral relationship to the landscape despite their relatively recent arrival, and they have maintained their culture and language despite significant integration with Albian society. Most critically, the Wen consider themselves indigenous. Thus, there are plenty of reasons for TNC to condition our own involvement on rigorous compliance with the Principles and Safeguards in this Guide.*

5

Same as above, except that instead of arguing against FPIC, Albian Trust gladly agrees to any process that TNC or the Wen feel is necessary. However, it notes that a residential suburb of Albian oil workers is closest in proximity to the easement. **Should the suburb be included in Wen dialogue and FPIC? Does it have the same right to grant or withhold consent as the Wen?**

*Absent more facts, an Albian residential suburb (built recently and for occupational purposes) would not appear to satisfy even the broad standard of profound connection to landscape that TNC uses. Thus, the residents of that suburb would not have the same right to grant or withhold consent as the Wen. That said, the principle of Inclusion would weigh in favor of including the suburb residents and other stakeholders as much as possible, in consultation with the Wen as indigenous rights holders.*

6

Same as above, but instead of a suburb of oil workers, the closest community is a commune of young Albian back-to-the-land families who focus on sustainable agriculture and living by traditional Albian religious values. They believe the Albian people were guided to Wenland by God, and they consider protecting the land to be a sacred trust. They also view the easement as critical to protecting their fresh water supply and right to a healthy environment.

*The prior analysis stands, but it need not be exclusionary. To the extent the Albian community is motivated by a genuine connection to the land and sees its rights as intertwined with the land, its inclusion as a stakeholder can reflect its relationship to the land, even if it doesn't exercise indigenous rights.*



## TNC in Wenland (SCENARIO 2)

### 1B. Wenland Case Study

**U**nlike Scenario 1, TNC has a large office in a southern Wenland city and a small office in a northern Wen town, where there are three ethnic Wen on staff. TNC has helped Wennec communities near its northern office fund and manage numerous conservation and community development projects over the years. We have not worked much with the other two Wen Camps.

#### Lets Say

1  
As in Scenario 1, the TNC team is considering program activities regarding an old easement project for which no FPIC process was conducted. The idea of initiating activities around the easement has come up informally several times in conversations with Wen contacts, and everyone seems in favor. *In this Scenario, is a broader FPIC process still necessary?*

#### Thoughts and Guidance

*TNC may not need to immediately address the lack of FPIC in every legacy project; however, modifying, expanding, or revisiting a project may trigger that need. Because FPIC is such a powerful relationship-building tool, TNC should not shy away from exploring it. It's not clear whether the Wennec Camp would be able to authorize further development of the project without involvement from the other Camps or broader Wen authority. An open FPIC process would answer this question and help TNC build trust and relationship with the Wenna and Wenebe Camps as well.*



2

**The Wennec Camp wants TNC's help in developing a herd management program for the Wendbok, a culturally significant reindeer. In the past, Wendboks were a staple of the Wen diet, but overpopulation has become an issue in some regions where fewer Wen youth are taking up hunting.**

*The fact that the proposed action would affect a migratory herd means a management plan is more likely to affect the other Wen Camps as well. And an additional inquiry and consultation are warranted to ensure that all Wen people are being considered in the decision-making.*

3

**Following on the above, when TNC asks to begin a broad consultation process about the Wendbok, Wennec leaders firmly object, saying that there are political considerations TNC wouldn't understand. They also say that a core tenet of Wen self-government is that individual communities control local land- and resource-use decisions — and this authority extends to migratory herds.**

*This scenario introduces tension related to the principle of Respect for Self-Determination, which urges TNC to respect the Wennec's own understanding of their authority within broader Wen society. Without any clear evidence that this understanding is problematic, TNC should probably defer to the Wennec's process. At the same time, TNC should let the Wennec know they will be checking in with the Wenna and Wenebe authorities, since TNC owes a duty of Respect for Self-Determination to the Wen people as a whole. TNC should be prepared for difficult cases where respecting a decision from one community could undermine self-determination of another or the community at large.*

4

**The Wennec move forward with their herd management program. TNC wildlife specialists who look at their initial plan are dismayed, saying it doesn't take into account data about the whole ecosystem. The Wen individuals on staff at TNC tell their colleagues that the whole thing is probably just an attempt by local big shots to get around Wenland hunting permit restrictions that the Wen have long objected to. *Can TNC take a stand against the program or at least its hasty implementation?***

*TNC does not have the agency to decide what's best for the Wen. Instead, staff should defer to the Wen's authority to exercise their self-determination. The fact that the Wennec Camp's plan does not immediately meet the ideals or expectations of TNC is no reason to depart from Respect for Self-Determination, though it may lead to discussion with the Camp and an offer of assistance.*

*In any relationship with an IPLC, there is much that TNC likely doesn't see; here, the Wennec Camp's plan may rest on indigenous knowledge about the herd and the ecosystem that is not stated in the plan documents. The fact that TNC has Wen staff members doesn't negate the fact that TNC is an outsider organization. However, TNC's commitments to Informed Decision-Making, Meaningful Consultation, and Inclusion could lead*

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*TNC to advocate for more discussion of the herd management plan, as long as it does so with respect for the Camp's ultimate right to decide for itself.*

---



# The Permafrost Crisis

## 1C. Wenland Case Study

**In July 2019, a groundbreaking study on data gathered from a global network of permafrost test sites confirmed what climate experts had long feared: permafrost throughout the subarctic is thawing and beginning to release massive amounts of stored methane and CO<sub>2</sub> into the atmosphere. A rapid meltdown could double the amount of CO<sub>2</sub> in the atmosphere, and unstable thawed permafrost could trigger massive erosion and threaten infrastructure such as roads, bridges and buildings across the subarctic. In August 2019, TNC received a large private grant to explore permafrost preservation and mitigation strategies.**

A few months later, FrostLock, a permafrost technology company, approaches TNC with an idea. FrostLock has developed and patented the use of hydrofracking technology and proprietary liquid gas mixtures to stabilize permafrost at a massive scale. In press releases, FrostLock touts its venture capital funding, its recruitment of the world's leading permafrost geologists, and the minimal environmental impacts of its technology — which they claim could not only save the planet but generate tens of thousands of jobs. FrostLock proposes using the Wend to test its technology and pledges to compensate for the minimal environmental impact by funding a Conservation Management Area that would encompass most of the undeveloped Wend. FrostLock agrees to an FPIC process, which they will fund, but they want to approach the Wen arm-in-arm with TNC because TNC is trusted by the Wen.

### Lets Say

### Thoughts and Guidance

1

***Before TNC is contacted by Frostlock, we want to talk to the Wen about deploying the permafrost conservation grant funding we received from the private donor. Can TNC initiate discussions even though the Wen have not raised the issue?***

*Yes. TNC can pursue our own conservation agenda as long as we follow the Principles and Safeguards. The caution recommended by this Guide should not be read as discouraging TNC from offering our services. Often TNC's ability to secure funding for conservation work is a key contribution we bring to an IPLC relationship. Initiating the discussions*

*ensure that any efforts are consistent with the Wen's exercise of self-determination. The important fact is that, consistent with the principle of Prior Engagement and Collaborative Relationships, TNC is not bringing a fully developed plan to the Wen for approval but is initiating a discussion.*

2

**Regarding the FrostLock proposal, can or should TNC negotiate certain terms of cooperation, such as the extent of the Conservation Management Area, before agreeing to approach the Wen?**

*A transparent, multi-stage process may be appropriate, starting with informing the Wen of FrostLock's proposal and seeking guidance on how to proceed.*

*The principle of Prior Engagement counsels against negotiating with FrostLock before discussion with the Wen. The reason is that having a discussion with FrostLock carries a risk of making decisions about the initiative before incorporating IPLC perspectives. TNC should be clear in discussions with the Wen that we have not yet vetted the initiative with FrostLock, much less endorsed the proposal.*

3

**Should TNC simply tell the Wen about FrostLock's proposal and hand over negotiation to Wen leadership? What if the TNC team is concerned about the Wen's practical ability to negotiate equitably with FrostLock?**

*TNC should be careful. Even handing over a proposal might be taken as an endorsement. And while TNC should scrutinize the basis for our concern over the Wen's negotiating abilities, there will be circumstances where such concern is warranted. This project could have major impacts on the Wen and their land; as such, their right to self-determination is activated at its highest level, along with the underlying principle of FPIC. TNC cannot usurp the Wen's role or undermine their self-determination, but respect for the Wen's rights might require a more engaged approach.*

4

**Initial dialogue with Wen leaders shows that they don't like the idea and just want to be left alone. Should TNC proceed with further consultation? What if TNC adamantly believes that FrostLock's technology is the only hope to guard against catastrophic CO2 and methane emissions that could destroy all prior climate efforts?**

*Some degree of advocacy is appropriate, and it may be tempting to rely on the Informed Decision-Making principle to justify pushing the Wen into further consultation to educate them about the initiative's importance. But neither the principle of Free Choice nor the Wen's right to self-determination are served by forcing them to engage*

## Lets Say

## Thoughts and Guidance

*in unwanted processes. The balance will depend on the circumstances. TNC staff must be prepared to set aside even our strongest organizational commitments in order to respect the Principles and Safeguards, especially Indigenous Self-Determination.*

5

**Same as the above, but TNC is aware of several committed Wen climate activists who are trying to convince the Wen Councils to see things differently. Does this change the analysis?**

*Conflicting intra-community views might justify some effort to support processes that ensure all views are heard. But this must be done through IPLC institutions and processes. If Wen institutions have not clearly spoken, there may be more room to work alongside community members who share TNC's own views. To preserve Overarching Good Faith, TNC must be careful to avoid sowing conflict in a community or Camp by supporting one group over another (see [Wen Self-Government hypothetical scenario](#)).*

6

**Alternative to the above, the Wennec leadership that TNC approaches for Initial Dialogue about FrostLock's proposal is quickly and strongly interested and begins discussions about future meetings and consultation. Shortly thereafter, leadership from the Wenebe Camp sends a fiery letter to TNC saying that it has authority to speak for the Wen regarding any consultation process. What does TNC do now?**

*After receiving the Wenebe letter, TNC should slow down our work on the substance of the proposal and revisit the question of how we are engaging with the Wen. Once an Engagement Plan is in place, we can resume work on the proposal.*

*Situations like this are why the Guide recommends establishing an Engagement Plan as early as possible. The choice of who to talk with is often freighted with implications that outsiders don't understand. TNC should have conducted enough research to know to start dialogue with all three Camps simultaneously.*



## Wen Self-Government

### 1D. Wenland Case Study

**M**ost Wen live and work alongside the Albian population in Wenland society under the Wenland territorial government and the Albian national government, but Wen self-government persists to an extent. The three Wen Camps occupy areas that partially overlap, and they each maintain a quasi-executive Camp Council.

The Councils, which are majority male but have some female representation, typically focus on efforts to preserve and promote Wen culture. There are also quasi-judicial Elder Councils composed of only men, who advise the Camp Councils and help resolve disputes. The authority of all these Councils has almost never been tested in Albian courts, which exercise civil and criminal jurisdiction over the Wen population.

#### Lets Say

#### Thoughts and Guidance

1

Following up on point 6 in the “Permafrost Crisis” scenario, TNC is now working with all three Wen Councils to agree on an Engagement Plan. The Wenebe and Wennec Councils vehemently disagree on the amount of consultation needed. Both Councils acknowledge that neither is superior and that decisions affecting the Wen can only be made by consensus. Three months go by and the disagreement persists. FrostLock is considering abandoning its Wenland project, which neither Council wants. *Can TNC adjust its involvement to pressure the Councils to agree on an approach?*

*The simple but profound truth is, TNC’s work with IPLC institutions must persevere even when things are hard or frustrating. True collaborative relationships and respect for self-determination aren’t contingent on things going as planned. TNC teams have to live with IPLC governance procedures we may find frustrating or counterproductive, but we need to work according to the rules and expectations of the system. Whether TNC can increase advocacy and try to pressure the Councils for legitimate purposes will depend on Wen rules and expectations—but this must be pursued in the spirit of Free Choice and zero tolerance for coercion.*

2

**In response to the disagreement, FrostLock suggests that TNC should work with FrostLock on a Plan B to conduct an FPIC process exclusively with the Albian government, noting that the Wen Councils are “just advisory anyway.” Can TNC entertain this suggestion?**

*No. Regardless of what authority the Wen Councils presently exercise under Albian law, indigenous self-determination and self-government are larger, global commitments that TNC respects and upholds. TNC should embrace any opportunity to support indigenous self-determination, even if there is an arguable basis not to.*

3

**While working with the Wen Councils, TNC is approached by a Wen splinter group, Wenza, that has a longstanding list of grievances about the Councils. Wenza claims that its voice will not be heard in the Council-led consultation process being planned. Does TNC have an obligation to hear Wenza out? What if the Councils tell TNC not to pay attention to Wenza? If TNC does listen to them and believes that Wenza has a legitimate distinct viewpoint that will not otherwise be included in the consultation process, does TNC have an obligation to take steps to include them?**

*TNC must adhere to the rules and expectations of established IPLC institutions, and we don't get to decide how IPLC institutions should work. At the same time, we must uphold the Principles and Safeguards. Depending on the circumstances, the principles of Equity and Inclusion and Informed Decision-Making might justify encouraging the Councils to include Wenza, or proposing a process for its views to be heard. Any such action should be pursued in service of self-determination, as embodied in the Wen's established institutions and processes.*

4

**Same as the above, except Wenza is a group of Wen women who have spent years fighting for more recognition and influence in the face of what they see as discriminatory practices enacted by the male-dominated Councils.**

*This is a difficult but not unusual scenario. The principles of Equity and Inclusion call for some effort at intervention. Given the existence of gender equity issues and the impact that the massive FrostLock initiative could have on Wen self-government and culture, gender should be considered a key issue. A collaborative analysis should be conducted using TNC's Guidance for Integrating Gender Equity in Conservation. TNC's participation lies within a continuum of attention to gender equity — from gender-blind, which often perpetuates entrenched discriminatory practices, to gender-balanced, -sensitive, -responsive and -transformative approaches. TNC does not have the power to dictate an approach to the Wen Councils, but staff should monitor gender equity and determine whether the Equity principle is being observed before proceeding with any initiative.*

5

**Same as the above, except that (a) the Councils don't exclude women from informational sessions, only from having a final vote; (b) TNC becomes aware of claims that most Wen women oppose Wenza's agenda; and (c) TNC hears from both men and women that Wen women have a strong voice in decision-making via family-based customs and cultural privileges.**

*This scenario is merely designed to illustrate how nuanced and difficult these situations can be. Cultural practices are not necessarily discriminatory just because they don't map neatly onto the anti-discrimination norm as certain societies understand it. On the other hand, words like "nuance" and even the concept of cultural relativism is sometimes used to sustain problematic privilege models. This further underscores the importance of applying the principles of Equity and Inclusion in a culturally responsive approach.*



## Template:

# Engagement Plan

This template is a starting point for developing the Engagement Plan described in [Step Two of the Learning & Early Discussions Module](#) of the Guide. The Engagement Plan should be focused on the “who” and “how” of early discussions, as TNC and the IPLC are getting to know each other, not on the detailed “what” that follows later and is guided by the Consultation Plan referenced in Module Two. This template also includes some questions for TNC and the IPLC to consider when putting the plan together. Agreement on the contents of this Engagement Plan should be documented in a culturally responsive manner, which may include signatures or initials on the plan, an exchange of emails, a show of hands at a meeting, a protocol or ceremony.

Content entered into this form **will not be saved** if filled out in a browser. [Learn more](#)

Initiative: \_\_\_\_\_

Time period: \_\_\_\_\_

Date: \_\_\_\_\_

Updated as of: \_\_\_\_\_

Approved by:

Organization or group:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

**1. TNC team capacity**, including language, cultural experience and training needed for working with IPLCs.

a. Staff training and workshops taken, and other learning experiences:

b. Other capacity needs:

c. How capacity needs will be filled, e.g., internal or external resources

**2. Key issues to be discussed by TNC and the IPLC.** This list should reflect the high-level topics the parties will discuss when getting to know each other; the points listed in (a) through (c) below are examples only.

a. IPLC development goals and natural resource priorities:

b. TNC’s conservation priorities:

c. Potential areas of alignment between (a) and (b) and opportunities for collaboration:

**3. Means by which discussions will occur**, describing how different social identities will be meaningfully included

a. Frequency and timing:

b. Place:

c. Format:

**4. Key participants from TNC and the IPLC.** Include the name and title of each participant and the topics to be discussed; some participants may be important for some discussions and not others. Review this list to ensure representation from IPLC institutions and inclusion of different social identities.

a. TNC:

i. Name and title	Issue(s) to be discussed
<hr/>	<hr/>

ii. Name and title	Issue(s) to be discussed
<hr/>	<hr/>

iii. Name and title	Issue(s) to be discussed
<hr/>	<hr/>

b. IPLC:

i. Name, title and organization	Issue(s) to be discussed
<hr/>	<hr/>

ii. Name, title and organization	Issue(s) to be discussed
<hr/>	<hr/>

iii. Name, title and organization	Issue(s) to be discussed
<hr/>	<hr/>

## 5. Existing IPLC engagement processes.

a. Describe established engagement processes the IPLC prefers to follow, if the IPLC is willing to share this information:

b. Describe prior consultations with other NGOs and the positive and negative aspects of those experiences, if the IPLC is willing to share this information:

c. Describe the IPLC's preferred engagement processes:

## 6. IPLC Decision Making

a. Describe how the IPLC will make decisions during initial engagement:

b. Describe how those decisions will be conveyed to TNC:

c. Assess whether there's sufficient cooperation to proceed:

## 7. Documentation of the Engagement Plan

a. Notes or correspondence on how the Engagement Plan was created in collaboration with the IPLC:

b. Describe how the final terms of the plan were communicated to the IPLC:



## 8. Review and update the Engagement Plan

a. Dates for periodic reviewing and updating:

--

b. Dates of updates reflecting changes in the TNC team, IPLC or goals, work plan or budget of the initiative:

--

### Questions to Consider for the Engagement Plan

- Would it help to reach out to other organizations who have worked with the IPLC to learn more about the IPLC's formal and informal decision-making process?
- What steps have you taken to ensure that the IPLC representatives with whom you are speaking have legitimacy in the eyes of the wider community they purport to represent?

This PDF has been provided primarily for printing or offline use. This form cannot be filled out digitally unless it is downloaded and opened in a PDF program such as Adobe PDF Reader or Preview (Mac OS). Unfortunately, text entered into this form **will not be saved** when using a browser such as Chrome, Safari or Internet Explorer.



## Module 2:

# Free, Prior & Informed Consent

In this module:

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[Learn what FPIC is and why it's important](#)

---

[Assess staff competencies for FPIC](#)

---

[Create a Consultation Plan, including impact assessment and budget](#)

---

[Seek consent via agreed-upon process, remembering consent needs to be reaffirmed throughout the initiative](#)

### Wenland Case Studies:

[2A. Consultation Coalition](#)

[2B. Consent & the Right to Withhold Consent](#)

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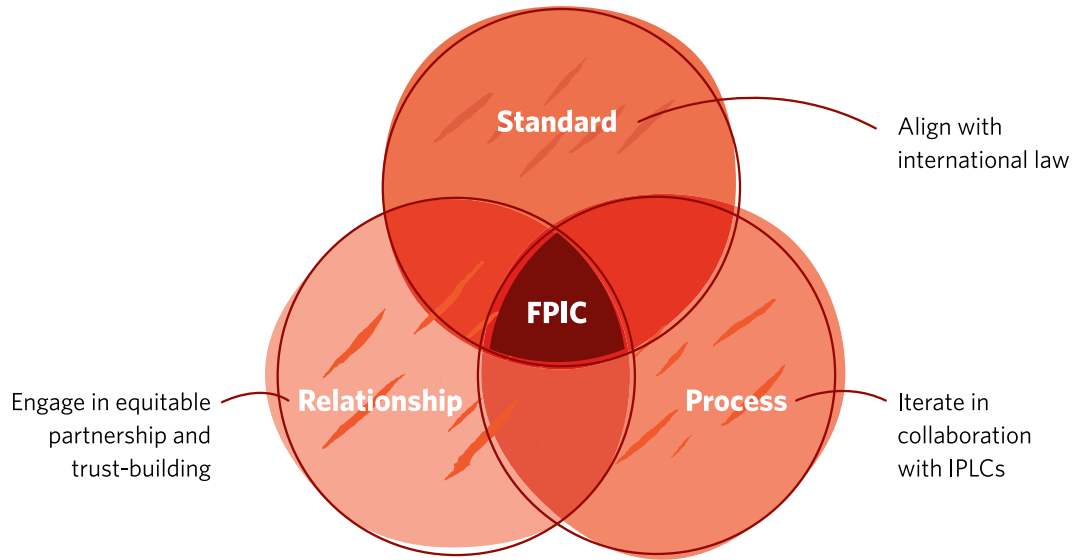
## Introduction

**T**his module provides advice TNC staff can use to conduct a Free, Prior & Informed Consent process. This module follows the [Learning & Early Discussions Module](#), which is designed for use in the earliest stages of engagement with indigenous peoples and local communities. If early discussions show there's alignment to move forward, TNC can initiate more detailed dialogue and consultation procedures for seeking consent, as shown in this FPIC Module.

TNC's work with IPLCs should always embody the Principles and Safeguards described in the [Introduction](#) to this Guide, which themselves reflect the elements of FPIC.

## FPIC as a Multi-dimensional Concept

FPIC is a multi-dimensional concept—part standard, part process, part relationship—that must be embedded in TNC’s work.



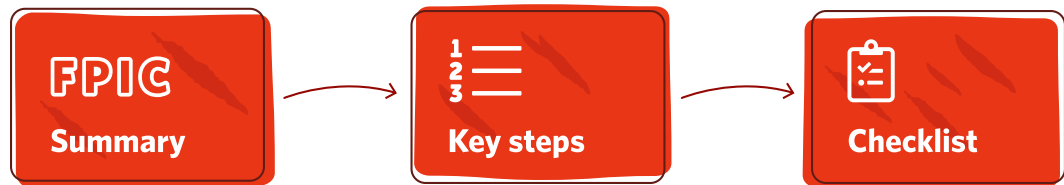
### Is an FPIC Process Required?



Refer to the decision tree in Appendix III for guidance:

[FPIC Decision Tree](#)

After gathering information in the [Learning & Early Discussions Module](#), staff should be confident in creating a transparent and inclusive FPIC process. This module provides the following framework:



- 1. A summary of FPIC** — a definition, its legal basis and the costs and benefits of the process.
- 2. Key steps that should be included in any FPIC process** — including tips and tools TNC staff can adapt to their situation.
- 3. A checklist** — for verification and monitoring during the life of an initiative, plus suggested documentation to save. Appendix IV contains a list of [FPIC Frequently Asked Questions](#).

FPIC is an iterative process. It won’t be completed in a single meeting. It is achieved through continuous

dialogue, information sharing, and the building of trust and cooperation over time. The Learning & Early Discussions Module, which serves as the foundation for FPIC, outlines actions that should begin before seeking and obtaining consent for an initiative.

The early-stage situational analysis contemplated by CbD 2.0 will involve discussions with IPLCs to understand their key priorities and challenges. Staff should keep FPIC fundamentals in mind, making sure the IPLCs fully understand the reason for discussions, that they can choose a time, place and format for discussions, and that they can modify or terminate discussions anytime. Staff should document those early engagements using the tips, tools and guidance provided in the [Documentation Module](#).

Not all engagements will require an FPIC process. For example, if an IPLC asks TNC for help with a simple product (say, a literature review) as part of a larger, multi-stakeholder initiative, TNC might not need a full FPIC process. TNC also wouldn't undertake an FPIC process if another non-indigenous organization asked TNC to play a minor role in a project led by that organization, again involving multiple stakeholders and impacting an IPLC. However, in this case TNC would want to make sure that the leading organization had gotten FPIC from the IPLC using a robust process embodying the principles and concepts outlined in this module.

Most importantly, FPIC is a continual process, not something that is secured once and forgotten about. Staff should revisit the process whenever the scope of an initiative changes, new substantive information arises, or a new phase of the initiative begins. Staff should continue collaborating on shared priorities reflecting the vision and standards of the IPLC. For initiatives that were already underway prior to the Guide, staff should take stock of where the initiative is in its lifecycle, and consider which elements of FPIC can be implemented. While this might be a variation on a full FPIC process, it strengthens and demonstrates TNC's commitment to taking a human rights-based approach in its work.

## Principles and Safeguards

The Introduction includes a discussion of all the [Principles and Safeguards](#) that apply to equitable partnerships. Six are particularly important for FPIC:

### FPIC's Key Principles and Safeguards

#### **Free Choice and Self-Determination:**

TNC must engage IPLCs in dialogue and consultation in a way that respects and contributes to IPLC autonomy, and supports their priorities and vision for the future. This requires an understanding of historical and current circumstances and a commitment to mutual learning and respect.

#### **Prior Engagement and Collaborative Relationships:**

TNC must take the time to fully understand the IPLC's perspective before formulating ideas for an initiative. The [Learning & Early Discussions Module](#) suggests an Initial Dialogue and a research-based Engagement Plan in which all parties agree on who is participating and how discussions will take place. That approach should carry forward into formal consultation, background learning, decision-making and consent. The IPLC can withhold consent anytime, and they should never be put in the position of an up-or-down vote on a proposal that they may

agree with only in part. The proposal should, instead, be crafted by the IPLC or in collaboration with TNC.

**Informed Decision Making:**

So they can fully assess impacts, the IPLC must have access to all information about activities that affect them, in a setting, language and format that meets their needs.

**Equity:**

Fairness and trust-building should be at the forefront, ensuring the IPLC has full access to power, opportunities and resources.

**Inclusion:**

Collaboration, decision-making and consent considerations must be non-discriminatory. Contributions from all social identities should be incorporated and provisions should be made for accessibility and physically and emotionally safe forums and processes.

**Right to Withhold Consent:**

Indigenous peoples can withhold consent to initiatives that will impact them at any time. This is true even if an in-depth, costly consultation process has already occurred. Often some objections can be resolved to prevent the complete rejection of an initiative. For that reason, in addition to “yes” and “no” answers to a request for consent, the answers “yes, but with conditions” and “no, but let’s keep discussing” should be offered.

## Understanding FPIC

The definition of FPIC, the legal basis for FPIC, and costs and benefits of obtaining FPIC discussed below are a deep dive, which is a departure from the other modules in this Guide. FPIC is a complex, nuanced and essential element of IPLC engagement. If you want to learn more about the history and evolution of FPIC, see Appendix IV for [FPIC Frequently Asked Questions](#).

### Definition of FPIC

Indigenous peoples have the right to self-determination. Their autonomy over their identity, culture and development priorities rests on their ability to self-govern, live on their lands, maintain their culture and protect themselves from undue influence by surrounding colonial or dominant society. FPIC is an international legal standard of assessment for interactions with IPLCs — and decision-making affecting IPLCs — to ensure we respect their right to self-determination.

FPIC ensures that indigenous peoples can give or withhold consent to initiatives that impact them. But FPIC is not just about giving or withholding consent. It is an ongoing process to protect the right of indigenous peoples to self-determination, allowing meaningful discussions and the freedom to make decisions without intimidation.<sup>[1]</sup>

TNC is committed to implementing FPIC not only to comply with United Nations mandates, but because human rights-based approaches to conservation are: (a) aligned with our Code of Conduct and Value of Respect for People, Communities and Cultures; and (b) essential to effective, lasting conservation. FPIC is vital to build equitable relationships that are rooted in trust and drive sustainable positive outcomes for

people and nature.

Some authorities have swapped out the “C” in FPIC to mean “consultation” instead of “consent.” To some extent, this places an appropriate emphasis on consultation, an emphasis TNC shares, reflected in the foundational principle of Meaningful Consultation. Removing the word “consent,” however, might signal a reluctance to concede the right to withhold consent. By contrast, TNC recognizes and respects that right in its full expression.

### Defining Free, Prior, Informed, and Consent

#### Free

Free means consent that is given free of coercion, intimidation or manipulation. TNC’s deep commitment to this concept is expressed in Free Choice and Self-Determination, described in the [Principles and Safeguards](#).

#### Prior

Prior means that consent should be sought not just in advance of any authorization or commencement of activities, but at the earliest stages of project development, before key decisions are made. This objective can be difficult to achieve in practice, so careful planning and the exercise of restraint is called for in the early stages of an initiative. Read more in the section on [Prior Engagement and Collaborative Relationships](#).

#### Informed

Informed means that the IPLC has been given access to all relevant information about the purpose of the project, its size, scope and lifespan, likely participants, and impact assessments. Possible impacts include environmental, human rights, economic, political, social and cultural. Information should be provided in culturally responsive formats and languages, accommodating the needs of people from different social identities. Sufficient time must be spent learning about underlying issues, following up, and allowing for dialogue within the IPLC and between the IPLC and TNC.

#### Consent

Consent refers to an authoritative and legitimate collective decision made by the IPLC, using its own customary decision-making processes. TNC fully respects indigenous peoples’ right to withhold consent. The IPLC can freely say “yes,” “no,” “yes, but with conditions,” or “no, but let’s continue to discuss” to any proposed activities.

### Resource: A Deeper Dive on FPIC

For a more detailed discussion of each FPIC element, see pages 15 and 16 of the FAO manual [Free Prior and Informed Consent: An indigenous peoples’ right and good practice for local communities](#).

## Legal Basis for FPIC

The FPIC standard has evolved over decades. It’s now part of many international treaties, such as the UN Declaration on the Rights of Indigenous Peoples – UNDRIP – and the Convention on Biological Diversity.

It's also referenced in the policies of governments and international institutions, case law of national courts and international human rights tribunals, mandates of local and global multi-stakeholder platforms (such as the Forest Stewardship Council), voluntary standards in the private sector, as well as the commitments of NGOs like TNC.

TNC's commitment to FPIC emerges from these sources of law and guidance, which recognize the fundamental role FPIC plays in protecting indigenous peoples' right to self-determination. UNDRIP specifically requires the state to engage in FPIC and TNC believes that non-state actors share this responsibility as well.

#### Resource: FPIC in International Law

For a comprehensive overview of the key international legal instruments that have referenced FPIC and helped to shape its evolution, see Annex 2 in the Forest Stewardship Council's [FSC guidelines for the implementation of the right to free, prior and informed consent \(FPIC\)](#) (2012).

FPIC has been viewed as a legal principle designed to protect rights specific to indigenous peoples. But FPIC also applies to interactions with local communities whose members identify less strongly as indigenous, who make no claim to be indigenous, or who are not recognized by the state as indigenous, but who maintain distinct identities and cultures linked to lands they have occupied or used for generations. TNC has adopted this approach by making the Guide and its procedures, protocols and guidance applicable to local communities as well as indigenous peoples.<sup>[2]</sup>

## Costs and Benefits of FPIC

Staff should be aware of and prepare to address the costs and benefits of an FPIC process. FPIC is not optional, however, regardless of costs and benefits. In practice, the initial costs of a comprehensive FPIC process often lead to more positive and sustainable outcomes for people and nature, which could actually lower total costs over time. For planning purposes, an FPIC budget should include staff and IPLC time for building relationships and the costs of holding inclusive meetings, gathering and disseminating information, and communicating with the IPLC. Illustrative budgets for two different scenarios are presented in the Wenland case study. Future versions of this Guide will include more guidance on costs and budget planning for FPIC.

#### Wenland Case Study: Hypothetical Budget

[Hypothetical Budget](#)

An FPIC process requires time, resources and commitment. Some may feel FPIC is too difficult or time-consuming and that it will leave conservation work mired in procedural or political disputes. Others may find the process too open-ended and uncertain. Both concerns are understandable.

In practice, however, it's a different story. The elements of FPIC are profound but also flexible and efficient. If an FPIC process encounters serious obstacles, they likely would have emerged at some point in an

initiative's lifespan. FPIC helps everyone anticipate issues that would be far more costly to address later in the process, possibly avoiding mistakes that would cause irreparable harm.

More and more, IPLCs are coming to expect an FPIC process. By fully embracing it, TNC can ground its relationships in trust, equity and genuine collaboration. And the downstream benefits are considerable. The risks of neglecting FPIC are likewise considerable. These risks include the withholding or withdrawal of support by key rights holders or stakeholders as well as reputational risk.

The possibility that consent may be denied, barring a forward path on an initiative TNC cares deeply about, must be accepted with humility and a broader appreciation of the global context. More specific risks must be considered, like the possibility that the implementation of FPIC in an area where state or local government is hostile to indigenous peoples could increase retaliatory action directed at the local community or at TNC for supporting their rights.<sup>[3]</sup> This module will help staff learn about and prepare for these risks, while also illuminating the short- and long-term benefits of a human rights-based approach to conservation.

### Resource: Additional FPIC Considerations

For a list of additional challenges to consider when implementing FPIC, see page 178 in: Lewis, Jerome. "[How to implement free, prior informed consent.](#)" *Participatory Learning and Action*, 65 (2012): 175-178.

## Key Steps in the FPIC Process

The key steps of any FPIC process should strike a balance between being flexible enough to be adapted to TNC's conservation work around the world, while also providing concrete and useful guidance. These FPIC steps assume staff have already used the [Learning & Early Discussions Module](#) to identify and begin conversations with IPLCs who might be impacted by an initiative. In the case of longstanding IPLC relationships and existing projects, staff should use the [Learning & Early Discussions Module](#) and [Documentation Module](#) to record the key points of the collaboration.

From that stage, the FPIC process includes the following steps:

- [Step One: Build Internal FPIC Capacity](#)
- [Step Two: Develop Consultation Plan](#)
- [Step Three: Seek Consent](#)

## Guidance

### Step One: Build Internal FPIC Capacity

TNC must build our internal capacity before engaging with IPLC representatives. Some of this would have occurred when staff completed the [Learning & Early Discussions Module](#), but staff capacity should be revisited and strengthened if needed.



The TNC team should include people who have experience engaging communities in culturally sensitive contexts. This may not come naturally to everyone. [The Diversity Learning page](#) on TNC's CONNECT intranet provides resources on leveraging differences and fostering inclusion.

TNC's team should include expertise in the specific languages, histories and cultures of the IPLCs, and external partners or consultants should be engaged if this expertise can't be found internally. These consultants may include individuals within the IPLCs, local NGOs or academics known to and respected by the IPLCs.

Finally, TNC staff should be humble, open to cross-cultural learning and communication, and committed to equity and inclusion. Staff should also be genuinely collaborative and prepared to take responsibility for our mistakes.

### Tip: Host a Learning Exchange

If the TNC Business Unit has worked with other IPLCs, the Business Unit could consider a learning exchange, where representatives from previous IPLC partnerships are brought together with those from potential partnerships. They can ask questions about TNC's credibility, methodologies and commitment for the long run. These exchanges can build trust and remind all parties that a quality FPIC process not only advances a specific initiative, it supports an IPLC's broader vision for self-determination.

### Key Issue: The Scope of Required Competencies

Below is a list of competencies that may be required for an FPIC process. TNC should determine which competencies it already has in-house and which should be externally sourced. The team should be able to:

- Develop equitable partnerships rooted in trust and collaboration
- Facilitate consultations, including with women and members of other social identities
- Collaborate with the IPLC to understand land, water and natural resource use, including potential differences across gender, age, access, etc.
- Represent TNC and make binding commitments on its behalf
- Conduct environmental, economic, social and human rights impact assessments
- Integrate technical and scientific information with indigenous knowledge if the IPLC chooses to share it
- Liaise with IPLC leaders and government officials (note: TNC representatives should have authority and standing within TNC commensurate with that of IPLC leaders or officials)
- Understand (a) state or local law or regulations, and (b) international human rights law, especially expectations around rights or obligations the IPLC may have. These might be related to land, environmental conditions, access to information, self-governance or intellectual property
- Analyze, provide information and give advice on economic benefits and risks of development opportunities

- Create and maintain records that ensure transparency and accountability
- Provide support or capacity building for any necessary governance functions, e.g., financial management

### Key Issue: Local Legal Framework



Staff should understand the host country's legal framework for IPLC engagement. Does the country have any laws or regulations regarding FPIC, land tenure, customary use, resource use or other rights of IPLCs? Knowing the relevant laws, regulations and standards will help staff ensure an FPIC process that meets expectations. Some of the elements described in this module that are aligned with international best practices may go above and beyond local or national legal requirements.

### Resource: Researching Local Laws on FPIC



Annex 5 of the FAO manual "[Free Prior and Informed Consent: An indigenous peoples' right and a good practice for local communities](#)" includes a helpful framework for researching local laws on FPIC.

Examples of relevant information regarding legal framework:

- Country support for UNDRIP
- National laws supporting FPIC or similar processes
- Human rights and indigenous peoples' rights organizations' commentaries on FPIC processes in the country

## Step Two: Consultation Plan and Process

### Template: Consultation Plan



[View the Consultation Plan Template](#)

Early discussions should follow the Engagement Plan from the [Learning & Early Discussions Module](#). This is intended to address how TNC will communicate with IPLCs in appropriate formats, languages, and forums. When TNC and the IPLC are ready to progress into the FPIC consultation process, the existing Engagement Plan should be further developed into a Consultation Plan.

While the Engagement Plan was focused primarily on "who" and "how," the FPIC Consultation Plan is more

focused on “what.” What are the substantive points for discussion? What are the proposed activities? What potential impacts, costs and benefits exist for TNC and the IPLC? The Consultation Plan can be relatively short and simple, and the format should be mutually agreeable to TNC and the IPLC.

The content and focus of the Consultation Plan depend on the IPLC and the specific initiative. There is only so much guidance that can be offered in the abstract, so the TNC team should work with the IPLC to assess and prioritize potential human rights impacts or areas of concern about the initiative. As the consultation proceeds and new learnings arise, this discussion should evolve and deepen.

There are many different models for this kind of process: impact assessment, risk analysis, due diligence and beneficiary assessment are just some approaches outlined by experts and practitioners.

## Human Rights Impact Assessment

A Human Rights Impact Assessment (HRIA) is a way of conducting a structured analysis of the potential impacts and concerns regarding an initiative. Some resources on HRIs are noted below. There are many different models and approaches, any of which might be well-suited to an initiative’s needs. For example, a [beneficiary assessment](#) focuses on existing perceptions in a community.

Human rights consulting firm NomoGaia describes its core process as a risk assessment, which is less intensive than a full impact assessment. A risk assessment analyzes:

1. The right or rights impacted’
2. All relevant rights holder groups
3. The severity of the potential impact
4. The probability of the potential impact or rights issue
5. The underlying causes of the risk
6. The nature and extent of the connection to the initiative or operation

Human Rights Due Diligence, elaborated in the UN [Guiding Principles on Business and Human Rights](#) is another widely adopted approach. HRDD aims to “identify, prevent, mitigate and account for how [companies] address adverse human rights impacts.” The four components are:

1. Assessing actual and potential human rights impacts’
2. Integrating the assessment findings and implementing measures to mitigate impacts
3. Tracking responses and outcomes
4. Communicating to all stakeholders and rights holders how impacts are being addressed

No one methodology is right for every instance. Depending on specific circumstances, the TNC team should pick one and proceed under the Principles of Self-Determination, Collaborative Relationships and Overarching Good Faith. The TNC team should continuously conduct research and consult experts, and then share what it learns with the IPLC in dialogue and collaboration, making no firm conclusions until the IPLC’s perspective is fully incorporated.

Impact assessments and prioritized areas for concern will be used throughout the lifespan of the initiative to design a [Conflict Resolution Plan](#), choose focus areas for implementation (see [Implementation Module](#)) and develop indicators for monitoring, evaluation and adaptation (see

Monitoring, Evaluation & Adaptation Module).

## Good Practices for a Human Rights Impact Assessment Process

### Prioritize (by category if needed)

Consultation should be comprehensive, but people can lose momentum if there's too much disparate information. If there are a large number of issues, prioritize by category to allow your approach to be both comprehensive and concise.

### Listen to the IPLC

Prioritization should flow from two sources:

1. What is the IPLC most concerned about? A potential impact may become a priority if it affects something valued by the IPLC.
2. What are the initiative's most important impacts in terms of social, cultural, environmental, economic or regulatory changes?

### Expect the assessment to evolve

Make sure to leave room for all parts of the assessment—including the IPLC's views about what's most important—to evolve as new information comes in and an IPLC becomes more informed about the initiative's impacts.

### Consider multiple perspectives and consequences

Any area of concern will have an initial most obvious impact. A methodical assessment unpacks the impacts and considers short- and long-term consequences, different perspectives, trade-offs and countervailing interests. TNC teams should consider the initiative broadly and its consequences in light of the rights outlined in the UNDRIP, such as self-determination, rights to territory and protection against forcible removal, rights to culture and protection against forced assimilation, and rights to self-government and financial and technical assistance.

In addition to an impact assessment, the Consultation Plan should include:

- Scheduling - a summary of when and where consultations will occur.
- Budgeting - an estimate of the costs each party will incur during the consultation process and how the IPLC will be compensated for its participation.
- Milestones - This ensures discussions are on track and proceeding at a comfortable pace for all, and that both TNC and the IPLC remain committed to the process.
- Documentation - The [Documentation Module](#) provides helpful tips and tools for ensuring thorough, consistent, and culturally responsive documentation. Questions to consider:
  - Who will document what?
  - How will meetings, telephone calls and other steps in the process be recorded and described?
  - Where will meeting minutes be kept and how will they be shared?
  - Are FPIC documentation plans compatible with any TNC record-keeping requirements for the initiative?
  - Is documentation maintained in a format that is easily available to staff (who may come

and go over the initiative's lifespan) and readily shareable with and stored by IPLC partners?-

### Resource: Additional FPIC Guidance

Page 43 of [FSC FPIC implementation guidelines](#) includes a helpful list of elements to consider when developing a Consultation Plan detailing how the parties will communicate and consult.

For a list of issues to consider when creating the Consultation Plan, see the bullets on page 21 of [Conservation International's FPIC guidelines](#).

Another good list of elements that should be included in the agreed-upon FPIC framework can be found in Section 1.3, page 38, of [FSC FPIC implementation Guidelines](#).

Equitable Origin and the Roundtable on Sustainable Biomaterials have guidance on what constitutes acceptable evidence of FPIC processes in [Enabling FPIC Through Voluntary Standards](#), Project Report, July 2018.

### Resource: Human Rights Impact Assessment Resources

The [UN Global Compact Guide to Human Rights Impact Assessment and Management](#) is a primary go-to source for HRIA practice. A one-page cheat sheet of core human rights is on page 62 of the HRIAM.

NomoGaia: [Human Rights Risk Assessment: A Practitioners Guide](#) and [The Business Person's Guide to Human Rights Risk Assessment](#).

Business for Social Responsibility: [Conducting an Effective Human Rights Impact Assessment](#).

[Oxfam's "Getting It Right" Tool on Community-Based Human Rights Impact Assessment](#) has information, case studies and a customizable dataset builder.

For helpful guidance when engaging with IPLCs in an impact assessment during the consultation process, see the Convention on Biological Diversity's [Akwé: Kon Voluntary Guidelines](#). Section IV of the guidelines includes information on how to integrate cultural, environmental and social impact assessments into a single process and issues and questions to consider with each component.

### Key Issue: Consent as a Process

Even if an IPLC is enthusiastic about working with TNC, **the FPIC process cannot be shortened or rushed**. One initial meeting is probably not sufficient for achieving the principle of Informed Decision-Making. TNC and the IPLC should work toward specific, clear agreements (ideally written down) that are formally approved by IPLC institutions. These agreements may reveal issues not presented at early meetings that need to be addressed.

TNC should therefore maintain a steady and thorough approach even in the face of legitimate excitement about mutual agreement. The FPIC process is iterative, and pace and progress will depend on the people involved and the circumstances of each initiative. There's no universal rule about how many meetings to hold, nor how often. For example, meetings with a farming community that happen on a weekly or monthly basis might need to be delayed during peak harvesting season. The same might be true for meetings with a pastoral community that needs to travel in search of grass during a drought. TNC should not force meetings if this happens. Instead, the process should be continually adapted to meet IPLC needs.

In later meetings, one goal should be to reach a consensus that the "Informed" element of FPIC has been met. Conservation initiatives can be complicated, so there may be occasional conflicts or detours into relevant side issues along the way. Staff should remember that the process is as much about educating themselves about how the IPLC sees the initiative as it is about sharing TNC's views. In many cases, a detailed or even difficult FPIC process yields a stronger, more equitable team heading into implementation.

#### Tip: Prepare for an Iterative FPIC Process



Consent requires an iterative process that involves presenting the initiative, asking for feedback from the IPLC, adjusting parameters based on feedback and seeking agreement to move forward. These negotiations between TNC and the IPLC frequently center on resources to be protected, how they should be protected, compensation for any damages to resources, and agreements about benefit sharing.<sup>[4]</sup> If the initiative involves capacity building, the discussion may focus on its scope and purpose, the people to whom it will be offered, and expectations regarding IPLC member roles.

#### Resource: Topics for Negotiation



For a detailed list of topics often negotiated during the FPIC process, and potential solutions for resolving conflict during those negotiations, see the bullet points on pages 56 and 57 of the [FSC Guidelines for the Implementation of the Right to Free, Prior and Informed Consent](#). For conflict-related issues specifically, see also the [Conflict Resolution Module](#) of this Guide.

#### Key Issue: Ensuring Inclusion



Inclusion has been repeatedly flagged as a key issue to consider. At this stage, TNC should integrate its earlier learning to conduct a gender analysis with the IPLC to locate the initiative on the Gender Integration Continuum and develop appropriate follow-ups and support practices, such as a Gender Action Plan. For a detailed explanation of the CARE Gender Integration

Continuum and steps for gender equity integration, see TNC's Guidance for Integrating Gender Equity in Conservation.

In addition to gender, TNC should analyze any other relevant inclusion issues. The FPIC process needs to be built with awareness, adaptation and affirmative support for all social identities. See [Appendix II – Glossary of Key Terms](#) for a list of social identities to think about.

### Key Issue: Community Capacity



As the framework for collaboration and equitable partnership develops, both parties should assess the capacity needs of the IPLC, in the same way that TNC assessed its own capacity in [Step One](#). The IPLC's familiarity with the concept of FPIC must be determined first. Then assess: their level of commitment to the process; compensation for their time; their ability to effectively send, receive and store information; and their capacity to attend or host meetings. **If the assessment reveals that the IPLC could benefit from third-party support, including advice from a legal consultant of their choosing to make sure they understand the costs and benefits and legal ramifications of the initiative, TNC should consider budgeting for that.**

In deciding how information will be shared, teams should understand the IPLC's preferred language(s), levels of literacy, and how the IPLC prefers to receive information: orally, visually in photos or videos, in writing, via diagrams or drawings, or another way.<sup>[5]</sup> Information may need to be shared in different ways with different groups. See the [Documentation Module](#) of this Guide for more information.

### 2A. Wenland Case Study Consultation Coalition



FrostLock has convened civil society organizations, Albanian national and Wenland territorial government agencies and Wen Councils for a series of consultations on the possibility of deploying its technology across the Wenland permafrost.

[View Case Study](#)

## Step Three: Final Presentation and Seeking of Consent

When a shared understanding is reached about the proposed collaboration, TNC will typically prepare a Final Presentation or Summary, or work with the IPLC on a similar process. The summary will include final outcomes, agreements reached, and key expectations or underlying assumptions. During consultations, parties will sometimes think out loud or speak conditionally, hypothetically or provisionally, which can leave misunderstandings about what's in or out of the overall initiative when it's time to move forward. A Final Presentation will articulate TNC's intentions and assurances in a concrete form upon which the IPLC's

determination of consent can be based. A summary or presentation may also be useful for Documentation purposes, as discussed in the [Documentation Module](#).

A Final Presentation or Summary can take many forms. It should be adapted to the IPLC's needs and preferences, and be presented in the IPLC's preferred language and format. It might be oral, ceremonial or part of a customary protocol or practice of the IPLC's choosing. In these cases, TNC should consider keeping a written version of the Final Presentation as part of its own Documentation Plan. The Final Presentation should be given in full compliance with the procedures and expectations of the IPLC and its leadership institutions.

### Key Issue: Memorializing Consent



The IPLC's consent, if granted, should be memorialized in a Consent Agreement. All parties must agree on the form this will take. TNC might want to document consent one way (approved minutes of the decision meeting or a written statement of consent, for example) and the IPLC might want to document it another way (a ceremony or protocol, for example). TNC should respect the IPLC's preferred approach, while also seeking to satisfy its organizational requirements.

If TNC feels that certain details of the consent need to be in writing (see the tools immediately below for common elements of written Consent Agreements), and IPLC written language and literacy levels support this, TNC may ask for a signed Consent Agreement before committing its resources.

TNC should, however, avoid meeting its documentation preferences by having IPLC leaders sign documents they can't read. Where there is no written language, or limited literacy, it is preferable for TNC to record the oral consent with permission and preserve it along with a written document that explains TNC's understanding of the consent but that does not purport to be binding on the IPLC. See the [Documentation Module](#) for more information.

### Resource: Elements of a Consent Agreement



The FAO manual [Free Prior and Informed Consent: An indigenous peoples' right and good practice for local communities](#) includes a good list of topics that should be covered and provisions that should be included in any Consent Agreement.

Common elements of a Consent Agreement include language specifying geographic areas that are off-limits, means of calculating and disbursing any compensation that will be paid to the community, conflict resolution mechanisms, and monitoring and evaluation plans.

### Key Issue: Maintaining Consent



Once consent is granted, implementation can begin. Implementation activities should be checked periodically against the Consent Agreement to ensure that the conditions upon which



consent was granted are still being met. It's also important to revisit the Consent Agreement whenever major decisions arise, when TNC or IPLC representatives change or new phases in the initiative are anticipated. TNC and the IPLC should both monitor the Consent Agreement via follow-up discussions and check-ins. The format, frequency and documentation of these discussions should be agreed on up front. This process for verifying ongoing consent should strengthen the IPLC's partnership with TNC as the initiative evolves and conditions change.

### Key Issue: Who Speaks for the Community



It is sometimes hard to know who from the IPLC is authorized to give consent. Which individual, group of individuals or body speaks for the IPLC and gets to say "yes" or "no"? What if the IPLC is divided? TNC will hopefully have become familiar with the IPLC's decision-making processes in [Step One](#) and [Step Two](#). But if conflict or confusion remains, TNC must seek to learn more about the IPLC's decision-making approaches, using community-based and external expertise as appropriate. TNC should try to reach a broad consensus on decision-making even if there are strong differences about what the ultimate decision should be. Then, staff should clearly communicate to the entire IPLC how it plans to proceed.

If TNC staff can't confidently affirm a consensus, they should put the process on hold and seek input and advice from TNC's [Global Indigenous Peoples and Local Communities Team](#) and colleagues in the [VCA Network](#).

### Key Issue: Consent vs. Consultation



The IPLC is free to say "yes" or "no," as well as "yes, but with conditions" and "no, but let's continue to discuss" in response to the Final Presentation. They may also indicate a lack of consent by declining to engage in additional discussions. If the IPLC declines to engage, staff should respect that choice and not keep reaching out. If the IPLC accepts some parts of the project and rejects others, TNC must understand exactly which parts are and aren't acceptable. Listening closely to the IPLC and incorporating their concerns and suggestions into the Consent Agreement will go a long way toward ensuring an initiative's success.<sup>[6]</sup>

TNC's FPIC process might differ from some government-run FPIC processes that are effectively Free, Prior & Informed Consultation processes, in which the state retains ultimate authority over the decision. See Appendix IV - [FPIC Frequently Asked Questions](#) for a summary of the distinction between consultation and consent. These processes can be legitimate and compatible with legal regimes that respect IPLC rights. TNC, however, like most non-state actors, has committed to not proceeding with an initiative unless Free, Prior & Informed Consent is given by all impacted IPLCs.

This commitment does not end the discussion on consent; difficult situations may still arise. For example, what if one significantly impacted IPLC gives consent and wants to proceed, while

a less significantly impacted IPLC withholds consent? What if an IPLC that is only minimally impacted by an important project withholds consent? What if an IPLC claims it will be impacted and demands an FPIC process, but TNC staff or other observers do not believe the impact claim is plausible?

There are no easy answers. Each scenario must be handled on a case-by-case basis. But TNC staff should hold the conviction that consensus is possible in most cases. TNC's mission is to conserve the lands and waters on which all life depends. IPLCs share these values more deeply than most because their identities are often inextricably connected to the natural world. The expressions of those values can sometimes be very different and, together with entrenched oppressive systems, power imbalances, and the legacy of colonialism, can lead to conflicts, as has so often happened between conservation groups and IPLCs in the past. FPIC offers a hopeful, and more reliable, path to a future of different outcomes.

## 2B. Wenland Case Study

### Consent & the Right to Withhold Consent



Concerns linger about FrostLock and its technology, but the Wen Councils say they will give consent. They recognize that the gravity of the situation—for the permafrost and for the planet—requires action even if outcomes are uncertain.

[View Case Study](#)

## FPIC Checklist

### Step One: Build Internal Capacity

- Ensure the TNC team has the necessary competencies or can access them externally.
  - Consider TNC's [Diversity Learning page](#) as a resource on topics such as leveraging differences and creating inclusion
  - TNC team should include expertise in languages, histories and cultures of the IPLCs involved, and be committed to collaboration and cross-cultural learning and communication
- Develop a Documentation Plan.
  - Work collaboratively with the IPLC to develop the plan
  - Agree on who will document what and in what format
  - Identify a member of the TNC team who will maintain records per TNC requirements
- Understand host country legislation regarding FPIC requirements, remembering that TNC is committed to a process that may go above and beyond the local legal framework.

### Step Two: Consultation Plan and FPIC Process

- Collaborate with the IPLC to create a Consultation Plan to include:
  - A mutually agreed approach to an impact assessment, to include potential human rights impacts of proposed activities (should be updated as consultation discussions proceed):
    - Positive impacts
    - Negative impacts, including severity, probability and underlying causes of the risk
    - Proposed mitigation for potential negative impacts described above
    - Plan for tracking responses and outcomes and for communicating how impacts are being addressed
  - Scheduling
  - Budgeting
  - Milestones
  - Documentation
- Hold meetings at times and places of the IPLC's choosing, including additional meetings or provisions for different social identities, if necessary.
- Document presentations made by TNC, IPLCs and others to record outcomes and agreements.

## FPIC Checklist (Continued)

### Step Three: Final Presentation and Seeking of Consent

- Conduct a [final presentation or summary](#) articulating TNC's intentions and assurances in a concrete form upon which the IPLC's determination of consent can be based.
  - Tailor the presentation to the context and IPLC expectations
  - In the case of oral, ceremonial or other customary practices, TNC may want to consider keeping written documentation for its records:
    - Document who attended
    - Take minutes
    - Keep a written record of the presentation
  
- If consent is granted:
  - Agree on the form consent takes
  - Make sure IPLC concerns and suggestions are incorporated in any [Consent Agreement](#)
  - Document who participated in Consent Agreement meetings
  - Create a plan for when and how to periodically revisit the Consent Agreement

## Documentation to Save

See [Documentation Module](#) for additional context and considerations for documentation

- Consultation Preparation
  - List of required competencies for the FPIC process showing how the TNC team meets these requirements
  - Summary of relevant host country legislation regarding FPIC
  - Capacity needs of the IPLCs, including familiarity with FPIC, ability to send, receive and store information and capacity to host and attend meetings
  
- [Consultation Plan](#), created in collaboration with the IPLC, that addresses at a minimum the following elements:
  - Substantive areas of discussion
  - Scheduling
  - Budgeting
  - Milestones
  - Documentation
    - Clearly articulate who will document what
    - Ensure all meetings, telephone calls and other steps in the process are noted and described
    - Explain how meeting minutes will be kept and shared
    - Check compatibility of these documentation plans with TNC's most recent record-keeping requirements for FPIC practice
    - Ensure documentation is maintained in a format that's easily available to staff and is readily shareable with and stored by IPLC partners
  - Information drawn from a [Human Rights Impact Assessment](#), including actual and potential impacts, proposals for mitigating impacts, a plan for tracking responses and outcomes and for communicating to stakeholders and rights holders how impacts are being addressed
  - Records of how the plan was co-created and shared with the IPLCs
  
- Materials documenting meetings, events, and similar activities (minutes, list of attendees, copies of substantive materials distributed)
  
- [Final presentation or summary](#) articulating TNC's intentions and assurances in a concrete form upon which the IPLC's determination of consent can be based
  
- [Consent Agreement](#) (if consent is given) that reflects an agreed-upon format and includes IPLC concerns and suggestions, who participated in Consent Agreement meetings, and a plan for when and how to periodically revisit the Consent Agreement
  
- Notes on meetings revisiting the Consent Agreement

## Notes

<sup>[1]</sup> Food and Agriculture Organization of the United Nations. (2016). Free and Prior Informed Consent: An indigenous peoples' right and a good practice for local communities. Manual for Project Practitioners. Available: <http://www.fao.org/3/a-i6190e.pdf>

<sup>[2]</sup> For TNC, "indigenous peoples and local communities" refers to peoples and communities who possess a profound relationship with their natural landscapes, which they depend on for cultural, spiritual, economic and physical well-being. Original inhabitants and migrants who have a close relationship with the landscape are likewise considered to be IPLCs. TNC recognizes the collective rights of indigenous peoples as codified in international law. In this Guide, "IPLCs" is used to refer to all indigenous peoples and local communities.

<sup>[3]</sup> FSC, *supra*, at 15.

<sup>[4]</sup> Jerome Lewis, *supra*, at 177.

<sup>[5]</sup> Conservation International, *supra*, at 22-23.

<sup>[6]</sup> FAO, *supra*, at 25.



## Consultation Coalition

### 2A. Wenland Case Study

**F**rostLock has now put together a coalition of civil society organizations, Wenland government agencies and Wen Councils to participate in a series of consultations on the possibility of deploying its technology across the Wenland permafrost. FrostLock will use its start-up investor funding to pay for the consultation, which will also address issues related to the administration of the Conservation Management Area that FrostLock is funding.

The Wenland government is strongly interested in the employment and investment connected to the deployment of the technology. FrostLock has committed to rigorous environmental monitoring of its test sites but acknowledges that the technology deploys aggressive underground fracking techniques using the injection of proprietary chemical mixtures to accomplish the fracturing and stabilization.

#### Lets Say

1

As the consultation process starts up, a split emerges between the Wen Councils, who want a thorough process no matter how long it takes, and FrostLock and the government agencies, who are more focused on efficiency and economic development. Should TNC “take sides” with the Wen Councils and push for a more thorough process?

#### Thoughts and Guidance

Coalition work at its best is about looking for areas of overlap and building on mutual agreement. TNC should strive to cooperate broadly in service of its mission. But there will also be times when “taking sides” is appropriate and the Principles and Safeguards together reflect TNC’s strong institutional commitment to careful processes designed to protect indigenous self-determination. TNC should also be aware of social power imbalances and that legacies of colonialism may have left IPLCs in a disempowered position that requires affirmative mitigation. The scenario reflects the kind of situation were TNC should consider using its leverage to assist the Councils in seeking more process.

2

**As the consultation continues, TNC's concerns grow. For example, FrostLock insists that the environmental issues are "too technical" for public consultation, which should just focus on social impacts. Despite initial misgivings, the Wen Councils hold a series of internal deliberations and ultimately decide they feel comfortable with the process moving forward in the way FrostLock suggests. *Should TNC continue to push for a more robust process?***

*As noted, TNC has a strong commitment to process, but that commitment is designed to serve the principle of Indigenous Self-Determination. Where the Councils have made a considered decision like this, even one TNC disagrees with, TNC's commitments to Meaningful Consultation and Informed Decision-Making may carry less weight.*

3

**As the process continues, the TNC team becomes convinced that the project is a very bad idea because of: (a) severe environmental risks which are not being fully addressed in the consultation; and (b) social risks to the Wen, such as the influence on the culture and lifestyle of small Wen towns from an influx of non-Wen project workers. *Can TNC vocally oppose the project even if the Wen Councils remain supportive of it?***

*TNC's views and positions are secondary and supportive as regards the IPLC perspective, which is rooted in the IPLC's right to self-determination even if the IPLC's view is in conflict with the well-meaning notions of outsiders. TNC may still offer its views and positions in a constructive spirit to the IPLC, however, the extent to which TNC can advocate for its views without running afoul of the principles of Free Choice and Self-Determination will depend in part on the nature of the issue. In this scenario, TNC would seem to have a stronger case to vocalize opposition given its views are based on its experience with environmental issues rather than paternalistic views of what is best for Wen culture and lifestyle. In either case, TNC should be careful to ensure that any perceptions of its power or position don't confer more authority on its views than would be appropriate.*

4

**Alternatively, the TNC team becomes convinced that the FrostLock technology is the only avenue to address this enormous climate threat and protect the health of the planet. The Wen Councils, however, are focused on the lack of specific employment guarantees for their communities. *Can TNC vocally support the project even when the Wen are unconvinced?***

*TNC is entitled to its own views but must be accountable to the rules and expectations of the IPLC institutions and cultures with whom it is working, and must always act in service to Indigenous Self-Determination, Collaborative Relationships and Overarching Good Faith. This could mean exercising a degree of restraint even though TNC feels passionately. But where a collaborative relationship is well-grounded and the IPLC partner is secure from coercive pressure, TNC might legitimately have more "room" to advocate strongly without infringing on other principles.*



5

**By the time the consultation process reaches the topic of the Conservation Management Area, the Councils say they trust TNC, the communities are losing interest in the process, and TNC should just “take care” of the details regarding the conservation plan, which is within TNC’s expertise anyway. Of course, the communities will vote at the end and thus have a voice that way, regardless of what TNC recommends. Can TNC “take over” this part of the consultation process?**

*Probably no. While TNC perhaps can play a larger role given its expertise and the Councils’ request, FPIC must be grounded in the IPLC’s fully informed decision-making and experience of consultation. A “shortcut” process could lack legitimacy in the future, especially concerning something as impactful as a massive Conservation Management Area on indigenous territory.*



## 2B. Wenland Case Study

# Consent & the Right to Withhold Consent

**C**oncerns linger about FrostLock and its technology, but the Wen Councils say they will give consent.

They state that they recognize that the gravity of the situation—for the permafrost and for the planet—requires action even if outcomes are uncertain. “We must act. We will deal with problems as they come up,” says one Wen leader.

### Lets Say

### Thoughts and Guidance

**1**  
**Leaders of the Wen Councils indicate that they can provide the Wen’s consent to the project without a popular vote. Should TNC push for a different process?**

*Absent some very clear problem, TNC should defer to the Wen Councils about the scope of their authority to speak for the Wen. Nonetheless, TNC may want to review the extent of community involvement in the consultation process. Approval of this initiative is a major decision, and the Wen have a complex and partially divided social structure. Have the principles of Inclusion and Informed Decision-Making been considered for all three Camps? Has the safeguard of the Right to Withhold Consent been protected? If concerns remain, a request for more process or broader indications of community support may be helpful.*

## Lets Say

## Thoughts and Guidance

2

Same as above, but Council leadership candidly admits they don't want to submit this directly to the Wen people who will be fearful of the project. "This is a moment for leadership," they say. *Now should TNC push for a different process?*

*This scenario sharpens the dilemma, but the same analysis applies. The Wen's self-determination as expressed through their established institutions must be respected. The decision on which matters should get a popular vote versus the determination of representatives is a constitutional decision made in different ways by all societies. To impose an outsider's view of what is necessary would run counter to self-determination. That said, TNC might legitimately use any leverage we have within the process to advocate in the direction of more consultation and informed decision-making, while still maintaining respect for self-determination.*

3

The Wen Councils say no formal document or memorial is needed to express consent. TNC legal and certain donors, however, insist on having some sort of documentation before they feel comfortable moving ahead with the initiative. *Should TNC insist on some sort of documentation of consent?*

*TNC must continuously respect self-determination. But we can also condition our ability to further engage, make commitments, or deliver third-party commitments, like funding, on our own internal needs, including documentation. However, if limiting TNC's involvement would threaten the overall project, this insistence could have coercive impact, which must be taken into consideration. TNC's influence must be exercised in collaboration with the Wen to find a form of memorialization that is mutually satisfactory (see the Documentation Module).*

4

FrostLock also wants to memorialize the consent and provides the Councils with an authorization agreement drafted by its lawyers. FrostLock insists that the document is the product of extensive review by FrostLock's legal department and that it cannot be modified—and that the company cannot move forward until it is signed. *Should TNC support FrostLock's insistence that the Wen Councils sign this document?*

*Illustrating the concerns described in #3, FrostLock's position may be coercive, non-collaborative and insufficiently respectful of self-determination. TNC should work with FrostLock to find a more collaborative approach.*

5

**Alternatively to the above, as the consultation concludes, the Wen Councils have not made any assurances about supporting the project but want to deliberate with their constituent communities. However, the Albian government announces its support, and FrostLock calls an end to the consultation, saying it has fulfilled the legal requirements and that no further process is needed because the Wen have no veto right under Albian law. FrostLock also says that the Wen have not formally withheld consent, they just have not made a decision. Can TNC stay involved in the project?**

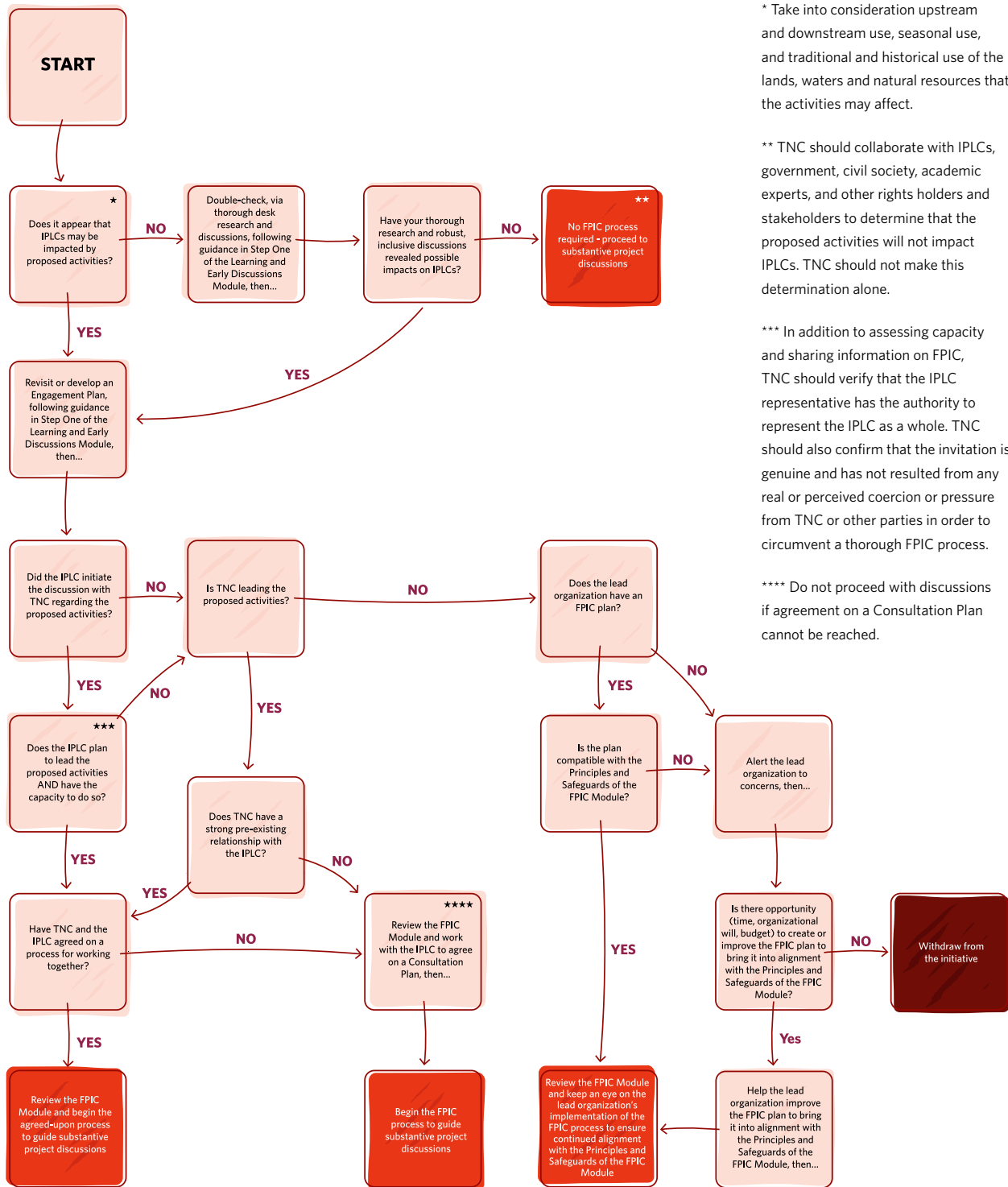
*TNC must either use our leverage to resist moving ahead without full FPIC from the Wen or withdraw if FPIC isn't reached. Even if TNC cannot change the facts of the situation, we must adhere to the guiding principles of FPIC, including respect for the Right to Withhold Consent. The fact that the Wen did not formally deny consent doesn't matter. The Right to Withhold Consent is an essential safeguard, but FPIC is a broader and more affirmative concept which is not satisfied by a purported lack of clear opposition.*

6

**Alternatively to the above, the Wenna and Wennec Councils provide consent while the Wenebe Council vigorously opposes. Because the Wen have always operated according to consensus, there are no traditions or rules stating that the majority prevails.**

*This situation is best interpreted as revealing gaps and failures of the Informed Decision-Making and Meaningful Consultation safeguards. Why do the Councils disagree? TNC should take inspiration from the Wen consensus-driven model and continue the consultation and conflict resolution procedures until consensus is reached.*

# Is an FPIC process required?



## Wenland Case Study:

# Hypothetical Budget

Prior to Initial Dialogue, FrostLock asks TNC for a ballpark estimate for the FPIC process and TNC responds with the following points:

- The scope and budget for the FPIC process will be deeply interwoven with the facts of the situation. Early on, TNC can only provide a high-level estimate with the caveat that different circumstances may lead to dramatically different requirements and costs.
- Nonetheless TNC recognizes that proper budgeting is important to provide focus and structure and set expectations for the process. TNC agrees to work with the Wen Councils to prepare a more detailed budget later.
- TNC recognizes that FPIC should be grounded in fairness and efficiency and urges all parties to be economical with time and resources. At the same time, the decisions reached in the FPIC process may impact fundamental self-determination rights of the Wen and involve complex issues that need to be fully understood by all parties—so the process needs to be thorough and will require effort.
- The guiding principle is that the extent of the duty to consult is **proportionate** to the nature and extent of: a) the potential **impacts** on the IPLC; and b) the potential **benefits** to be shared with the IPLC. This proportionality principle was discussed in the foundational consultation cases of *Delgamuukw v. British Columbia* in Canada and *Sarayaku v. Ecuador* at the Inter-American Court of Human Rights, among many other sources.

After consulting with in-house and external practitioners, TNC provides the following analysis and estimate:

- As described in Hypo 1b, FrostLock’s proposal consists of two components: a) the installation of a network of hydrofracking stabilization test sites; and b) a Conservation Management Area. Because the potential impacts and benefits of these two components are significantly different, they should be analyzed separately.
- Regarding the technology test sites:
  - These sites present an extreme level of impact, involving heavy construction and equipment, the injection of proprietary chemicals into the permafrost, increased national and global attention, social and economic impacts, and much more. The benefits analysis for the Wen is complicated, but for FrostLock a successful test (which is not guaranteed) could lead to billions of dollars in technology contracts.
  - The impact/benefit analysis would be similar to high-impact, large-scale extraction projects in the oil, gas or mining industries. FPIC costs should be benchmarked against best practice in those areas. The actual costs may be **higher** given the novel and unfamiliar nature of the technology.
  - TNC reports that the cost of FPIC for high-impact, large-scale extraction projects ranges widely from \$250,000 to \$5,000,000. After considering the local economy, TNC advises FrostLock that a best-case scenario would be \$800,000 for one year, but it should be prepared to fund up to \$1,500,000 should difficult or unexpected issues emerge in the process. Regarding the CMA:
    - The proposed CMA is massive in geographic scope, but the extent of potential impact is dramatically lower than the technology sites. The potential impacts on the Wen’s rights and interests that need to be considered include: the impacts of fortress models of conservation; indigenous resource use; the cultural significance of the Wendbok; hunting restrictions; and responsibility for monitoring and herd management.

- TNC reports that the cost for FPIC for large, low-impact conservation projects ranges from \$50,000 to \$500,000. TNC advises FrostLock to budget around \$200,000 for one year and advises that the cost could escalate by \$80,000 if difficult issues emerge that require expert analysis.

After initial dialogue with the Wen Councils on the scope and design of the FPIC process, TNC helps the Councils submit the following draft FPIC budgets for the technology test sites and the CMA. TNC advises that the numbers are subject to change as new information or issues emerge.

#### Draft FPIC Budget for Technology Test Sites:

Category / Item	Cost	Notes
<b>Salary</b>		
Existing TNC staff	-	Paid by TNC
Additional Project Manager	-	Paid by TNC
Community Outreach Coordinator	-	Paid by TNC
<b>Travel</b>		
Travel - FrostLock	-	Trips x Individuals = 16 Cost internal to FrostLock
Travel - TNC (domestic)	\$14,400	Trips x Individuals = 24
Travel - TNC (international)	\$9,000	Trips x Individuals = 6
Travel - Wen leadership & liaisons	\$7,000	Trips x Individuals = 28
Travel - Wen community	\$10,000	General fund
<b>Contracts/Consultants</b>		
Community Liaison Coordinator	\$40,000	1 Indiv x \$5,000/mo x 8 months
Community Liaisons	\$54,000	3 Indivs x \$3,000/mo x 6 months
Materials & Logistics Coordinator	\$65,000	1 Indiv (logistics)
Preparation of a Draft Environmental and Social Impact Assessment (ESIA) for community review and adaptation	\$350,000	Includes collecting and compiling baseline data, identifying and analyzing discrete and cumulative impacts, identifying mitigation and monitoring options
External review/second opinion: Cumulative impacts analysis (relying on ESIA data)	\$35,000	Often justified given greater degree of extrapolation and/or subjectivity in cumulative analysis
Expert Report: Comprehensive literature review on hydrofracking	\$45,000	-
Consultant Report: Dispute resolution and remedy mechanism models	\$28,000	-

**Draft FPIC Budget for Technology Test Sites (continued):**

<b>Category / Item</b>	<b>Cost</b>	<b>Notes</b>
<b>Contracts/Consultants</b>		
Local NGO-led Complementary Project: Traditional Knowledge survey and database	\$30,000	-
Translation of key documents into Albian and Wen	\$50,000	-
Diversity, Equity & Inclusion Coach	\$25,000	-
<b>Materials, Supplies &amp; Other Direct Costs</b>		
Initial Dialogue budget	\$4,000	-
Issue scoping - working session and follow-up	\$8,000	2 days, group size 30+
Main FPIC working sessions (3)	\$36,000	3 days, group size 150+ Space, technology, materials, food
Focus Session: Gender Equity	\$9,000	1 day, group size 40+
Community outreach meetings (6)	\$66,000	6 days, groups 30-100 Space, materials, food
Final negotiating sessions	\$15,000	3 days, group size 25+ Retreat-style space
Agreement and Honoring Ceremony	\$30,000	-
<b>Communications</b>		
Media/public education budget - Albian	\$50,000	-
Media/public education budget - Wenland	\$125,000	-
Targeted outreach to Wen communities	\$25,000	-
Short video series	\$12,000	-
Albian government & public relations services	\$16,000	-
Digital document preservation and public access system and services	\$35,000	-
<b>Indirect Costs (@30%)</b>	\$342,480	
<b>TOTAL</b>	<b>\$1,484,080</b>	



**Draft FPIC Budget for the CMA:**

<b>Category / Item</b>	<b>Cost</b>	<b>Notes</b>
<b>Salary</b>		
Existing TNC staff	-	Paid by TNC
Additional Project Manager	-	Paid by TNC
Community Outreach Coordinator	-	Paid by TNC
<b>Travel</b>		
Travel - FrostLock	-	Trips x Individuals = 8 Cost internal to FrostLock
Travel - TNC (domestic)	\$1,800	Trips x Individuals = 6
Travel - TNC (international)	\$1,500	Trips x Individuals = 1
Travel - Wen leadership & liaisons	\$3,200	Trips x Individuals = 12
Travel - Wen community	\$2,000	General fund
<b>Contracts/Consultants</b>		
Community-Based Impact Assessment Consultant	\$75,000	1 Indiv full-time at 8 months. Provides logistics and drafting CMA-ESIA text
Community Liaisons	\$6,000	3 Indivs x \$1,000 one-time fee
Expert Report: Natural resources services analysis	\$15,000	-
Expert report: Wendbok population trends, distribution, and conservation status	\$15,000	-
Translation of key documents into Albian and Wen	\$20,000	-
<b>Materials, Supplies &amp; Other Direct Costs</b>		
Environmental and land-use data collection, compilation, and preservation costs	\$22,000	-
Listening Sessions	\$4,000	4 days, group size 30+
Main FPIC Working Session	\$6,000	1 day, group size 75+ Space, technology, materials, food
Community Outreach Sessions	\$4,000	4 days, group size 30+
<b>Communications</b>		
Publicity for sessions	\$500	-
<b>Indirect Costs (@30%)</b>	\$46,500	
<b>TOTAL</b>	<b>\$201,500</b>	

**Template:**

# Consultation Plan

This template is a starting point for developing the Consultation Plan described in [Step Two of the FPIC Module](#) of the Guide. Whereas the Engagement Plan in Module One focuses on the “who” and “how” of early discussions, this Consultation Plan focuses on the “what” of discussions – the substantive issues to be discussed, proposed activities, potential impacts, costs and benefits. This template also includes some questions for TNC and the IPLC to consider when putting the Consultation Plan together. Agreement on the contents of the Consultation Plan should be documented in a culturally responsive manner, which may include signatures or initials on the plan, an exchange of emails, a sho of hands at a meeting, a protocol or ceremony

Before beginning the Consultation Plan, revisit the Engagement Plan and consider which parts have proven useful to TNC and the IPLC so far. Consider drawing from and building on content and lessons from the Engagement Plan to develop the Consultation Plan, in tandem with this template.

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Initiative: \_\_\_\_\_

Time period: \_\_\_\_\_

Date: \_\_\_\_\_

Updated as of: \_\_\_\_\_

Approved by:

Organization or group:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

**1. TNC team and IPLC capacity**, including language, experience and training needed for the consultation process. See Questions to Consider below and Step One of the FPIC Module.

a. TNC staff training and workshops taken, and other learning experiences:

b. Other TNC capacity needs:

c. IPLC capacity needs:

d. How TNC and IPLC capacity needs will be filled, e.g., internal or external resources:

**2. Substance of discussions.** The points listed in (a) through (c) below are examples only

a. Proposed activities

i. TNC role: \_\_\_\_\_

ii. IPLC role: \_\_\_\_\_

iii. Role(s) of other actor(s) involved: \_\_\_\_\_

**b. Potential human rights impacts of proposed activities.** The impacts should be updated as consultation discussions proceed. See more guidance on the Human Rights Impact Assessment in Step Two of the FPIC Module.

i. Potential and actual positive impacts:

\_\_\_\_\_

ii. Potential and actual negative impacts, including severity, probability and underlying causes of the risk:

\_\_\_\_\_

iii. Potential and actual negative impacts, including severity, probability and underlying causes of the risk:

\_\_\_\_\_

iv. Plan for tracking responses and outcomes and for communicating how impacts are being addressed

\_\_\_\_\_

**c. Benefit Sharing.** List expected benefits and how they will be shared among the parties. See Step Two of the FPIC Module.

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

**3. Means by which discussions will occur**, describing how different social identities will be meaningfully included

a. Frequency and timing:

b. Place:

c. Format:

## 4. Budget

a. Costs to be paid by TNC:

--

b. Costs to be paid by the IPLC:

--

**5. Milestones.** During the consultation process, the parties intentionally stop and take stock, making sure discussions are on track as originally envisioned.

a. Planned and actual date, participants (name, title, organization), location, topic to be discussed:

b. Planned and actual date, participants (name, title, organization), location, topic to be discussed:

c. Planned and actual date, participants (name, title, organization), location, topic to be discussed:

d. Planned and actual date, participants (name, title, organization), location, topic to be discussed:

**6. Final Presentation and Seeking of Consent.** TNC presents the results of the consultation process in a form upon which the IPLC’s determination of consent can be based.

a. Planned and actual date of the final presentation, participants (name, title, organization), location:

[Attach documentation of the presentation, who attended and meeting minutes]

b. If the IPLC grants its consent, specify:

i. The form the consent will take:

---

ii. Who participated in the meetings:

---

iii. How and when consent will be revisited:

---

[Attach documentation of the presentation, who attended and meeting minutes]



## 7. Documentation

a. Aspects of the consultation process TNC will document:

b. Aspects of the consultation process the IPLC will document:

c. Means of documentation and sharing:

d. Check these documentation plans for compatibility with TNC's most recent record-keeping requirements for FPIC practice:

e. Records of how the plan was co-created, shared with and approved by the IPLC:

## Questions to Consider for the Consultation Plan

- Have TNC and the IPLC assessed and put a plan in place to address their capacity to engage effectively in a robust consultation process?
  - Capacity of TNC, including required competencies; see Step One of the FPIC Module for more information
  - Capacity of the IPLC, including familiarity with FPIC, ability to send, receive and store information and capacity to host and attend meetings
- Have TNC and the IPLC collectively assessed the potential human rights impacts or areas of concern regarding the proposed activities or put in place a plan to do so? See Step Two of the FPIC Module for further guidance.
- Will documentation be maintained in a format that is easily available to staff and readily shareable with IPLC partners?
- Would it help to reach out to other organizations who have worked with the IPLC to learn more about the IPLC's formal and informal decision-making process?
- Have you asked local leaders if they've engaged in similar consultations with other NGOs before and, if so, what were the positive and negative aspects of those prior experiences?
- Have you asked the IPLC if they have existing consultation protocols or processes that they prefer to follow?
- What steps have you taken to ensure that the representatives with whom you are speaking have legitimacy in the eyes of the wider community they purport to represent?

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## Module 3: Conflict Resolution

In this module:

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[Learn about conflict resolution, practices, and tools](#)

---

[Collaborate on a plan for resolving conflict that is culturally responsive — before conflict arises](#)

---

[Identify trusted mediators and other mechanisms](#)

---

[Respond to grievances and see resolution process through to completion](#)

---

**Wenland Case Studies:**  
[3A. Conflict Resolution](#)

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## Introduction

**T**his module offers a framework TNC staff and IPLCs can use in two scenarios:

- setting conflict resolution procedures and expectations at the beginning of a project
- building these procedures into existing IPLC relationships

This module is not just about risk management or preparing for worst-case scenarios. It reflects TNC's support for international law and standards on indigenous rights, where the right to grievance procedures and remedy is well-established.

Trusted conflict resolution procedures are necessary because they can throw light on issues or problems that might otherwise undermine an initiative's success. If concerns linger, trust and support could waver. Plus, conflict resolution, just like [Free, Prior & Informed Consent](#), is a relationship-building tool as much as

it is a risk-management tool.

Some degree of conflict between collaborators on initiatives is unavoidable. But when conflicts are addressed openly, quickly and respectfully, they are opportunities for collaborators to learn about each other, build trust and recommit to a shared future. Conflicts are also an opportunity for TNC to demonstrate its commitment to our Values, Code of Conduct and the Principles and Safeguards set forth in this guide.

Early on, well before a conflict arises, TNC staff and IPLCs should discuss how disputes will be handled and document their shared understanding in a Conflict Resolution Plan. Different situations will have different conflict resolution needs; the menu-based approach recommended in this Guide includes three mechanisms:

### Conflict Resolution Mechanisms

#### **Dialogue:**

Respectful, mutual listening, quick on the heels of arising conflict, inclusive of all views;

#### **Mediation:**

A structured dialogue process, relying on trusted individuals or institutions; and

#### **TNC's Ethics & Compliance Process:**

A grievance procedure administered by TNC's Ethics & Compliance Office for alleged violations of our Code of Conduct or Principles and Safeguards.

In most cases, conflicts can be resolved through Dialogue or Mediation. The Ethics & Compliance Process is available to IPLCs for two reasons: (1) to affirm that TNC staff are held accountable for their actions; (2) to provide a different, perhaps deeper way to talk with TNC and get resources to investigate and resolve conflicts outside of the immediate project team.

In some cases, the three mechanisms will follow a logical progression and will be pursued in succession. You might move from Dialogue to Mediation to solve a conflict. But sequential exhaustion isn't necessary; the IPLC can go straight to TNC's Ethics & Compliance Process if circumstances warrant it. The three mechanisms are a menu of options that are available at any time.

Dialogue and Mediation mechanisms should be adapted to the standards and expectations of the IPLC, should include their methodologies and practices, and should be consistent with the Principles and Safeguards of the Guide. The Conflict Resolution Plan should be continuously revisited to keep it up-to-date with expectations, factual circumstances and learned experience.

Guidance is offered below for implementing the conflict resolution process in accordance with the Principles and Safeguards. TNC staff can also review the dilemmas presented in the Wenland hypothetical case study in this module.

## Principles and Safeguards

The Introduction includes a discussion of all the [Principles and Safeguards](#) that apply to equitable partnership. Four are particularly important for conflict resolution:

### Conflict Resolution Principles and Safeguards

#### **Overarching Good Faith:**

Assuming good intentions is perhaps the most important principle in resolving conflicts with IPLCs. Being honest, respectful and humble and demonstrating Integrity Beyond Reproach is critical.

#### **Self-Determination:**

A collaborative conflict resolution process builds trust, enhances dialogue and embodies TNC's commitment to supporting Indigenous Self-Determination and leadership on conservation outcomes.

#### **Accountability:**

Conflict resolution mechanisms are accountability mechanisms. Accountability isn't something to avoid or fear; it should be embraced as a chance to learn and improve. TNC won't get everything right on the first try. A commitment to accountability and responsibility can turn mistakes and misunderstandings into a platform for more solid partnerships.

#### **Equity & Inclusion:**

Conflict resolution procedures all over the world are marred by exclusionary and discriminatory practices. TNC's conflict resolution practice must demonstrate a thorough understanding of the impacts and legacies of the past. Only by acknowledging these injustices can we provide better access and resolve disputes in a more equitable and inclusive way.

## Guidance

A good conflict resolution process keeps dialogue going, ensures transparency, and promotes equitable relationships between partners. The process need not be prescriptive or an administrative burden. Conflict resolution procedures demonstrate that TNC's work aligns with our Values, Code of Conduct and international law and standards. A mutually agreeable conflict resolution process is one of the most important ways TNC can respect and support the human rights of indigenous peoples and local communities.

### Conflict Resolution as a Human Right

Having a reliable mechanism to resolve conflicts isn't just a risk-management tool or a Plan B if things go wrong. It is a human right.

IPLCs have faced generations of abuse, systemic oppression, and denial of rights. The harm is often compounded by institutional failure to act justly, be accountable, or listen to community concerns. Modern law elevates the right to grievance mechanisms, remedies and accountability measures to the status of a substantive right under international law.

## United Nations Declaration on the Rights of Indigenous Peoples, Article 40

*Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.*

The right to procedural justice is also found in TNC’s Conservation by Design 2.0 Guidance Document. The commitment to conflict resolution emerges from the first of four key advances in CbD 2.0—People in Conservation—which states, “In all our work, we must ensure that vulnerable, disadvantaged, and marginalized people and communities (e.g., low-income communities, indigenous peoples, communities dependent on the local environment, racial and ethnic minority groups, women, children, the elderly) are not harmed and we incorporate social safeguards into project planning and implementation.”

Two social safeguard questions are especially relevant:

- Does the project comply with local and national laws, international treaties and conventions, and other relevant rules?
- Is there an accountability system that is transparent and accessible for primary stakeholders to share concerns or file complaints?<sup>[1]</sup>

CbD 2.0 also recommends that teams working with indigenous peoples provide access to redress through grievance mechanisms that are accessible, predictable, transparent, effective, rights-based, respectful, appropriate, and responsive.<sup>[2]</sup>

Similar commitments to accountability through grievance and conflict resolution are found in leading international frameworks and institutions, such as the International Finance Corporation, the World Bank, the United Nations Environment Programme, the Food and Agriculture Organization of the United Nations, the United Nations Development Programme, the United Nations Guiding Principles on Business and Human Rights, and peer conservation organizations.<sup>[3]</sup>

## Conflict Resolution as a Practical Tool

Conflict resolution procedures shouldn’t be a management burden. Done right, such procedures may allow TNC and the IPLC to focus more time and energy on the initiative itself. In the best-case scenario, everyone emerges from a dispute with a stronger sense of trust and commitment and feels that obstacles have been addressed quickly and overcome fairly.

Of course, not all conflicts will meet these ideals. But a well-framed Conflict Resolution Plan is flexible enough to address many different circumstances. The menu approach described below recommends intuitive, collaborative methods (dialogue), as well as more structured mechanisms (mediation). In situations where there’s less trust at the start, the existence of procedural guarantees might help (TNC’s Ethics and Compliance Process).

## Step One: Develop a Conflict Resolution Plan

A Conflict Resolution Plan is an important part of how TNC respects IPLC rights, demonstrates accountability, and builds and sustains equitable relationships. The Conflict Resolution Plan is foundational to every initiative and should be included in the initial conversations recommended in the [Learning & Early Discussions Module](#). Deliberation and agreement on a plan should be part of any process described in the [FPIC Module](#).

TNC staff working on existing initiatives should assess past experience with conflict resolution. Then they should look for opportunities to raise the issue mid-stream during a project. TNC staff should take care to explain that this doesn't mean they're anticipating conflicts. Rather, it's being brought up as part of an evolving understanding of best practice.

To craft a plan, TNC staff can draw on their own experience, the experience of other TNC teams, and the guidance and resources in this module. Staff should also revisit the [Human Rights Impact Assessment](#) and FPIC process. The Conflict Resolution Plan should provide a clear path to addressing any concerns identified in these assessments and processes. IPLCs might have existing procedures and preferences that should be explored together and incorporated.

A discussion about conflict will help TNC and the IPLC learn about one another's values, expectations, and past experiences with disputes, which come up in any collaborative endeavor. But the deliberation process and the preparation of a plan need not be burdensome. If TNC and the IPLC are in agreement, a plan might simply describe the menu of options below and how they're accessed. It might include specifics, such as the names of trusted mediators agreed upon in advance.

TNC prefers to resolve conflicts without taking legal action. Still, there may be circumstances that result in litigation. If a lawsuit seems possible, consult the Use of Outside Counsel and Litigation SOP and contact TNC's legal team.

## Dialogue

The best way to prevent misunderstandings from escalating to complaints is to enter into each relationship from a place of humble learning, respect and honesty. Keeping communication lines open enables TNC to see issues bubbling up and address them head-on. When trust and understanding are cultivated at the beginning of an initiative, problems are more likely to be resolved through discussion at the team level.

To learn and practice dialogue skills, see the [Diversity Learning page](#) on CONNECT and the Intentional Listening Resources and Indigenous Dialogue and Storytelling resources listed in the Tips & Tools section of this module. The [Learning & Early Discussions Module](#) also discusses relationship-building in detail.

Open dialogue should be part of any IPLC collaboration. But disputes can emerge from difficult circumstances or conflicting interests—and even parties accustomed to open communication may go to great lengths to avoid discussing these hard topics. The dialogue promoted in this guide is an intentional round of dialogue designed to address a specific conflict.

This means the logistics of the dialogue must be considered ahead of time:

- Are all the affected parties available to participate?
- Are parties informed of the subject matter ahead of time so they can prepare?
- Are we respecting IPLC timescales, needs and preferences?

- Are necessary learning resources available?
- Do the circumstances of the dialogue guarantee the physical and emotional safety of participants?

Attention to these parameters is important, but it doesn't need to signal formality. A dialogue characterized by informality and friendly relationships between working partners is a good recipe for success. Additionally, the principles of Overarching Good Faith and Collaborative Relationships require TNC to enter into dialogue prepared to listen and to take action on concerns. Otherwise, dialogue could end up generating cynicism or be dismissed as yet more talk.

## Mediation

Mediation is a conflict resolution mechanism that increases the structure and formality of Dialogue. Ideally, its incorporation is grounded in a deep understanding and respect for existing cultural values and norms for resolving conflicts.

Mediation should rely on IPLC institutions and forums, and traditional ceremonies or practices designed by the IPLC, taking into account government or donor requirements (see [Key Issue: Is there a grievance mechanism mandated by a host country government or donor?](#)).

In some contexts, an external mediation process may be regarded as disempowering, in which case it should not be included in the Conflict Resolution Plan. But in others, having a trusted, third-party mediator available may be acceptable or even preferable. Mediation might create a deeper engagement, mutual understanding and compromise between parties, or it could help parties overcome initial mistrust. A mediation process should result in an outcome, such as a commitment to the mediator's recommendations.

Mediation is not arbitration, and the mediation contemplated by this guidance wouldn't be considered legally or even procedurally binding. Nonetheless, a mediator may make recommendations parties might not want to hear, but might be willing to hear, based on a prior commitment to the mediation process.

If using an outside mediator is acceptable, TNC and the IPLC should identify the person in advance. It might be an objective academic or professional individual or institution. When an outside mediator is chosen, their name and contact information should be included in the Conflict Resolution Plan.

## TNC's Ethics & Compliance Process

As discussed in the [Introduction](#) to this module, in most cases, conflicts can be resolved favorably through Dialogue or Mediation. TNC's Ethics & Compliance Process ensures that TNC takes responsibility for its actions, and provides another way for an IPLC to raise a concern and access resources to investigate and resolve conflicts. (See [Appendix V](#) for more detail on the process.)

The Ethics & Compliance Process is a good mechanism for listening, answering questions or referring concerns back to TNC's program staff for clarification. When a complaint is received, the Ethics & Compliance Office may consult with program staff to get information or clear up a misunderstanding. Often a mutually acceptable remedy can be found, and the complaint can be resolved.

TNC employees or third parties can contact the Ethics & Compliance team anytime to submit a question or concern at the online [Helpline](#), [www.nature.org/tnc Helpline](http://www.nature.org/tnc Helpline). The TNC Helpline is available online and by



phone, text or mail 24 hours a day, seven days a week in multiple languages. Complaints can be submitted anonymously and will be treated confidentially to the extent possible, disclosed only to those with a need to know. When someone calls the Helpline, they will speak with a third-party agent who will document the complaint and forward it to TNC's Ethics & Compliance Team. When someone submits a complaint online, it goes directly to TNC's Ethics & Compliance Team (see [Code of Conduct](#)).

TNC's Ethics & Compliance process should be explained and information on how to access it should be translated into the IPLC's preferred language and distributed throughout the project area. If the IPLC does not speak one of the languages available through the Helpline, TNC may need to hire a translator to help file a complaint. Written complaints may be submitted in any language.

TNC's Ethics & Compliance Process should be presented as an option in the Conflict Resolution Plan at the beginning of a new initiative or as soon as possible in an ongoing partnership.

### Measures to Guard Against Retaliation

Since conflict resolution by definition occurs in the context of discord, it might be accompanied by aggravation, frustration and sometimes aggressive and antisocial behavior. Retaliation against individuals who raise a complaint is a problem faced by institutions of all kinds at all levels. Fear of retaliation is a major deterrent to reporting problems, especially for groups who may have more to lose. As stated in our [Code of Conduct](#), TNC will not tolerate retaliation against individuals who ask questions or raise concerns about potential misconduct in good faith.

Anti-retaliation tools should be included in the Conflict Resolution Plan and may include:

- Procedures to allow for and protect anonymity
- Procedures to protect the confidentiality of sensitive information
- Procedures to preserve the physical and emotional safety of participants and the integrity of forums, including respecting legitimate needs of some individuals for physical distance from others
- Clear messaging from TNC and all initiative partners about zero tolerance for retaliation
- Warnings about the adverse consequences of retaliation

### Key Issue: Is There a Grievance Mechanism Mandated by a Host Country Government or Donor?

TNC staff need to know whether there is a grievance mechanism required by either a host country government or a funder supporting the initiative. For example, IUCN and the Global Environment Facility of the World Bank require grantees to comply with each entity's grievance mechanism.

If a grievance mechanism is mandated, TNC staff should determine what types of disputes it applies to and whether the IPLC has consented to its use or is willing to. TNC's [Code of Conduct](#) requires compliance with local laws, which includes those requiring use of a grievance mechanism. Failure to comply with a mechanism imposed by one of TNC's donors would

constitute a breach by TNC of any funding agreement with the donor.

So TNC's starting point should be to seek out and comply with these mechanisms. The IPLC would likely be bound, as a citizen of that country, by a grievance mechanism required by a host country, but they would not be bound by a grantor's mechanism if they were not a party to the funding agreement.

If the IPLC agrees to use the required grievance mechanism, and it applies to disputes not resolved by other local agreements, the required grievance mechanism should be followed.

If the IPLC doesn't agree to use the required grievance mechanism, the initiative may need to be suspended while TNC gathers information about the reasons and circumstances for the IPLC's opposition. If TNC and the IPLC can't agree to comply with a mandated grievance process, the initiative might need to be terminated.

In some cases, TNC and the IPLC might be able to ask for a variance or accommodation from the government or donor. If an alternative grievance mechanism that addresses government or donor concerns is proactively proposed, it might secure government or donor buy-in, especially if it's culturally responsive, efficient, reduces administrative costs and results in positive outcomes.

### Key Issue: Agreeing to Procedures



As we've discussed, TNC and the IPLC should understand and agree to conflict resolution procedures in advance. Addressing IPLC concerns early on will add legitimacy and usefulness to the procedures. Along with basic failure to consult, a hallmark of poor conflict resolution practice is an insistence by outsiders on using their own procedures, which may be unfamiliar to the IPLC. Then the outsiders are surprised if the IPLC either doesn't follow the procedure when conflicts arise or doesn't accept the legitimacy of the results. This leads to estranged relationships on top of the existing conflict, rather than the stronger relationships that come from a well-considered conflict resolution process.

The menu approach addresses this to some extent, by allowing an IPLC to set aside any procedures it doesn't like or understand. Additionally, the first two mechanisms recommended in this guidance—Dialogue and Mediation—are more concepts than formal procedures, which means they could be adapted into frameworks the IPLC prefers.

IPLCs have their own ways of conducting intentional dialogue and, in many cases, engaging a structured process and a third-party facilitator akin to mediation. It's valuable for TNC staff to learn about how an IPLC understands and engages these modalities, to the extent the IPLC is willing to share. Integrating TNC's and the IPLC's approaches can be a useful exercise in collaboration and trust-building.

More importantly, having a conflict resolution method that contains elements of an existing IPLC practice means they are much more likely to seek these solutions when conflicts arise, and it's more likely that any resolutions will have broad legitimacy within the IPLC.

Conflict resolution methods can be adapted in a number of ways:

For **Dialogue**, when a member of an IPLC wants to approach another member with a grievance, are there rules or customs in place that ensure mutual respect and enhance dialogue? Examples could range from the structural, like the use of nominees in the place of the aggrieved parties, to the ceremonial, such as the practice of sharing meals before or after a dialogue.

For **Mediation**, disputes and grievances might be addressed in non-adjudicative but intentional forums before IPLC governing bodies, elder councils or similar entities. Someone within the IPLC might often serve in the role of mediator for intra-community disputes; they may therefore understand the value of a neutral perspective, as opposed to the role of an advocate on behalf of the IPLC, which is an important but separate role.

A plan that provides for mediation facilitated by such an individual stands a much better chance of being relied on and respected, since the person brings credibility. There also might be a trusted outsider who has helped resolve disputes with outsiders in the past. Or perhaps there is a panel of trusted individuals from which the parties could select a mediator.

Any adjudicative dispute resolution methods used by the IPLC should get a close look. In many cases, using such procedures will carry an expectation that TNC or other parties will be bound by the decision of the IPLC institution and not consider it merely advisory. TNC should agree to submit to these procedures only when confident in our ability to comply with a binding decision. It's better to respectfully decline to submit to these decision-making procedures than to submit to the procedures, but then not be able to comply with the result.

IPLCs are typically understanding of an outsider's inability to fully submit to IPLC decision-making procedures. In some cases they may not even allow outsiders to use the procedures. But an agreement to use IPLC procedures is the highest expression of respect for Self-Determination and Overarching Good Faith. Even if this agreement needs to be restricted to certain types of disputes or circumstances, for example, following the exhaustion of other options, an agreement to submit to IPLC procedures is a valuable addition to a Conflict Resolution Plan.

### Key Issue: Inclusion



The Conflict Resolution Plan should be well scrutinized for barriers to access for members of the IPLC, and adaptations and modifications should be made to address those barriers as much as possible. For example, women may be excluded from an IPLC's internal conflict resolution procedures. Even if the Conflict Resolution Plan includes women's participation, psychological or social barriers might preclude individual women from participating.

How can this be addressed yet remain consistent with the IPLC's exercise of Self-Determination?

Possibilities include the promoting of women's participation, the convening of separate forums or procedures to solicit views, or providing remedies to women community members. It is important to understand how and if the excluded groups want to participate in the conflict resolution process, as TNC staff risk imposing external perceptions, expectations or values if we don't see the full context.

## Step Two: Implement the Conflict Resolution Plan

### Template: Conflict Resolution Plan



[View the Conflict Resolution Plan Template](#)

When conflict arises, TNC staff must use the conflict resolution mechanisms set out ahead of time, in a manner consistent with the Principles and Safeguards—especially Overarching Good Faith, Self-Determination, Accountability, and Equity & Inclusion. Successful resolution doesn't depend on any single act, but hundreds of acts over the course of a conflict.

Implementation will depend on the circumstances, so specific guidance is hard to give in the abstract. Where there's uncertainty, staff should consult Legal Counsel, the [Global Indigenous Peoples and Local Communities Team](#) and the [Global Diversity, Equity & Inclusion Team](#).

Staff must stay on top of conflict resolution processes until all parties are satisfied that disputes are resolved. This is important for two reasons:

- The underlying conflict, which often stems from an important issue, could resurface in another, more contentious, form if it's not genuinely resolved.
- Disciplined follow-through increases the credibility of the Conflict Resolution Plan and TNC's trustworthiness as a partner.

Procedures must not be allowed to taper off without real resolution. This could give the impression that the conflict resolution process is a bandage to cover up the problem, rather than a robust information-gathering, problem-solving and relationship-building tool.

TNC and the IPLC should keep the following concepts in mind when implementing the Conflict Resolution Plan:

### Conflict Resolution Concepts



#### Equity:

All parties should know how a concern can be raised and how each type of dispute will be managed. The process must provide access to information, advice and expertise needed to resolve conflicts on fair, informed and respectful terms. In some cases, TNC may need to provide additional resources, such as information, advice, or translation services.

#### Transparency:

Everyone is kept informed about progress and outcomes; decision-making, implementation and monitoring are transparent.

#### Mitigation and Remedy:

Adverse impacts should be addressed early on, preventing compounding the harm and the escalation of grievances.

#### Rigorous Follow-Through:

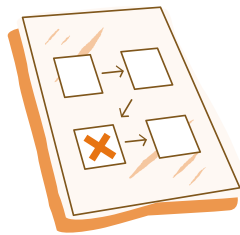
Although conflict resolution mechanisms should be efficient and timely, it may take patience,

time and energy to see them through. Sometimes conflict resolution occurs in the midst of fast-moving developments on the ground, and the process starts to feel stuck in the past. Other times, conflict resolution struggles to compete with other priorities, especially as the initial sense of urgency wears off. Follow-through should continue in good faith until the conflict is truly resolved.

### Step Three: Continuously Revisit and Adapt the Plan

No Conflict Resolution Plan will be perfect from the beginning. It's likely that significant problems and obstacles will come up once the procedures in the plan are tested in practice. In most cases, this merely reflects reality rather than poor planning, but the response should be, in either case, a thoughtful and non-defensive process of learning and modifying the plan to meet newly understood challenges.

This process requires:



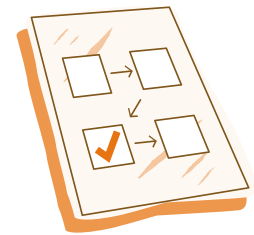
a) acknowledging flaws or insufficiencies in the plan that were revealed on implementation;



b) accepting them as problems and not trying to cover them up or justify them;



c) investigating causes and consequences;



d) developing responses, mitigation strategies and a process for adapting the plan in collaboration with partners.

#### Tools to be used in this process might include:

- An audit or review conducted by TNC staff or external advisors on a periodic basis or in response to any emerging problems or issues;
- Solicitation of participants' experiences, including procedures that allow anonymous feedback;
- Holding workshops after the initiative wraps up to assess how it went, or holding review conferences throughout the process to solicit views and brainstorm improvements. (See the [Monitoring, Evaluation & Adaptation Module](#) for more information on mechanisms such as pause-and-reflect meetings.)

Continuous efforts should be made to raise awareness about the existence, nature and accessibility of the procedures in the Conflict Resolution Plan. Conflict resolution tools are famous for not being used simply because no one knows about them, or for gathering dust until there is a crisis, when sentiments are high and it's hard to apply an unfamiliar process.

Broad community education about the methods available, as well as routine monitoring on whether the IPLC understands and agrees to the options, will help facilitate their adoption. This should be an ongoing, sincere effort and can be accomplished by mentioning the procedures regularly when checking in with the

### Resources: Conflict Resolution



Links to the grievance mechanisms and accountability processes for the following agencies are found [here](#):

- African Development Bank
- African Development Bank
- European Bank for Reconstruction and Development
- Food and Agriculture Organization of the United Nations
- Inter-American Development Bank
- International Fund for Agriculture Development
- United Nations Development Programme
- United Nations Environment Programme
- United Nations Industrial Development Organization
- The World Bank Group
- Conservation International
- Development Bank of Southern Africa
- Ministry of Environmental Protection
- Environmental Protection of China
- International Union for Conservation of Nature
- World Wildlife Fund

### Intentional listening resources

- [United States Institute of Peace – Active Listening](#): This resource includes a PDF for download on the core principles of active listening
  - Physical attention
  - Paraphrasing
  - Reflecting
  - Clarifying
  - Encouraging
- [Nonviolent Communication](#): This article outlines the four steps of nonviolent communication and provides examples. The four steps are:
  - Observe facts, rather than making judgments or exaggerations
  - Note feelings, rather than giving random thoughts or expectations
  - Uncover the desires behind your specific feeling
  - Make explicit requests based on these desires, not demands

The Nature Conservancy's [Policies and Procedures Manual, Reporting Suspected Violations of Law and Policy](#) (2017) provides "a mechanism for employees to raise good faith concerns regarding suspected violations of law on the part of the Conservancy, to cooperate in an inquiry or investigation by a court, agency, law enforcement, or other governmental body, or to identify potential violations of Conservancy Policy or procedure; and to protect employees who take such actions from retaliation."

### Indigenous dispute resolution / "peacemaking"

The [Indigenous Peacemaking Initiative](#) is an initiative of the Native American Rights Fund, an organization focused on tribal justice issues.

- [List of resources](#)
- [The video on the "About" page above](#) explains the larger goals discussed in this module, i.e., using dispute resolution to address problems before they start, build community and create intercommunity dialogue.
- ["How Indigenous Voices Can Get Lost in Mediation,"](#) Rebecca Hiers (Nov. 2018).

### Books on mediation

[Christopher Moore et al., The Mediation Process: Practical Strategies for Resolving Conflict](#)

### Indigenous dialogue and storytelling

Jo-ann Archibald, [Indigenous Storywork](#) (2008). [A PDF version is hosted by the publisher](#)

Val Napoleon & Hadley Friedland, ["An Inside Job: Engaging with Indigenous Legal Traditions Through Stories"](#) (2014)

### Other resources

["Practicing Cultural Safety,"](#) from [Towards a New Relationship](#), BC Association of Social Workers (2016)

## 3A. Wenland Case Study Conflict Resolution



The Wen have given consent for the permafrost stabilization initiative. They are also attracted to the annual conservation funding FrostLock has committed to provide, although FrostLock hasn't given a concrete figure — just a range.

[View Scenario](#)

## Conflict Resolution Checklist

### For the entire conflict resolution process

- Describe how TNC is building mutual trust, accountability and transparency with the IPLC
- Co-create a trusted conflict resolution process that's considered legitimate by all parties

### Step One: Develop a Conflict Resolution Plan

- Determine if there is a conflict resolution process required by a government or funder and if the IPLC is willing to comply with it
- If the IPLC does not agree to use the required process, consider working together to propose an alternative process
- If there is no conflict resolution process required by the host country government or a funder, or if there is one that only applies to certain complaints, collaborate with the IPLC and agree upon culturally responsive mechanisms for resolving conflicts
- Agree upon a [Conflict Resolution Plan](#) with the IPLC that considers Dialogue, Mediation and the TNC Ethics & Compliance Process

### Dialogue

- Learn about the IPLC's preferences and methods for dialogue
- Train TNC staff to build and practice dialogue skills
- Create a physically and emotionally safe environment for dialogue
- Allow time for a meaningful dialogue process; respect IPLC timescales, needs and preferences; and provide more information and resources as needed



## Conflict Resolution Checklist (Continued)

### Mediation

- If the IPLC is willing, discuss their preferred processes for resolving conflicts. Determine if the IPLC's existing process is appropriate for resolving conflicts when they work with outsiders
  - If TNC staff needs information or documentation beyond the scope of the IPLC's process, TNC may request the IPLC's help to get it
- Determine who will represent each party in the process and include their names in the Conflict Resolution Plan
- Discuss the IPLC's position on using outside mediators or facilitators for resolving disputes
  - If acceptable, identify trusted mediators or facilitators and include their names in the Conflict Resolution Plan
  - If using outside mediators or facilitators is not a standard practice or norm, discuss and document other options that both parties agree to use
- Determine how input from different social identities will be meaningfully incorporated in the process

### TNC's Ethics & Compliance Process

- Explain TNC's Ethics & Compliance Process and how and when it can be accessed by TNC staff and partners (See [Appendix V](#) and [www.nature.org/tnc helpline](http://www.nature.org/tnc helpline))

### Step Two: Implement the Conflict Resolution Plan

- Ensure parties know about the Conflict Resolution Plan, and explain the mechanisms, processes and outcomes
- Provide measures to guard against retaliation
- Decide together how the conflict resolution process will be documented
- Consult with Legal Counsel, the Global Indigenous Peoples and Local Communities Team and Global Diversity Equity & Inclusion team if uncertainty arises
- If an adverse impact is identified, remediate it promptly and fairly to prevent compounding the harm and the escalation of the grievance

## Conflict Resolution Checklist (Continued)

### Step Three: Continuously Revisit and Adapt the Plan

- Carry out the conflict resolution process in good faith, including rigorous follow-through until parties agree the conflict is resolved
- Use the conflict resolution process to support continuous learning for TNC and the IPLC
- Revisit and update the Conflict Resolution Plan periodically, particularly when there are significant changes to the TNC project team, partners, work plan or budget

## Documentation to Save

See [Documentation Module](#) for additional context and considerations for documentation

- A [Conflict Resolution Plan](#), including the menu of mechanisms available and records of how the plan was co-created and shared with the IPLC
- Documentation of each dispute, how it was processed and its resolution, including:
  - Who initiated the process (if not anonymous) and when, the nature of the conflict, who was involved and which mechanisms were used
- Outcomes of dialogue, mediation or other mechanisms, agreed-upon resolution and next steps
- Revisions or updates to the Conflict Resolution Plan based on experience and learning

## Notes

<sup>[1]</sup> [1] See the CbD 2.0 Guidance Document, Appendix C: Social Safeguard Questions and FPIC.  
<https://www.conservationgateway.org/ConservationPlanning/cbd/Pages/default.aspx>

<sup>[2]</sup> See the CbD 2.0 Guidance Document, Appendix D: Consideration of Human Rights in Conservation Projects: The Nature Conservancy's Approach.  
<https://www.conservationgateway.org/ConservationPlanning/cbd/Pages/default.aspx>

<sup>[3]</sup> See [https://www.iucn.org/sites/dev/files/iucn\\_esms\\_manual.pdf](https://www.iucn.org/sites/dev/files/iucn_esms_manual.pdf) (IUCN);  
[https://www.conservation.org/docs/default-source/gef-documents/20151115-accountability-and-grievance-mechanism.pdf?sfvrsn=92633125\\_2](https://www.conservation.org/docs/default-source/gef-documents/20151115-accountability-and-grievance-mechanism.pdf?sfvrsn=92633125_2) (CI); and  
<https://www.worldwildlife.org/publications/wwf-project-complaints-resolution-policy> (WWF).



## Conflict Resolution



### 3A. Wenland Case Study

**T**he Wen have given consent for the permafrost stabilization initiative. They are also attracted to the annual conservation funding FrostLock has committed to provide, although FrostLock hasn't given a concrete figure — just a range.

Detailed planning discussions proceed among TNC, FrostLock, the Wen and the Alban government.

#### Lets Say

#### Thoughts and Guidance

1

**When TNC raises the idea of a Conflict Resolution Plan before moving into implementation of the project, Wen leaders say they're exhausted and they don't feel a Conflict Resolution Plan is necessary. Should TNC move ahead without a Conflict Resolution Plan?**

*This shows the importance of addressing Conflict Resolution early. A complex consultation process can easily generate frustration and conflict. Having a Conflict Resolution Plan could have helped ease some frustrations. Well-structured conflict resolution should be addressed in consultation and be part of informed decision-making. But respecting human rights is a continuous process, so it's not too late to turn to the development of a plan. TNC should advocate for more consultation on conflict resolution, with the goal of arriving at a mutually agreed-on plan. If the teams need extra time to do this, that's acceptable since it honors self-determination.*

2

**The Wen Councils are negotiating a Conflict Resolution Plan with FrostLock but insist that they don't need one involving TNC because of the high level of trust and collaboration they have with TNC. Should TNC agree?**

*A plan should not be seen as indicating a lack of trust. It's a method of building and maintaining trust, and clear expectations about resolving conflicts may be necessary to preserve that trust, and serve the larger principle of Accountability. So while it's a nice compliment, TNC should encourage having a Conflict Resolution Plan.*

3

**The parties have prepared a detailed Conflict Resolution Plan, but FrostLock says it should be exclusive—that is, by agreeing to the plan, the Wen communities waive their right to bring any complaints or grievances to any other institution or court. Should TNC raise a concern?**

*Yes. TNC should resist this proposal. Our objective, supported by the principles of Accountability, Equity and Inclusion, is to strengthen and expand rights, not weaken them. Given the nature of the project, the scope and severity of impacts ahead cannot be known. A Conflict Resolution Plan provides an initial level of consensus on how to deal with conflict in a healthy way. It is not a mechanism to limit liability or foreclose remedies. International practice strongly disfavors attaching waivers to remedy options.*

4

**Same as above, except FrostLock is only insisting that parties must exhaust the procedures stated in the Conflict Resolution Plan before accessing other options. Should TNC raise a concern?**

*Exhaustion requirements are disfavored, too, but not disallowed. A key consideration here is Free Choice. Does the Wen community fully understand the exhaustion requirement and why it might be useful, e.g., predictability, efficiency, the creation of a full record? If the Wen are being asked to agree to this just because FrostLock wants it, the principle of Free Choice may need to be revisited.*

5

**The Wen say that any disputes that can't be resolved in mediation must be submitted to the Wen Elder Councils for final, binding resolution. FrostLock's lawyers won't let the company expose itself to unknown or unfamiliar liability and they say they cannot proceed. What position should TNC take?**

*TNC should keep in mind the commitment to support IPLC self-determination. But exercising self-determination may not be entirely free of consequence. FrostLock may have a legitimate need to understand the consequences of an unfamiliar legal or quasi-legal process, and the Wen may not want to terminate the initiative. TNC should explore ways of working with FrostLock to understand the actual implications of Elder Council jurisdiction, and work with the Wen to find out how essential Elder Council jurisdiction is to Wen self-determination. A tailored Conflict Resolution Plan that submits some*

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*categories of disputes to the Elder Councils but exempts others might be a possibility.*

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**6**

**Same as the above, but a women's group from one Wen community objects, saying that since the Elder Councils are exclusively male, the mechanism will be used to disadvantage women.**

*Ideally a Gender Analysis was conducted during consultation using TNC's Guidance for Integrating Gender Equity in Conservation. That analysis would be useful at this stage for insights into gender equity. It may reflect some consensus within the Wen about the nature of gender equity and how to address it. TNC should not impose any values on the process by condemning or withdrawing from the situation. Instead, TNC should strive to understand and take a culturally responsive approach, returning to the principles that guided the Learning and Early Discussions process. Still, all the Principles and Safeguards are relevant to all parts of TNC's work, and there may be times when TNC will need to opt out of a process that entrenches or perpetuates inequity or exclusion.*

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**Template:**

# Conflict Resolution Plan

This template is a starting point for developing the Conflict Resolution Plan described in [Step One of the Conflict Resolution Module](#) of the Guide. The Conflict Resolution Plan is foundational to every initiative and should be included in the conversations recommended in the [Learning & Early Discussions Module](#) and the [FPIC Module](#). TNC staff need to keep in mind that TNC's Code of Conduct requires compliance with any grievance mechanism mandated by a host country government or funder.

The preparation of a Conflict Resolution Plan need not be burdensome. Ideally, it will include the IPLC's preferred practices or aspects of those practices. If the IPLC and TNC agree, a plan might simply describe a menu of options for resolving disputes with outsiders and how those options are accessed. Some specifics, such as the names of trusted mediators, may be included if acceptable to the IPLC.

This template presents three possible scenarios and the key elements of a Conflict Resolution Plan. It also includes some questions for TNC and the IPLC to consider when designing mechanisms for resolving disputes. Agreement on the Conflict Resolution Plan should be documented in a culturally responsive manner, which may include signatures or initials on the plan, an exchange of emails, a show of hands at a meeting, a protocol or ceremony.

Content entered into this form **will not be saved** if filled out in a browser. [Learn more](#)

Initiative: \_\_\_\_\_

Time period: \_\_\_\_\_

Date: \_\_\_\_\_

Updated as of: \_\_\_\_\_

Approved by:

Organization or group:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_



# Scenarios

## Scenario 1

There is a conflict resolution process required by a host country government or a funder and the IPLC **agrees** to comply with it.

[Attach documentation of the process that will be followed]

## Scenario 2

There is a conflict resolution process required by a host country government or a funder, but the IPLC **does not agree** to comply with it.

[Attach documentation of the IPLC's decision to not comply]

1. In some cases, the IPLC and TNC may be able to ask for a variance or accommodation from the government or funder. If the IPLC **agrees** to work with TNC, both parties could collaborate on an alternative process that incorporates the IPLC's preferred procedures and reflects TNC's Principles and Safeguards.

The IPLC and TNC present the alternative process to the government or funder and document the result.

[Attach documentation of the alternative process and the government's or funder's decision]

2. If the IPLC **declines** to work with TNC on an alternative process, the initiative may need to be suspended while TNC gathers information about the reasons and circumstances for the IPLC's opposition.

3. If the IPLC **declines** to comply with a required grievance process, the initiative may need to be terminated.

[Attach documentation of the decision to terminate the initiative]

## Scenario 3

There is no conflict resolution process required by the host country government or a funder, or there is one that only applies to certain complaints.

1. The IPLC **agrees** to collaborate with TNC on mechanisms for resolving conflicts that the IPLC considers culturally responsive and legitimate (see Key Elements of a Conflict Resolution Plan).

[Attach documentation]

2. If the IPLC **declines** to collaborate with TNC on mechanisms for resolving conflicts, the initiative may need to be suspended or terminated.

[Attach documentation]

## Key Elements of a Conflict Resolution Plan

1. TNC staff learn and practice **dialogue and cross-cultural competency skills** for working with IPLCs. Specify training, workshops and other learning:

a.

b.

c.

2. The **IPLC's preferred procedures and methods** for resolving conflicts with outsiders:

a.

b.

c.

**3.** If TNC and the IPLC agree that Dialogue will be one of the conflict resolution mechanisms, specify:

a. Conditions that ensure parties are able to participate, including social identity groups

i. Frequency and timing of dialogue sessions: \_\_\_\_\_

ii. Place: \_\_\_\_\_

iii. Format: \_\_\_\_\_

iv. Language: \_\_\_\_\_

b. Methods for sharing information and ensuring all parties are aware of the subject matter ahead of time so they can prepare:

c. The IPLC's timescales and preferences for dialogue, for example, the use of nominees in the place of aggrieved parties or other cultural protocols:

d. Provisions to preserve the physical and emotional safety of the parties:

**4.** If TNC and the IPLC agree that Mediation will be one of the conflict resolution mechanisms, specify:

a. Institutions, forums and practices used by the IPLC for mediating conflicts, if they are willing to share this information:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

b. Conditions that ensure broad participation of parties, including social identity groups

i. Frequency and timing of dialogue sessions: \_\_\_\_\_

ii. Place: \_\_\_\_\_

iii. Format: \_\_\_\_\_

iv. Language: \_\_\_\_\_

c. Institutions, forums and practices used by the IPLC for mediating conflicts, if they are willing to share this information:

i. IPLC representative(s): \_\_\_\_\_

ii. TNC representative(s): \_\_\_\_\_

iii. Other parties: \_\_\_\_\_

d. Names of trusted mediators or facilitators the IPLC and TNC will call on if needed:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

**4. Continued:**

e. If using mediators or facilitators is not a standard practice or norm, specify other mechanisms that both parties agree to use, for example, elder councils or other non-adjudicative, but intentional forums:

[Attach documentation of other mechanisms]

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

f. Additional information needed to deepen TNC's understanding or satisfy documentation requirements of an initiative or process:

5. Communication about **TNC's Ethics & Compliance Process** as one of the conflict resolution mechanisms:

a. See Appendix V and [www.nature.org/tnc helpline](http://www.nature.org/tnc helpline)

b. Notes on using TNC's Ethics & Compliance Process:

**6. Measures to guard against retaliation:**

a. Procedures to allow for and protect anonymity:

b. Procedures to protect the confidentiality of sensitive information:

c. Provisions to preserve the physical and emotional safety of participants:

d. Clear messaging from TNC about zero tolerance for retaliation:

e. Warnings about the adverse consequences of retaliation:



**7.** Communication about the Conflict Resolution Plan with all parties, including notes on how different social identities were supported in meaningfully participating

a. Frequency and timing of communications:

b. Place:

c. Format:

d. Content of the plan:

**8. Documentation of development and implementation of the Conflict Resolution Plan**

a. Records of how the IPLC and TNC created the plan:

b. Aspects of the conflict resolution process that TNC will document:

c. Aspects of the conflict resolution process that IPLC will document:

d. For each dispute, document:

i. Who initiated the process if not anonymous, and when \_\_\_\_\_

ii. The nature of the conflict \_\_\_\_\_

iii. Who was involved and which mechanisms were used \_\_\_\_\_

iv. Outcomes and next steps \_\_\_\_\_

## 9. Review and update the Conflict Resolution Plan

a. Dates for periodic reviewing and updating:

b. Dates of updates reflecting changes in the TNC team, IPLC or goals, work plan or budget of the initiative:

### Questions to Consider for the Conflict Resolution Plan

2. Are the IPLC and TNC prepared to enter into dialogue and take action on concerns?
3. Are the IPLC and TNC prepared to remediate adverse impacts promptly and fairly?
4. Are the IPLC and TNC prepared to commit to the conflict resolution process until parties agree the dispute is fully resolved?
5. What are the risks and rewards to TNC for participating in an IPLC's conflict resolution process? Using IPLC procedures demonstrates the highest respect for IPLC self-determination, but TNC should agree to submit to any adjudicative dispute procedure only when confident it can comply with a binding decision.
6. How are the IPLC and TNC using the conflict resolution process to support equitable partnership, trust and continuous learning?
7. Once the conflict resolution process has been tested in practice, how will the IPLC and TNC improve it? Possible tools include an internal or external audit, feedback from participants or a post-initiative workshop.

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## Module 4: Implementation

In this module:

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[Learn how to assess projects already underway and review previous modules](#)

---

[Reaffirm the Consent Agreement and Conflict Resolution plan](#)

---

[Decide how to continually apply the Principles and Safeguards](#)

---

[Monitor progress as implementation proceeds](#)

---

**Wenland Case Studies:**

[4A. Implementation](#)

---

## Introduction

**T**he Implementation Module shows how to integrate the Principles and Safeguards into the day-to-day activities of a project, strategy or policy initiative. After TNC staff and the IPLC have finished a collaborative process and reached an agreement on how to work together, this module will be useful, particularly for newer IPLC relationships and for initiatives TNC is leading. Staff should review the [Learning & Early Discussions](#), [FPIC](#) and [Conflict Resolution Modules](#).

---

# Principles and Safeguards

The Introduction includes a discussion of all the [Principles and Safeguards](#) that apply to working with IPLCs. Five are particularly important for implementation:

## Implementation Principles and Safeguards

### Free Choice and Self-Determination:

Indigenous peoples' right to self-determination isn't established once and then forgotten. It must be continuously upheld from design through implementation.

### Informed Decision-Making:

IPLCs bring generations of leadership in ecological and cultural knowledge and practice. To support their decision-making, they may request scientific, legal, policy, or other information to supplement their knowledge.

### Equity & Inclusion:

True partnership with IPLCs means continually assessing and addressing the power dynamics of the partnership, supporting IPLC leadership in decisions about their lands and resources, and ensuring the inclusion of groups that might otherwise be marginalized.

### Accountability:

Accountability requires good communication, a shared vision, regular check-ins on progress toward agreed-upon plans, and taking action on adjustments as needed.

### Overarching Good Faith:

Initiatives implemented in the spirit of honesty, integrity and service strengthen all the other principles. This is one of the most important foundations in achieving sustainable outcomes for people and nature.

## Guidance

### Step One: Update and Extend Plans

TNC staff should have a foundation of engagement and consultation materials to work with as TNC and the IPLC move into implementation. No need to reinvent the wheel: the first step is to revisit the modules on [Learning & Early Discussions](#), [FPIC](#) and [Conflict Resolution](#).

### For Teams that Have Gone Through the Earlier Modules of This Guide:

If teams have developed an [Engagement Plan](#) and [Consultation Plan](#) by working through this Guide, those plans should be reviewed during implementation. It may become clear that some processes or protocols are a better fit than others. The teams should consider which practices fostered greater engagement and collaboration, and lean on those moving forward.

The initiative scope should now be reassessed to ensure that it's still aligned with the Principles and Safeguards. If other processes were used, like the [Human Rights Impact Assessment](#), those should be reviewed as well. The priorities identified in the Human Rights Assessment might need extra attention as implementation proceeds.

For example, imagine a conservation project funded in part by a high-volume visitors' center. In consultation discussions, the community identifies a potential negative impact — the gradual forced cultural assimilation resulting from large numbers of tourists and the development of tourism infrastructure. During implementation, teams should mitigate against that impact through measures like setting daily visitor limits, designing roads and access points that prevent tourists from wandering into community villages, and working with local authorities to regulate tourism growth.

A review of the [Conflict Resolution Plan](#) together with the IPLC is also important, as advised in Step 3 of that module, "[Continuously Revisit and Adapt the Plan.](#)"

### **For Teams in the Implementation Phase Who Have Not Gone Through the Earlier Modules of This Guide:**

TNC teams may be referencing this Guide for the first time when already in the implementation phase. Teams can review the earlier modules and think creatively about how recommendations around agreements, understandings, and relationship strengthening can be incorporated.

No matter what, the team should apply the [FPIC](#) steps moving forward (and retroactively where possible) and work with the IPLC on a [Conflict Resolution Plan](#). The team should also try to anticipate unforeseen impacts. Particularly for those strategies outside the IPLC Portfolio of the Shared Conservation Agenda, it's a good idea to review the [Learning & Early Discussions Module](#), to ensure a good understanding of possible impacts.

### **Human Rights Considerations Mapped to the CbD 2.0 "Take Action" Phase**

In addition to revisiting the guidance and materials from the previous modules, the following human rights-focused questions related to Conservation by Design 2.0, Phase 4: Take Action,<sup>[1]</sup> can help in the implementation phase:

#### **What decisions are needed? (CbD "Draft Charter")**

##### **Tip**

During implementation, new decision points might emerge after reviewing the plans and processes for engagement, consultation and conflict resolution.

#### **Who will do what? (CbD "Draft Charter")**

##### **Tip**

Implementation might require new processes for consultation and decision-making. An initial decision to proceed made by a high-level council might be followed by operational decision-

making that should include IPLCs if they choose to participate (see [Step Two](#) of this module). Operational decision-making might be more informal or delegated to local leadership.

Additional consent affirmations may now be necessary to remain in compliance with FPIC as the initiative changes and progresses. The [FPIC Consultation Plan and Process](#) should be reviewed to ensure all potential impacts are being considered as implementation proceeds.

### What are the tasks and timeline of the initiative? (CbD “Draft Workplan”)

#### Resource

For cases where staff are developing a full work plan for their initiative, the [Conservation Partnership Center](#) provides guidance on joint work planning, including a general work plan template. The Principles of Equity & Inclusion will be important to ensure continued partnership and collaboration during this phase.

### What capacity building is required? (CbD “Identify Capacity”)

#### Tips

Building and maintaining IPLC capacity may be essential for the long-term sustainability of conservation efforts. At any time, IPLCs may request scientific, legal, financial management, policy or other assistance or expertise.

Staff training in cultural competency, participatory approaches and other relevant skills is an important component of respecting rights and supporting collaborative partnerships with IPLCs. More information is available in the [Learning & Early Discussions Module](#), and in the “[Scope of Required Competencies](#)” section of the [FPIC Module](#).

The team should take capacity building for TNC and the IPLC into account when estimating staffing and budget requirements.

#### Resources

The [Learning Network on Capacity Development](#) “aims to promote and facilitate sharing of lessons and learning on capacity development and promote changes for better practice at the global, regional and local levels.” Steering group members include FAO and UNDP.

The [Network for Strong Voice, Choice and Action](#) (VCA Network) on TNC’s CONNECT intranet provides opportunities to engage with and learn from peers.

### What resources will be necessary? (CbD “Draft Budget”)

#### Tips

TNC should consider compensating IPLCs for their time and effort spent on all aspects of an

initiative. This may include time to attend meetings, travel, translation services and other related costs. Equitable participation may mean holding additional meetings for women or other social identity groups.

If the project is not fully funded, TNC and the IPLC may decide to collaborate on plans for partial or phased implementation — the Plan B approach. If the project is terminated or put on hold due to lack of funds, TNC and the IPLC should agree on expectations and contingency plans, including a no-go cutoff.

#### Resources

The [Partners for Dignity & Rights](#) has a page with information and resources on human rights budgeting.

#### How will the initiative be monitored? (CbD “Conduct Monitoring”)

See [Step 3](#) of this module below, as well as the [Monitoring, Evaluation & Adaptation Module](#).

#### Will the initiative end at some point, and if so, what are the closing or hand-off procedures?

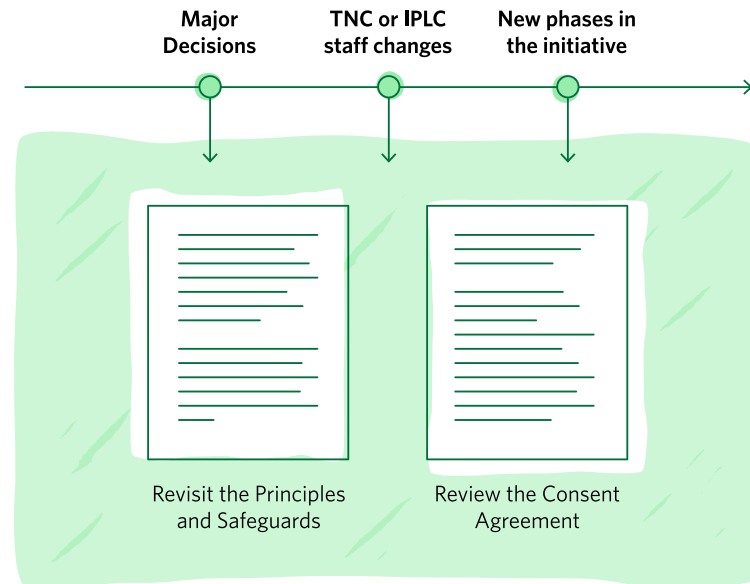
An initiative’s closing or hand-off procedures should be discussed long before the transition takes place. These procedures should continue to embody the Principles and Safeguards in this Guide, with attention to IPLC capacity and priorities.

Teams should consider each question above and decide if their agreed-upon engagement and consultation plans are sufficient to keep the collaboration on track. If not, the processes and plans must be revised as needed.

## Step Two: Revisit the Principles and Safeguards and Consent Agreement

TNC teams should regularly revisit how they’re applying the Principles and Safeguards. TNC and the IPLC should also continue to review the [Consent Agreement](#), making sure consent conditions still apply. At a minimum, this review should happen whenever there are: 1) major decisions; 2) TNC or IPLC staff changes; or 3) new phases in the initiative.





The format, frequency and documentation of the check-ins should follow the terms of the Consent Agreement.

This is truly an ongoing practice and not a single task. Throughout an initiative, countless procedural decisions, big and small, allocate responsibility to either TNC or the IPLC. The **Principles and Safeguards** require that the IPLC assumes such responsibilities whenever they further the goal of self-determination.

In implementation, some decision-making may seem obvious to the TNC team, perhaps for legitimate reasons, and flying through such decisions might feel necessary because of time pressure or financial constraints. But adhering to the **Principles and Safeguards** may require more time for informed decision-making, a robust FPIC process and collaborative relationships based on equity and inclusion. Dedicating time and resources to this effort should not be seen as a burden, but rather an investment in a relationship that will yield long-term results and better outcomes for people and nature.

### Step Three: Monitor Key Impacts

The practices of monitoring, continuous learning, adaptation, and identification and resolution of disputes are essential to fulfilling the Principles and Safeguards and maintaining strong relationships with IPLCs. Monitoring should center on the results of a [Human Rights Impact Assessment](#) or other identified areas of importance or concern. See [Step 3 of the FPIC Module](#) and [Step 3 of the Conflict Resolution Module](#). This topic is also the central focus of the [Monitoring, Evaluation & Adaptation Module](#). Monitoring should not be considered a wrap-up process that comes at the end of an initiative. It should be integrated throughout implementation

#### 4A. Wenland Case Study Implementation



The permafrost stabilization initiative is moving forward. FrostLock will implement 25 permafrost stabilization test sites in the far north. The initiative includes funding for Environmental Monitoring Committees to monitor water quality and other potential adverse impacts in towns near the test sites, which are almost exclusively Wen.

[View Case Study](#)

## Implementation Checklist

### Step One: Update and Extend Plans

- For TNC teams who have been through the earlier modules: Update [Engagement](#), [Consultation](#) and [Conflict Resolution](#) Plans to reflect new decisions, roles, responsibilities and consultation processes
- For TNC teams in implementation who have not been through the earlier modules:
  - Review the [Learning & Early Discussions Module](#) to identify potential impacts
  - Apply FPIC moving forward (and retroactively where possible), as discussed in the [Free, Prior and Informed Consent Module](#)
  - Develop a [Conflict Resolution Plan](#)
- With the IPLC, agree on tasks, a timeline and the budget of the initiative
- Co-create short-term and long-term plans to build IPLC and TNC capacity and fill staffing needs

### Step Two: Revisit the Principles and Safeguards and Consent Agreement

- Hold check-ins, trainings and additional consultations throughout implementation, in line with the Principles and Safeguards and [Consent Agreement](#), to ensure requirements are being assessed and integrated continuously

### Step Three: Monitor Key Impacts

- Throughout implementation, monitor key impacts identified in the [Human Rights Impact Assessment](#) or other assessments during the FPIC process (see [FPIC Module](#) and [Monitoring, Evaluation & Adaptation Module](#))

## Documentation to Save

See [Documentation Module](#) for additional context and considerations for documentation

- For teams who have been through the earlier modules: Updated [Engagement](#), [Consultation](#) and [Conflict Resolution](#) Plans, including:
  - Key decision points to be addressed in implementation
  - Roles and responsibilities
  - Consultation and decision-making processes during implementation
  - Tasks and timeline
  - Budget
  - Provisions for capacity building and participatory monitoring
  
- For teams in implementation that haven't been through the earlier modules:
  - Notes on assessments and any identified potential impacts or impacted parties, based on a review of the [Learning & Early Discussions Module](#)
  - Plan for applying the [FPIC](#) steps moving forward (and retroactively to the extent possible)
  - [Conflict Resolution Plan](#)
  
- Notes on meetings, discussions and decisions to revisit and integrate the Principles and Safeguards and Consent Agreement requirements throughout implementation, e.g., learning processes, trainings, additional consultation
  
- Notes on monitoring processes and results, based on issues identified in the [Human Rights Impact Assessment](#) or other assessments carried out during the FPIC process (See [FPIC Module](#) and [Monitoring, Evaluation & Adaptation Module](#))

## Notes

<sup>[1]</sup> The Nature Conservancy (2016). Conservation by Design 2.0 Guidance Document {Version 1.0, March 2016}:  
[https://www.conservationgateway.org/ConservationPlanning/cbd/Documents/CbD2.0\\_Guidance%20Doc\\_Version%201.pdf](https://www.conservationgateway.org/ConservationPlanning/cbd/Documents/CbD2.0_Guidance%20Doc_Version%201.pdf). See pages 101-103.



## Implementation



### 4A. Wenland Case Study

**The permafrost stabilization initiative is moving forward. FrostLock will implement 25 permafrost stabilization test sites in the far north. The initiative includes funding for Environmental Monitoring Committees to monitor water quality and other potential adverse impacts in towns near the test sites, which are almost exclusively Wen. In consultation with the Wen, an unpopulated 800,000-acre area has been designated a Conservation Management Area. TNC will oversee it for the first five years, then transfer management to a new, initiative-funded Wen organization at the end of that period, or when the new organization is ready.**

A Gender Analysis was conducted during consultation. Everyone — Wen women's groups and the Wen Councils alike — agreed that women were traditionally disempowered in Wen society, especially around collective decision-making.

The FrostLock initiative requires extensive engagement from Wen communities, and the Gender Analysis recommended that implementation should at least be gender-responsive, which contributes to the advancement of gender equality, and in some respects, gender-transformative, which challenges the distribution of resources and allocation of duties between men and women. (For more information on the Gender Integration Continuum see TNC's Guidance for Integrating Gender Equity in Conservation.)

Wen women advocated for the Environmental Monitoring Committee membership to be separated from the Wen Councils. They described being denied agency in public affairs, including situations where they were allowed to participate but faced coordinated opposition from men through bloc voting on the Wen Councils. Other attempts to assert power have been responded to with recrimination and retaliation by men.

The Wen Councils agreed to a protocol where TNC will supervise the Environmental Monitoring Committees by providing technical assistance and selecting members from slates of nominees assembled by the communities. The Wen women's group, Wenza, insists that a mandate for balanced gender representation be included, but the Wen Councils reject the proposal.

## Lets Say

## Thoughts and Guidance

1

**A handful of test sites are planned within the Conservation Management Area. FrostLock drafts a reporting protocol under which TNC will monitor the test sites, and the results will be shared only with FrostLock. It claims these particular sites do not impact the Wen and need not involve them. Can TNC agree?**

*No. The Wen claim is that the entire Wend is their ancestral indigenous territory. Even without taking a firm position on that claim, TNC should not act inconsistently with it. For TNC to agree to treat the land as entirely outside of the Wen's concern would not support their self-determination.*

2

**Membership on the local Environmental Monitoring Committees becomes a flashpoint. The Councils are uncomfortable with having given up the power to control the Committees' budgets, especially hiring and procurement. They start trying to assert influence over the Committees using traditional Camp lines of authority. The Councils also ask TNC to share the slates of nominees before making a selection, even though this wasn't part of the protocol. The Councils say they are better positioned to select the most qualified members, given their knowledge of the communities. Should TNC comply with the Councils' request?**

*Many principles need balancing in this situation. TNC must try to balance them in collaboration with the Wen, while also taking responsibility for our own actions and standards. Respect for Self-Determination as expressed by the Wen Councils is important, but the process that has been created, with the Councils' approval, has independent requirements of Equity and Inclusion. TNC owes a duty of Overarching Good Faith to the entire Wen community. Sharing the slates of nominees with the Councils might make sense if it is not prohibited by the protocol and would allow TNC to gain the benefit of the Councils' knowledge and insight. But TNC shouldn't deviate from the protocol. If an irreconcilable conflict persists, TNC should propose reevaluation of the process under a transparent and thorough new FPIC process.*

3

**As TNC reviews the nominees, the male nominees seem more qualified based on more extensive prior community leadership experience and more familiarity with the land and wildlife, much of it derived from experience hunting, an exclusively male practice. Can TNC favor female nominees despite this experience gap?**

*Yes. Equity and Inclusion are core principles of TNC's work, and the selection process for the Environmental Monitoring Committees can be seen in the context of the agreement by the Wen Councils and other stakeholders that gender equity was a problem and that the initiative should be gender-responsive or gender-transformative where possible.*

*Notably, both prior leadership experience and experience derived from hunting are grounded in gender in Wen society. Reliance on these factors would entrench gender privileges in a new structure, the Environmental Monitoring Committees, perpetuating and arguably worsening the gender equity concerns. Open communication and transparency around female nominees is an opportunity to build trust and mutual learning for TNC and the Wen.*

4

**Women from several communities tell TNC staff that they won't nominate themselves for Committee membership unless the Committees are majority women, because they believe the men will vote in bloc and that their participation in the Committees won't be worth it. Can TNC agree to make the Environmental Monitoring Committees majority women to encourage women nominees to step forward?**

*This scenario is difficult. The Wen Councils agreed that gender equity was a problem and that the initiative should be gender responsive or transformative, but they also rejected the idea of fixed gender quotas. If TNC agrees to quotas now, that conflicts with our commitment to respect IPLC authority. However, the male-only Councils were the ones who voted to reject the gender representation proposal.*

*TNC should try to avoid a win/lose zero-sum approach and seek more inclusive solutions with the Councils, like creating safeguards to encourage women's participation or re-raising the gender representation issue with more focus on the underlying goals.*

5

**The Environmental Monitoring Committees are there, in part, to assess complaints about environmental impacts, such as water quality problems, and convey them to FrostLock and TNC. FrostLock sets up a telephone hotline to enhance monitoring. A year in, TNC hears that FrostLock is sending representatives out to investigate hotline callers' complaints directly, and in some cases taking measures like installing water filters and paying compensation if the caller signs a non-disclosure agreement. What should TNC do, if anything?**

*TNC needs to intervene. Though not directly responsible for FrostLock's actions, TNC is linked to the initiative as a whole.*

*We should use our leverage to mitigate any implementation issues that run contrary to the Principles and Safeguards. Non-disclosure agreements in this context are suspect from a human rights perspective because they can perpetuate abuse, and requiring IPLCs to sign non-disclosure agreements in exchange for benefits runs contrary to principles of Accountability and Transparency.*

*But even if FrostLock removed that requirement, their direct engagement with hotline callers goes around the authority of the Environmental Monitoring Committees. Direct engagement could also impact the quality of data collection and monitoring and result in hiding or misrepresenting a bigger problem. To support IPLC self-determination, TNC should support the Committees in challenging FrostLock's direct engagement with hotline callers and propose more equitable alternatives. Return to the Conflict Resolution Module for more information.*



## Module 5: Documentation

In this module:

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[Learn the five hallmarks of successful documentation](#)

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[Identify key materials to have in a documentation file](#)

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[Decide on a documentation format that is accessible and culturally responsive](#)

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**Wenland Case Studies:**  
[5A. Conflict Resolution](#)

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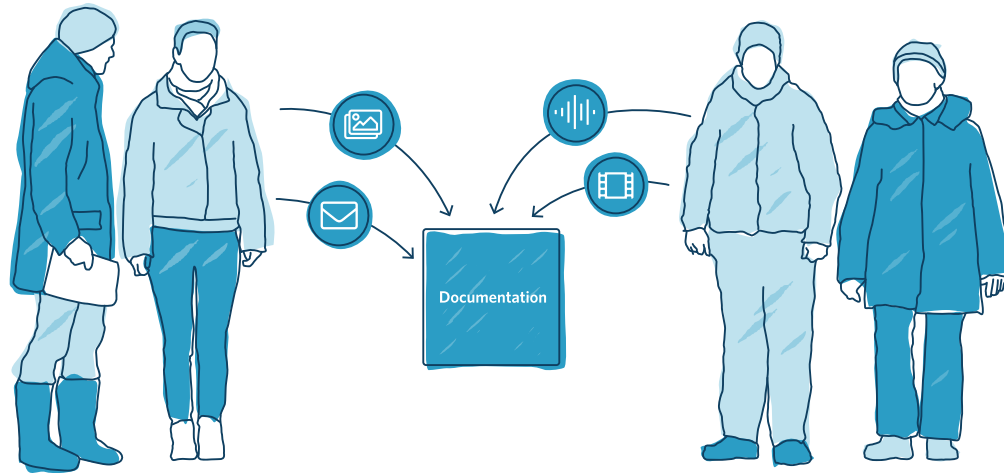
### Introduction

**T**he Documentation Module provides the context, purpose and standards for documenting an initiative. Specific recommendations are provided in the “Documentation to Save” section of each module.

Historically, poor documentation has reflected both careless record-keeping and intentional efforts to conceal human rights abuses. Strategically self-serving documentation—a record that only reflects the experiences, perspectives, interests and language of the record-keeper—has been used to coerce, oppress and silence indigenous peoples.

Ideal documentation is not just thorough and consistent but also co-created and co-maintained by TNC and the IPLCs. Many IPLCs practice an oral tradition, and therefore a culturally responsive documentation file may contain formats besides written documents, which could include audio recordings, smartphone videos, captioned photos or email exchanges.





Documentation is not expected to look the same across different initiatives and IPLCs.

But documentation should be thorough and consistent with the guidance in this module. From a human rights perspective, careful documentation provides a record for TNC and the IPLC to assess their work's alignment with the Principles and Safeguards.

Collaborative documentation helps communication, inclusion and relationship-building by ensuring everyone understands which issues have been considered, what actions have been taken, and the terms of any agreements. Documentation is also helpful for TNC staff or external auditors to review the work.

Shared documentation reflects agreements on process and outcomes, substance and experience. When parties agree to document or memorialize a view, story, or agreement for the record, they are validating the experience and its importance—both listening and being heard.

## Principles and Safeguards

The Introduction includes a discussion of all the [Principles and Safeguards](#) that apply to equitable partnerships. Five are particularly important for documentation:

### Key Principles and Safeguards for Documentation

#### **Prior Engagement and Collaborative Relationships:**

Creating a shared record of experiences is a powerful tool for mutual learning, building trust and reinforcing collaboration.

#### **Accountability:**

Documentation prompts authorities and participants to accept responsibility for their actions. A historical record allows us to draw lessons from the past and make better decisions in the future.

#### **Equity:**

Documentation includes a record of decisions regarding benefit sharing agreements, measures to mitigate power imbalances and access to resources. The documentation process itself should further the principle of Equity by respecting IPLC value systems and choices, and culturally responsive formats.

**Inclusion:**

Documentation should include the voices and perspectives of diverse social identities. Rigorous documentation may reveal the need to address gaps in participation and improve inclusion.

**Meaningful Consultation:**

Careful documentation ensures that TNC and the IPLC have a complete picture of what has been agreed upon and by whom — a critical component of a robust, ongoing consultation process.

## Guidance

Documentation should begin at the concept stage and continue throughout the collaboration. It should serve both TNC and the IPLC, being responsive to language, format, literacy levels, internet access, and cultural practices and preferences. Technical support or capacity-building may be needed to ensure the IPLC's participation, and TNC staff may need to improve their understanding of the documentation formats preferred by the IPLC.

Teams should aim for a full record of processes and outcomes, fostering communication, trust and accountability. Documentation practices will vary across initiatives, but teams should meet the standards described below: robust, thorough, collaborative, respectful, and accessible.

As teams begin documentation, they should take a look back at the [Human Rights Impact Assessment](#) or other issues that have been identified so far. Priority areas and sensitive issues may need extra attention. The five key hallmarks of successful documentation are:

### Five Hallmarks of Successful Documentation

**Robust:**

More is often better. It's impossible to predict future uses of documentation files, and items that may not seem useful initially may turn out to be important. But documentation should be intentional within this robust framework, since a file with too much in it becomes bloated, unwieldy, and less useful. To keep this balance, plan to revisit the documentation file regularly, and organize and consolidate the contents.

**Thorough:**

A balanced approach covering all modules, stages, and processes is important. A file that is stuffed with material regarding an FPIC consultation but has no documentation of initial engagement or implementation is not sufficiently thorough.

**Collaborative and culturally responsive:**

Documentation is a co-created process. IPLCs should make their own decisions about what's included, what the record will look like, and how it's used, accessed and stored. Documentation should serve both TNC's and the IPLC's needs and priorities.

**Respectful:**

Documentation must acknowledge the IPLC's rights, practices and contributions and, in

particular, must respect and protect an IPLC's rights to their collective knowledge and intellectual property.

**Accessible:**

The documentation file must be readily accessible to both TNC and the IPLC. Accessibility for third parties or the general public can also be valuable, but confidentiality concerns must be taken into account.

## Key Materials to Include in the Documentation File

**Background research:**

Background research that was conducted to identify all potentially impacted IPLCs (desk research, expert consultations, preliminary community contacts) as described in [Step One of the Learning & Early Discussions Module](#). Research notes, resources, meeting notes and copies of materials supplied by experts should be included.

**Engagement Plan:**

An Engagement Plan for each IPLC, and a description of how the plan was co-created and shared. See [Step Two of the Learning & Early Discussions Module](#).

**Consultation preparation:**

Consultation preparation, including competencies of the TNC team, capacity needs for FPIC and any host country legislation that applies, remembering that TNC is committed to an FPIC process that may go above and beyond the legal framework. See [Step One of the FPIC Module](#).

**Consultation Plan:**

A Consultation Plan, including materials that describe:

1. how the plan was co-created and shared
2. the sessions, meetings and events that were held, and related materials
3. a brief outline of how information will be shared, including preferred languages and formats. See [Step Two of the FPIC Module](#).

**Consent Agreement:**

A Consent Agreement (if consent is given) reflecting an agreed-upon format, IPLC concerns and suggestions, who participated in meetings, and a plan for periodically revisiting the agreement, along with meeting notes, as described in [Step Three of the FPIC Module](#).

**Conflict Resolution Plan:**

A Conflict Resolution Plan outlining the mechanisms and terms for resolving disputes, and materials that show: (a) how the plan was co-created with the IPLC; and (b) a record of each dispute and how it was resolved. See [Step One of the Conflict Resolution Module](#).

**Updated Engagement and Consultation Plans:**

Updated Engagement and Consultation Plans as implementation begins, as discussed in [Step One of the Implementation Module](#), especially areas of key concern or human rights impacts identified during consultation, as described in the [FPIC Module](#).

**\*\*Teams already in implementation:**

Teams already in implementation should do a streamlined version of the above, including:

- Notes on assessments and any impacted parties, based on a review of the [Learning & Early Discussions Module](#)
- A plan for applying the FPIC steps moving forward (and retroactively where possible) in line with the [FPIC Module](#)
- A [Conflict Resolution Plan](#) per the Conflict Resolution Module

**Human Rights Impacts Monitoring:**

Human Rights Impacts Monitoring including practices established per the guidance in [Step One of the Monitoring, Evaluation & Adaptation Module](#), focused on areas of key concern and human rights impacts. Activities carried out per [Steps Two](#) and [Three](#) of the Monitoring, Evaluation & Adaptation Module should be fully documented, including notes on pause-and-reflect meetings.

**Key Issue: Format**

Documentation should be easy to implement, share, store and keep secure. Agreeing on an information-sharing database with the IPLC (e.g., a Box folder) may be a good option for keeping everything in one place. For major events or decisions, non-confidential information should be shared broadly throughout the IPLC, supporting transparency and trust. Staff should work with the IPLC to identify who should share this information and how.

Multilateral funders, governments or other actors may have specific documentation requirements, such as meeting minutes, a signed list of attendees or a negotiated agreement. In other contexts, documentation can take a more innovative form, such as a smartphone video of a meeting or ceremony, a recording of oral testimony, photos with captions, a WhatsApp text or voice conversation, a written report, bulleted lists, a song, or an artist's depiction of a meeting or agreement. The form of documentation must be agreed upon with the IPLC.

Documentation should serve the needs of both TNC and the IPLC. TNC may feel that certain elements need to be documented in writing, for example, for a donor report or the team's institutional memory. If the IPLC prefers a different format, it may be possible to honor both formats, as long as transparency is maintained, and the written version is not considered binding on the IPLC.

**Key Issue: Additional Workload Burden**

It takes effort to create a complete file for operational and human rights purposes, but the work does not necessarily need to be extensive. For example, a [Conflict Resolution Plan](#) could be a short summary of the options in the Conflict Resolution Module, including additional considerations as appropriate. On a smaller project, a [Consent Agreement](#) may be a one-page

summary of the process and terms. Meeting notes from a consultation session may be a series of photos accompanied by a bulleted list of participants and the major discussion points and decisions.

Managers should plan for additional capacity to handle a larger workload if it becomes necessary, but documentation can be efficient and thorough, as long as it is designed and carried out in collaboration with the IPLC.

### Key Issue: Confidentiality



Transparency is key to establishing fairness and trust between TNC and IPLCs. But extending this principle to broader audiences is complicated. Preserving confidentiality may be paramount in certain circumstances, as indigenous peoples have intellectual property rights over their stories and practices. They may choose to share this information with TNC as part of a consultation process, but TNC must also respect the IPLC's choice not to share it. For more on IPLC intellectual property rights, see [Step Three of the Learning & Early Discussions Module](#). Confidentiality measures may be enacted around sensitive information, such as IPLC political strategies, internal administration, or information about territorial demarcation.

The need for confidentiality may arise with outside audiences as well as within the IPLC. If there is an inter- or intra-group conflict or a vulnerable group, eliciting information may require confidentiality. Cases should be addressed with continual assessment of the Principles and Safeguards and the guidance in the [FPIC](#) and [Implementation](#) Modules. The [Global Indigenous Peoples and Local Communities Team](#), members of the VCA Network, and Legal Counsel can also provide advice.

### Key Issue: Legal Considerations



Organizations generally record activities, understandings, positions and decisions that can be used in audits, future negotiations, or even litigation in unfortunate circumstances. This documentation may be important for protecting TNC legally. Managers should consult with Legal Counsel as required by TNC's policies and procedures.

In keeping with the Principles and Safeguards, documentation should be designed to support intentional, informed communication and collaboration, not defensive strategies. The modules in this Guide, and related documentation, are meant to be implemented continuously. FPIC, for example, is not just obtained at a single point in time; it is continually re-assessed as circumstances shift. If the IPLC asks for a modification, TNC would not typically insist on sticking to the terms of the deal, but should see such a request as a valuable part of the relationship-building process. In some cases, it may be necessary to suspend or terminate a relationship that the IPLC no longer believes serves its needs.

## Resources: Documentation

### Storybook video on Healthy Country Planning in Australia

The Warlpiri speakers of the Tanami Desert have turned the English version of the Southern Tanami Indigenous Protected Area management plan into a digital storybook: a series of videos, audio and animation in the Warlpiri language. The [website](#) contains these materials as well as the English version.

### Special Attention to Documenting FPIC

Equitable Origin and the Roundtable on Sustainable Biomaterials have guidance on what constitutes acceptable evidence of FPIC processes in [Enabling FPIC Through Voluntary Standards](#), Project Report, July 2018. This framework promotes best practices in natural resource development, constructed with and by indigenous peoples. They were designed to support responsible energy development, but they could be adapted for conservation. For example, in the FPIC Monitoring Tool Framework presented in Annex 3 of the Project Report, the section on the Tenets of FPIC (pages 101-103) could be used to supplement the documentation to save for Free, Prior & Informed Consent in this Guide.

## 5A. Wenland Case Study Documentation

As the permafrost stabilization initiative gets up and running, the TNC team conducts a documentation review per the Guide, assessing what the team has been collecting throughout the process.

[View Case Study](#)

## Documentation Checklist

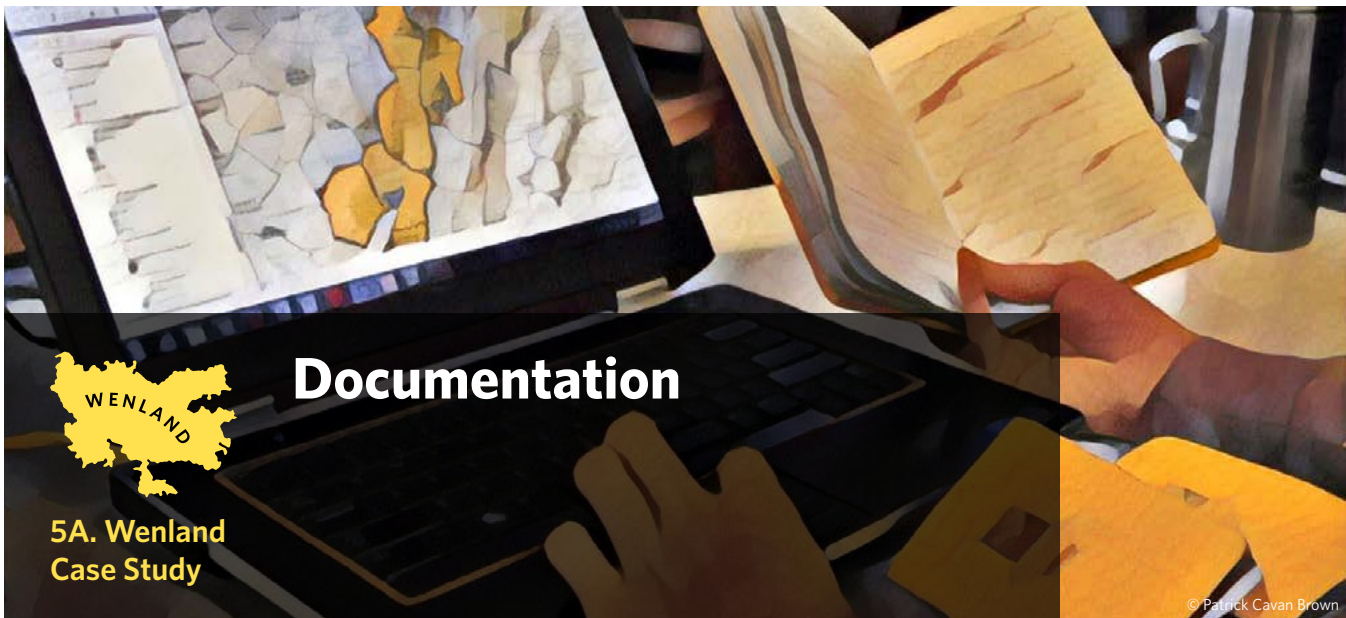
- Establish documentation practices that facilitate communication, trust and accountability. Documentation should meet the needs of both TNC and the IPLC, including language, format, literacy levels, internet access and cultural practices and preferences
- Revisit the [Human Rights Impact Assessment](#) or other areas of concern identified during consultation, and provide added attention to these areas during documentation
- Ensure documentation practices respect and protect IPLCs' rights to collective knowledge and intellectual property, and include confidentiality provisions where necessary
- Throughout the lifecycle of an initiative, ensure documentation is continuous and thorough, yet intentional and manageable
- Support TNC and IPLC capacity-building to facilitate participation in and understanding of culturally responsive documentation practices

## Documentation to Save

### Key materials to include in the documentation file (see above):

- [Background research](#) identifying all potentially impacted IPLCs
- [Engagement Plan](#) for each IPLC partner
- Consultation preparation information
- [Consultation Plan](#)
- [Consent Agreement](#)
- [Conflict Resolution Plan](#)
- Updated Engagement and Consultation Plans
- For teams in implementation that have not been through the earlier modules, an adapted, streamlined version of the above, including:
  - Notes on assessments and any potential impacts or impacted parties
  - A plan for applying the [FPIC](#) steps moving forward, (and retroactively to the extent possible)
  - A [Conflict Resolution Plan](#)
- Human rights monitoring indicators, activities and notes





## Documentation

### 5A. Wenland Case Study

**A**s the permafrost stabilization initiative gets up and running, the TNC team conducts a documentation review per the Guide, assessing what the team has been collecting throughout the process. The documentation file contains:

- A research file including copy-and-pasted news stories, some downloaded academic articles, emails with attached documents sent by some local university Native Studies professors and staff notes.
- Introductory emails among TNC staff, a Wen community contact and two Wen Camp Council members, and notes from a coffee meeting with Council members.
- Emails with a broader group of Wen Council members, arranging a time for TNC to appear before the Council. TNC's initial email conveying the staff member's understanding of how to engage the community and asking for comment on the proposed methods of engagement. A number of replies ("sounds good!") indicate approval.
- A Consultation file, including: an outline of topics to cover, annotated over time with meeting dates, issues covered and rough notes on conclusions that were reached; flash drives with video of sessions; copies of official minutes, resolutions and correspondence with the Camp Councils; copies of some reports and correspondence with outside parties; copies of posters and promotional materials regarding consultation sessions; copies of maps and handouts used at consultation sessions; drafts and an executed copy of the Initiative Agreement clearly indicating Wen consent; news articles regarding the consultation.
- A three-page Conflict Resolution Plan and a cover email from TNC to a group of Council members, saying, "This is the final version of the plan that we discussed during the consultation session on July 21; let us know if you have any comments or revisions, and please share widely within your respective communities."
- Correspondence related to the Environmental Monitoring Committees' membership issues.

1

**This is a new project team, and they are eager to know whether their documentation file is adequate. Where could it be stronger?**

*The team's file might be improved, but it's adequate and reflects diligent efforts to document a relatively well-established relationship with the Wen. For many projects where the IPLC has less administrative or technical capacity, the file may be considerably thinner and rely primarily on TNC notes and memos documenting oral processes and agreements.*

*A few areas where the file could be stronger:*

- *The Engagement Plan could have been more formally set out and agreed to, but this can be hard at the beginning of a relationship.*
- *The Conflict Resolution Plan should have been more clearly agreed to. The TNC team should have pushed to confirm that it had been read, understood, agreed to, and, ideally, was being promoted within the communities.*
- *While the Consultation file seems robust, an annotated outline might not be sufficient to capture such a detailed and complex process.*

2

**rostLock has been keeping its own file on the project and the consultation. At the signing ceremony, FrostLock proudly delivers to the Councils a neatly prepared series of 34 binders with reports, minutes and transcripts, saying they are an invaluable historical resource. Then FrostLock asks the Wen leaders sign a statement acknowledging the volumes as the "official record of the proceedings." Should TNC have any concerns?**

*Yes. First, the principles of Informed Decision-Making and Overarching Good Faith weigh against seeking IPLC signatures or other approval of documents or materials that the IPLC is not familiar with in-depth and in detail. Asking the Wen to approve a document they haven't reviewed is like asking them to sign a contract in a foreign language. Second, if there is going to be an official record of the proceedings, the Wen should have involvement in, or ownership over, the process of creating it.*

3

**FrostLock told its investors that technical evaluations agree on the likelihood of success of its stabilization technology. The technical evaluations, disclosed during the consultation, do not contradict this, but only barely: Evaluators put the likelihood of success at 51 percent. FrostLock doesn't want evaluations to be included in the public record because they contain proprietary information. When the issue of the likelihood of success came up during consultation, the Wen said they would still support the initiative even if there was only a small chance of success. Can TNC go along with FrostLock's request to limit the record?**

*FrostLock's request may not be ideal, but it doesn't seem deeply problematic. Transparency is an important part of Accountability, and reasonable protection of proprietary information is not inconsistent with that. FrostLock does not appear to be misleading investors, and their relationship with their investors is not a responsibility of TNC or the Wen. The Wen apparently have the information on likelihood-of-success that they need to make their decision.*

4

**Same as above, but the information FrostLock wants excluded from the record is about the proprietary chemicals being used in drilling and stabilization. Several of the chemicals are new and still undergoing testing. Is this a legitimate exclusion request?**

*This exclusion might be seen as undermining the effectiveness of the public record.*

*Public policy battles are ongoing around the world over the public's right to know the contents of chemicals used for fracking. One purpose of a public record would be to allow the Wen and other stakeholders to revisit decision-making in light of new information — as might arise from ongoing testing. TNC and the Wen should try to find solutions that protect legitimate proprietary information but also accommodate the purpose of documentation. Perhaps an exception is warranted to reveal the chemicals to a select group of researchers only.*

5

**The Councils tell TNC they don't have the capacity to do anything with the record, like share it with the communities. They just plan to keep it on file at the Council head office. So it goes?**

*TNC doesn't live in a world of unlimited resources either, but the team might budget ways to make the record accessible, like an archival website, uploading key documents and session videos, or writing a one-pager that summarizes the process. If the consultation process was historic and involved collecting Wen stories, setting expectations, and hearing commitments from FrostLock and TNC, there could be many reasons that rights holders and stakeholders would want to revisit the process. Having everything readily available also serves the practice of continuous learning.*



## Module 6:

# Monitoring, Evaluation & Adaptation

In this module:

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[Learn how monitoring outcomes can reinforce human rights efforts](#)

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[Develop key performance and success indicators to track alignment with the Principles and Safeguards](#)

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[Gather feedback, evaluate it, and implement changes as needed](#)

**Wenland Case Studies:**

[6A. Monitoring, Evaluation & Adaptation](#)

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## Introduction

**T**his module provides guidance on monitoring, evaluation and adaptive management of TNC's human rights-based approach to working with IPLCs. This work is a process of continuous learning and improvement through analyzing the outcomes and impacts of our actions.

Monitoring, evaluation and adaptation are substantive elements of human rights work, as well as essential tools for project management. As described in the [FPIC](#) and [Conflict Resolution](#) Modules, respecting the human rights of IPLCs means taking steps to avoid adverse human rights impacts, identifying and mitigating impacts, and understanding and strengthening the processes and practices that support IPLCs' human rights.

---

## Principles and Safeguards

The Introduction includes a discussion of all the [Principles and Safeguards](#) that apply to equitable partnerships with IPLCs. Five are particularly important for monitoring, evaluation and adaptation:

### Key Principles and Safeguards for Monitoring, Evaluation & Adaptation

#### **Informed Decision-Making:**

Continual learning and improvement is the goal. Bad news can become good news if teams take prompt, informed action. Positive results can be better understood and reinforced as the initiative continues.

#### **Meaningful Consultation:**

The consultation process should center on the IPLCs' concerns and priorities, which should inform the Monitoring, Evaluation & Adaptation indicators.

#### **Equity & Inclusion:**

Given the well-known adage, "what gets measured gets done," it's important to include diverse voices in setting up a system to assess the progress of TNC's human rights-based approach.

#### **Accountability:**

Accountability can be assured when parties take responsibility for their actions based on the information produced by a strong Monitoring, Evaluation & Adaptation system.

#### **Overarching Good Faith:**

The information generated by a strong Monitoring, Evaluation & Adaptation system is only as good as how it's used. Adaptive management of a human rights-based approach requires a commitment to turning information into action through collaboration and accountability.

## Focusing on IPLC Human Rights

This module focuses on the monitoring, evaluation and adaptation of how an initiative impacts IPLC human rights. TNC has also developed resources on conservation and human well-being frameworks, measures and indicators,<sup>[1]</sup> which should be applied to track an initiative's goals and outcomes. TNC teams should be aware that there are broader frameworks for understanding how well an initiative serves a community's conservation and human well-being goals, but the focus here is to ensure TNC's efforts to respect and promote the human rights of IPLCs are measured, understood and used as a learning tool for ongoing adaptation. Therefore, it's important to understand the scope of the Monitoring, Evaluation & Adaptation covered in this Guide, as compared to other frameworks.

### Appropriate Frameworks to Consult

#### **Impacts of the initiative process:**

*Use this Guide.* This Guide is primarily focused on the who and the how of an initiative — in other words, the process. Thus, the monitoring we are discussing in this module is about making sure the process respects and promotes human rights in line with the Principles and Safeguards of this Guide. For example, is there a high level of meaningful participation by IPLCs and the

social identities that comprise them? Is self-determination increasing as a result of how activities are carried out?

**Unintended impacts of the initiative:**

*Use this Guide and other TNC frameworks.* The non-negotiable minimum standard for a human rights-based approach is the duty to do no harm. So while this Guide focuses on how an initiative is carried out, we also want to make sure that the initiative's activities and outcomes are not having a negative impact on human rights, even if intentions are good. Returning to the example of the conservation project funded by a high-volume visitors' center in the Implementation Module, what happens if the number of tourists and impact of tourism infrastructure make it difficult for the IPLC to keep their culture intact? It's important to work with the IPLC to identify these areas of concern early on and develop appropriate indicators and monitoring processes to understand and mitigate them. TNC staff should consult this module along with other broader evaluative frameworks, including TNC's [Voice, Choice and Action Measures Framework](#).

**Intended impacts of the initiative:**

*Refer to other TNC frameworks.* When working with the IPLC to establish an initiative's ultimate goals and associated measures, it will be most helpful to refer to other frameworks, such as TNC's [Voice, Choice and Action Measures Framework](#), which has comprehensive guidance on setting up conservation and human well-being and measures, including equity measures.

## Guidance

### Step One: Develop Indicators

**Template: Human Rights Indicators**



[View the Human Rights Indicators Template](#)

It's critical for TNC and the IPLC to develop indicators together, paying attention to social identities who may be marginalized. The [Learning & Early Discussions Module](#) contains guidance on culturally responsive approaches to ensuring inclusion. If monitoring is done well, the results may be useful to the IPLC for purposes beyond the initiative.

Indicators and monitoring procedures should be designed, integrated and implemented with other aspects of an initiative, not conceived after the fact. An integrated approach produces better data that are more timely, collected using best practices and meaningful over longer time frames. This approach allows earlier results and insights to be fed back as implementation proceeds.

As a first step to identifying indicators, TNC and the IPLC should return to any [Human Rights Impact Assessment](#) or other areas of concern identified as part of the [FPIC process](#). Consider conducting a new

Human Rights Impact Assessment if one isn't available or is out-of-date. Any priority impacts or key areas of concern should be translated into specific indicators that are monitored over time. This should help TNC and the IPLC answer key questions such as:

### Key Questions for Ongoing Monitoring

What are the IPLC's goals, priorities and concerns regarding the initiative?

How might an initiative impact an IPLC's core resources or practices?

What were the most contentious issues to surface during consultation?

What expectations did the IPLC have for the initiative that may have informed decision-making and FPIC?

The answers to these questions will help teams develop their key human rights indicators and better understand priorities and expectations for monitoring. Teams will be able to adjust to unplanned circumstances that may arise and ensure that the IPLC feels that self-determination is being prioritized as implementation progresses.

For example, consider again the conservation project funded by a high-volume visitors' center. Forced cultural assimilation was identified as a potential adverse impact, stemming from a rapid escalation in tourist activity.<sup>[2]</sup> Indicators to monitor the **unintended impacts of the initiative** might include:



**Number of visitors**

**Incident activity**

**Commercial activity**

**Community interactions**

**Identified impacts**

- number of visitors - data from entrance checkpoints or ticket sales
- incident activity - collected by local law enforcement or municipal authorities
- commercial activity - generated by local government, business associations, or the community
- community interactions with tourists - a quantitative and qualitative survey of community members
- specific identified impacts, such as incidences of noise, litter or impact on wildlife associated with tourists from survey data or reports.

Another source of insight for indicators is emerging conflicts or disputes. Disputes are inevitable, and instead of causing alarm, they should be framed and addressed as opportunities for transparency and relationship-building with the IPLC.

[Through addressing disputes](#), TNC can demonstrate its commitment to the Principles and Safeguards,

particularly Overarching Good Faith and Indigenous Self-Determination. Looking into a dispute, how it arises and how it is dealt with can highlight areas that need attention. Even after a dispute is resolved, it may indicate some areas that should be flagged for more regular monitoring.

Indicators to monitor the **impacts of the initiative process** can be derived from the checklists in each module of the Guide. It is important to include both objective and subjective (perception) indicators – and teams should consider what makes a good indicator, for example, SMART and SPICED<sup>[3]</sup>. Objective indicators may make analysis less prone to bias from outlier experiences or expectations. Subjective indicators reflect experiences and behavior, and ensure IPLCs' voices are heard.

As with all types of indicators, less is more. To ensure clarity and feasibility, TNC and the IPLC should collaborate on the development of a few targeted, representative indicators that reflect priority concerns. For a small, on-the-ground project with one IPLC, three human rights indicators may suffice. For larger landscape or policy initiatives that include multiple actors and have full-time monitoring and evaluation specialists, ten or more human rights indicators may be necessary.

#### Tip: CbD 2.0 Participatory Monitoring

The [CbD 2.0 Guidance document](#) promotes participatory, community-based monitoring and encourages staff to hire contractors to fill any gaps (see pages 96-97). When monitoring a human rights-based approach, contractors should have experience and capacity in IPLC partnerships in the context where the work is carried out.

#### Resource: Danish Institute for Human Rights Key Indicators

The Danish Institute for Human Rights provides a menu of indicators that can serve as inspiration (particularly Part B, Community Impact, Sections 2 and 3: Land Management, and Environmental Health and Safety, pp. 68-82). See [Human Rights Compliance Assessment Quick Check](#), Danish Institute for Human Rights (2006). However, staff should be aware that many indicators and considerations in this menu have a scope beyond TNC's usual initiatives, many are oriented to private companies, and some fall short of the Principles and Safeguards in this Guide.

## Step Two: Collect and Evaluate Feedback

With indicators in place and human rights in focus, TNC and the IPLC should collaborate on monitoring and collecting data for determined time frames using appropriate methods. The people closest to the impacts will be the best judge of whether data is indeed sound, representative, and meaningful. Data can be collected in a number of ways:





**Using existing data**



**Surveying target populations**



**Interviewing IPLC members**

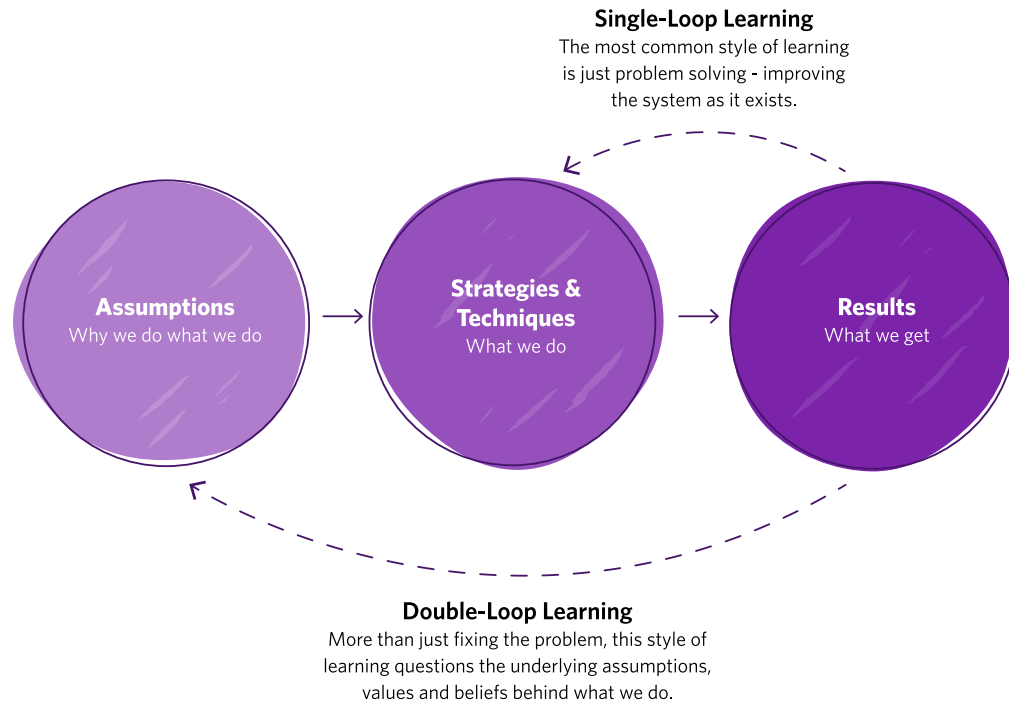
Using existing (secondary) data; surveying target populations during a specific timeframe; and interviewing IPLC members about their experience.

As with all monitoring, evaluation and adaptation, data gathering based on established indicators should begin before activities start in order to establish a baseline for comparison. If an initiative is already underway, teams should begin data collection as soon as possible.

TNC and the IPLC should collaborate on how to analyze data as it is collected, and what resources they need for evaluation. External resources can provide methodologies and approaches for data evaluation that may fit the circumstances of the initiative, the data and the team's available budget. [Better Evaluation](#) describes more than 300 evaluation methodologies, clustered into two dozen approaches in seven different stages. TNC also has considerable internal expertise on data evaluation and staff may contact the [Global Indigenous Peoples and Local Communities Team](#) for support.

It's common for evaluations to happen at two points in the lifecycle of an initiative. The first is during implementation, which is called formative evaluation, and usually comprises mid-term reviews, and the second is at the end of implementation, which is called summative evaluation, and often compares indicators before and after. For large or long-term initiatives, a multi-stage process might make the most sense, with several summative evaluation points at different phases.

The scope of evaluation will depend on time and budget constraints. Elaborate methods are not always better, especially if they alienate an IPLC whose wisdom and insight is essential to understanding the data. An annual pause-and-reflect meeting can be useful. During a pause-and-reflect meeting, the IPLC and TNC review their human rights indicators, the Principles and Safeguards of this Guide and the checklists in each module to ensure compliance. They also re-evaluate the assumptions underlying the theory of change and adjust as needed. This is known as double-loop learning (below). Pause-and-reflect meetings can be done during implementation and again in final evaluation to update the theory of change.



### Step Three: Engage in Adaptive Management

With insights being generated from monitored data, the IPLC and TNC can begin the challenging and creative task of adapting the work to address any human rights impacts or problems that are revealed. Even in the absence of problems, the team may improve and better align the initiative with the IPLC's priorities. Monitoring results can show the team where to change, continue or strengthen their practices. Looking at how the IPLC and TNC co-developed the human rights-based approach, resolved disputes, improved governance and extended the initiative's scope can all be beneficial.

TNC should collaborate with the IPLC on adaptive management. The people living with the impacts will have the most relevant experience and the best judgment on whether a proposed adaptation will produce better results.

In addressing IPLC concerns or adverse human rights impacts that come to light, adaptations like additional mitigation safeguards are sufficient if implemented with patience, resources, and good faith. However, there may also be concerns that point to profound dissatisfactions, baseline misunderstandings, structural defects or deeply entrenched opposition that may lead the IPLC and TNC to question the viability or value of an initiative. In these cases, a return to dialogue and consultation may be necessary. TNC and the IPLC may decide that in order to stay aligned with the Principles and Safeguards, the initiative needs to come to a close. Of course, reducing the scope or activities of an initiative must happen in close collaboration with the IPLC to avoid withdrawal that leads to an impression of bad faith.

## Mitigation and Adaptation Response



The Human Rights Due Diligence process outlined in the FPIC Module may be useful to think through mitigation and adaptation responses. The [Human Rights Due Diligence](#) process consists of:

1. Assessing potential and actual human rights impacts
2. Mitigating adverse impacts identified in the assessment process
3. Tracking responses and outcomes of the mitigation provisions
4. Communicating to all rights holders and stakeholders how impacts are being addressed

Point 3 of the Human Rights Due Diligence process outlined above creates a backward-looking feedback loop that applies the same monitoring and evaluation systems used to identify the concern or impact in the first place to assess the effectiveness of mitigation provisions. Point 4 creates a forward-looking feedback loop by increasing the audience of rights holders and stakeholders (consistent with confidentiality obligations) who can monitor the ongoing process and contribute ideas.

Returning again to the example of the conservation project funded by a high-volume visitors' center, if the monitoring results show that the limits on visitor numbers are not protecting the cultural and environmental priorities of the IPLC, the team may choose to further lower the number of visitors allowed per day. If semi-structured interviews with the IPLC revealed this inadequacy, another round of interviews would be conducted after some time to assess how the new limits are working, with the results shared openly in the community.

### 6A. Wenland Case Study Monitoring, Evaluation & Adaptation



The permafrost stabilization initiative has been operational for three years, and the initial data on stabilization is promising. Some complaints about construction impacts (noise) have come through, but there's no evidence of environmental issues.

[View Case Study](#)

## Monitoring, Evaluation & Adaptation Checklist

In addition to the highlights below, TNC staff should refer to the checklists at the end of each module, which comprise a comprehensive checklist to inform monitoring, evaluation and adaptation.

### Step One: Develop Indicators

- Develop a targeted set of subjective and objective human rights impact indicators reflecting IPLC goals, priorities and concerns, based on a [Human Rights Impact Assessment](#) or areas of concern identified through other assessments or processes.
- Consider existing or established IPLC engagement processes

### Step Two: Collect and Evaluate Feedback

- Establish monitoring and data collection systems for specific time frames using appropriate methods, considering existing IPLC engagement processes
- Put methodologies in place, considering both formative and summative evaluations (e.g., midterm and final pause-and-reflect meetings)

### Step Three: Engage in Adaptive Management

- Adapt as needed, according to evaluation results

## Documentation to Save

See [Documentation Module](#) for additional context and considerations for documentation.

- Human rights monitoring indicators
- Data collection methodologies and results
- Materials describing the evaluation methodologies and notes from the implementation of these methodologies
- Specific provisions for adaptation and plans for how to implement them

## Notes

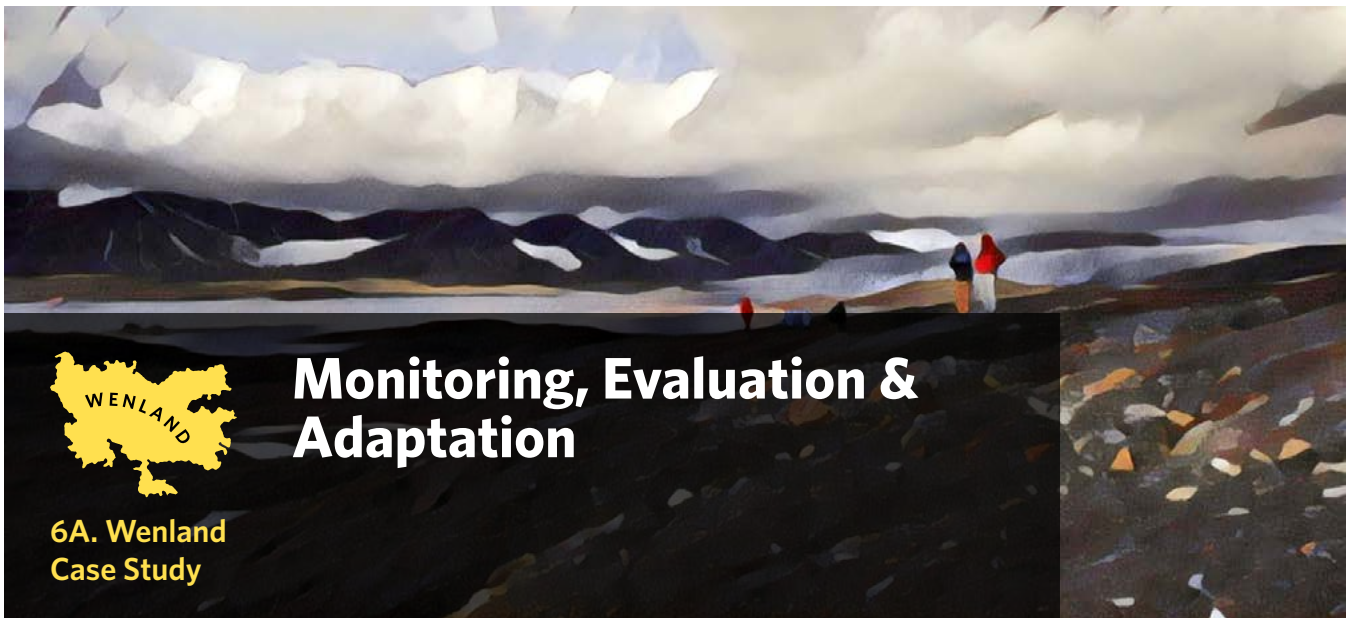
<sup>[1]</sup> Contact Nicole DeMello ([ndemello@tnc.org](mailto:ndemello@tnc.org)) for more information on TNC's Voice, Choice and Action Measures Framework, which provides guidance on conservation and human well-being indicators, including equity-focused indicators. TNC's [Strong Voices, Active Choices Framework](#), or "VCA Framework" outlines TNC's approach to partnering with IPLCs on shared conservation and sustainable development goals.

<sup>[2]</sup> See more on this example in the Implementation Module

<sup>[3]</sup> "While there are no set rules to selecting indicators, one popular guideline has been to use the acronym 'SMART': indicators should be Specific, Measurable, Attainable and action-oriented, Relevant, and Time-bound. This guideline tends to suit quantitative indicators in particular. Another acronym recently suggested is 'SPICED': Subjective, Participatory, Interpreted, Communicable, Empowering and Disaggregated. SMART describes the properties of the indicators themselves, while SPICED relates more to how indicators should be used." From Better Evaluation — Equal Access Participatory Monitoring and Evaluation Toolkit, Module 2: Setting Objectives and Indicators.

[https://www.betterevaluation.org/sites/default/files/EA\\_PM%26E\\_toolkit\\_module\\_2\\_objectives%26indicators\\_for\\_publication.pdf](https://www.betterevaluation.org/sites/default/files/EA_PM%26E_toolkit_module_2_objectives%26indicators_for_publication.pdf)

<https://connect.tnc.org/sites/lands/indigenous/SitePages/Human%20Well-Being%20Measures.aspx>



## 6A. Wenland Case Study

# Monitoring, Evaluation & Adaptation

**The permafrost stabilization initiative has been operational for three years, and the initial data on stabilization is promising. Some complaints about construction noise have come through, but there's no evidence of environmental issues.**

The following developments have occurred:

- TNC has heard from people in different Wen Camps that they are disappointed. They don't point to concrete impacts, but they say the number of Albians in the north has increased, and the Wend feels less like home. They tell TNC they would do it differently if they could.
- Women's participation in the Environmental Monitoring Committees has dropped. Pressure from the Councils and other men in the community made the experience of participation unpleasant for women, according to some. TNC has even heard of retaliatory harassment and gender-based violence, but no formal complaints have been made.
- Climate crisis tourism, wherein adventuring tourists seek out hot zones in the planetary fight for survival, has emerged as a trend. Stabilization technology sites are primary destinations, and visitation surges during the Wen summer celebrations. The Wen have long fought to restrict public access to the Wend during their celebrations, but the Albian government has refused to do anything and calls it a separate issue. FrostLock is likewise unwilling to act.

### Lets Say

### Thoughts and Guidance

1

**Given all the investment by FrostLock, Wen elders are wondering if it is appropriate to withdraw their grant of consent for the permafrost stabilization initiative, or whether it is now too late. Is there nothing they can do about their dissatisfaction now?**

*On the one hand, Respect for Self-Determination does not mean that the Wen cannot be held to their commitments. But it may be unfair to hold the Wen too strictly to consequences they couldn't have predicted, especially when the impact on self-determination is profound.*

*In response, TNC could decline to support revoking consent but still support the Wen's right to revoke consent and bear the consequences, if they say it's essential to their self-determination. Situations like this reflect a gap in the consultation process and the community education necessary for Informed Decision-Making. Perhaps the question of consent can be set aside in order to solve the underlying problems leading to dissatisfaction. The sentiment of "we would do it differently" might refer to specific aspects of implementation that can be addressed, or changes some community members want but don't feel empowered to ask for. TNC should consider a new round of consultation to identify problems, and work with FrostLock to honor a strong FPIC process, which includes continual iteration, particularly when new information or changes arise.*

2

**TNC's monitoring protocol notes the growing gender disparity on the Environmental Management Committees but adds that the only tool at TNC's disposal, nominating authority, hasn't succeeded. And while TNC has heard concerning stories about repercussions of the gender-equity focus for Committee membership in the Camps, no data confirms this. Furthermore, intra-community disputes are beyond the scope of TNC's authority to monitor, much less interfere with. Is this an appropriate assessment?**

*No. More investigation is needed. The allegations reflect human rights impacts of the Environmental Management Committees and thus, the permafrost stabilization initiative. This requires a response just as environmental impacts would.*

*Wen women have sought outside assistance in the past, and the Wen community as a whole has agreed that gender disparity is an issue, which the all-male Councils even agreed to address during implementation. Still, given that rumors of harassment, discrimination and gender-based violence persist, TNC should make an extra effort to gain information, including through consulting TNC's Guidance for Integrating Gender Equity in Conservation, and should seek out partners with expertise. The critical foundation and duty of all safeguards is to do no harm.*

3

**If the Albanian government has been lobbied on the hot zone tourism issue and won't budge, is the situation out of TNC's hands?**

*NC should not wash our hands of responsibility for this situation. The hot zone tourism is a direct consequence of the permafrost stabilization initiative (see UNDRIP, Article 12, which protects the right of privacy to religious and cultural sites).*



*But this impact was impossible to anticipate. Even though neither FrostLock nor TNC has the power to prohibit tourism, both should use leverage and resources to mitigate the problem. Informational programs could be created to educate tourists about respecting the Wen's privacy, or a hot zone exhibit or museum could be built far away from the celebration sites.*

4

**The Wen organization designated to take over management of the Conservation Management Area from TNC has stalled. No one has been hired, no plans are in place—and the organization may not be ready by the five-year mark. A TNC staffer suggests that the team not be in any hurry to push the organization along, as it will allow TNC to extend our management of conservation activities, such as the Wendbok reindeer herds. Is this acceptable, since TNC has no concrete obligation to do anything to support the Wen organization's development?**

*TNC might not be obligated under the Initiative Agreement to help the Wen organization form, but Overarching Good Faith and Respect for Self-Determination may require more from us. Assuming responsibility for the Conservation Management Area may be integral to the Wen's conclusion that the permafrost stabilization initiative was consistent with their self-determination.*

*For TNC to look the other way, while enforcing the provisions it favors, could lead to Wen mistrust of TNC and disillusionment with the overall initiative. TNC's concern for the Wendbok herds is legitimate, but that can be pursued in more transparent and collaborative ways.*

**Template:**

# Human Rights Indicators

This template is a starting point for developing the human rights indicators described in [Step One of the Monitoring, Evaluation and Adaptation Module](#) of the Guide. TNC and the IPLC collaborated on a mutually agreed-upon approach to the human rights impact assessment in [Step Two of the FPIC Modules](#). The indicators focus on monitoring the human rights impacts of the initiative process, for example, the level of meaningful participation, self-determination and other areas embodied in the Principles and Safeguards, as well as any unintended impacts of the initiative.

This template also includes some questions for TNC and the IPLC to consider when developing the indicators. Agreement on the indicators should be documented in a culturally responsive manner, which may include signatures or initials on the plan, an exchange of emails, a show of hands at a meeting, a protocol or ceremony.

For guidance on what makes a strong indicator, refer to TNC's VCA Measures and guidance on developing SMART and SPICED indicators.

([https://www.betterevaluation.org/sites/default/files/EA\\_PM%26E\\_toolkit\\_module\\_2\\_objectives%26indicators\\_for\\_publication.pdf](https://www.betterevaluation.org/sites/default/files/EA_PM%26E_toolkit_module_2_objectives%26indicators_for_publication.pdf)).

Content entered into this form **will not be saved** if filled out in a browser. [Learn more](#)

Initiative: \_\_\_\_\_

Time period: \_\_\_\_\_

Date: \_\_\_\_\_

Updated as of: \_\_\_\_\_

Approved by:

Organization or group:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

## 1. Human rights impacts or key areas of concern

Revisit the Human Rights Impact Assessment results or other areas of concern identified as part of the FPIC process in Module Two. If TNC and the IPLC developed a Consultation Plan using the template, return to the list of potential and actual human rights impacts in that plan to guide this section.

i. Potential and actual positive impacts:

ii. Potential and actual negative impacts, including severity, probability and underlying causes of the risk:

iii. Proposed mitigation for potential and actual negative impacts:

iv. Plan for tracking responses and outcomes and for communicating how impacts are being addressed:

## 2. Additional information, if not included in the impacts listed above:

a. The IPLC's goals, priorities and concerns regarding the initiative:

b. Ways the initiative may impact an IPLC's core resources or practices:

c. Most contentious issues in consultation:

d. Expectations the IPLC has for the initiative that have informed decision-making & FPIC:

### 3. Highlights from the checklists in each module

Revisit the checklists at the end of each module in the Guide, noting key responses to the checklist prompts.

a. Module One - Learning & Early Discussions:

b. Module Two - Free, Prior & Informed Consent:

c. Module Three - Conflict Resolution:

d. Module Four - Implementation:

e. Module Five - Documentation:

f. Module Six - Monitoring, Evaluation & Adaptation:

**4. Indicators to monitor unintended impacts of the initiative, based on review of #1 & #2 above**

a. Indicator 1:

b. Indicator 2:

c. Indicator3:

## 5. Indicators to monitor the impacts of the initiative process, based on review of #3 above

a. Indicator 1:

b. Indicator 2:

c. Indicator 3:

d. Indicator 4:

e. Indicator 5:

### Questions to Consider for Developing Indicators:

- Does TNC and the IPLC have a plan in place for collaboratively collecting and evaluating feedback?
- Does TNC and the IPLC have a process for deciding which activities to change, which to continue and which to strengthen, based on the feedback received?
- How does TNC and the IPLC plan to share the results of the monitoring, evaluation and adaptation process with rights holders and stakeholders, consistent with confidentiality obligations?

This PDF has been provided primarily for printing or offline use. This form cannot be filled out digitally unless it is downloaded and opened in a PDF program such as Adobe PDF Reader or Preview (Mac OS). Unfortunately, text entered into this form **will not be saved** when using a browser such as Chrome, Safari or Internet Explorer.



## Appendix I

# TNC Commitments

In this Appendix:

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[Understand TNC's commitment to upholding human rights and equitable partnership](#)

---

[Know which international standards and guidelines informed this Guide](#)

---

[Review the UNDRIP articles that underpin the nine Principles and Safeguards](#)

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**T**NC's vision and values are reflected in the Guide's best practices for respecting and promoting human rights and equitable partnerships with IPLCs. The commitments to international standards and internal guidance that inform this work include:

Although most of TNC

- The United Nations Declaration on the Rights of Indigenous Peoples
- The principle of Free, Prior & Informed Consent
- The Guiding Principles of the Conservation Initiative on Human Rights
- TNC's Values, particularly Respect for People, Communities and Cultures
- TNC's Code of Conduct, particularly Respect the World Around Us
- Conservation by Design 2.0

A human rights-based approach to conservation is a direct expression of TNC's Values. Our commitment to respecting and promoting the rights of IPLCs requires us to pursue conservation outcomes that are equitable, collaborative and reciprocal.

[TNC's Code of Conduct](#) outlines expectations for ethical behavior. This includes:

- the importance of support and input from IPLCs in decision-making
- respect for all local populations and cultures wherever we operate
- the furtherance of the human rights of all people throughout our operations — across the globe
- an understanding that our goals and mission must never become more important than the rights of the people living in the communities we serve

The Conservancy is a founding member of the [Conservation Initiative on Human Rights](#), working alongside six other international conservation organizations to integrate human rights into conservation policy and practice. This operates on four main principles:

- Respect human rights
- Promote human rights within conservation programs
- Protect the vulnerable
- Encourage good governance

TNC's 2016 [Conservation by Design 2.0 Guidance Document](#)<sup>[1]</sup> evolves our understanding of the ties between people and nature. It articulates a more inclusive approach to conservation and social safeguards related to human well-being, equity and human rights. This Guide turns commitments and ideals into action steps, and it will be part of the organization-wide implementation of CbD 2.0.

We also strive to align ourselves with the [United Nations Declaration on the Rights of Indigenous Peoples](#). UNDRIP is considered the most comprehensive international instrument regarding the collective and individual human rights of indigenous peoples, and it recognizes their inherent rights and decision-making authority<sup>[2]</sup>. UNDRIP was adopted by the UN General Assembly in 2007 and has 46 Articles that detail these rights and how they should be addressed when working with indigenous peoples.

The main articles in UNDRIP that inform the principles of this Guide are:

- Article 18: the right to participate in decision-making which would affect IPLC rights
- Article 19: the right to operate through their own institutions in Free, Prior and Informed Consent processes
- Article 23: the right to determine and develop priorities for health, housing, and other developmental programs
- Article 24: the right to access their traditional medicines and equal right to the highest standard of physical and mental health
- Article 25: the right to maintain and strengthen a spiritual relationship with their lands and waters
- Article 26: the right to own, use and develop their lands, territories and resources
- Article 29: the right to conservation and protection of their lands and resources and freedom from hazardous materials on their territories
- Article 31: the right to maintain, control and develop their heritage and customs, as well as their knowledge and intellectual property
- Article 32: the right to determine priorities for land use and development
- Article 40: the right to fair, just, and prompt resolution of conflicts

NC fully supports the principle of Free, Prior & Informed Consent, which underlies indigenous peoples' right to self-determination. Self-determination protects indigenous autonomy over their identity, culture and development priorities. This rests on indigenous peoples' ability to self-govern, live on their lands, maintain their culture, and protect themselves from undue influence by surrounding colonial or dominant society. Oviedo et al. (2000) describe the bundle of rights related to the right to self-determination as it pertains to conservation and natural resource management:

- Ancestral land/territorial and resource rights
- Land and resources control and management rights
- Self-government by own institutions and authorities
- Self-development (independent decision-making on development options)
- Prior informed consent on conservation and development actions
- Benefit-sharing rights
- Indigenous knowledge and intellectual property rights<sup>[3]</sup>

## Notes

<sup>[1]</sup> See pages 16-19 and Appendices C & D.

<sup>[2]</sup> Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, U.N. Doc. A/HRC/9/9 (2008), para. 85: The United Nations Declaration on the Rights of Indigenous Peoples: “[R]epresents an authoritative common understanding, at the global level, of the minimum content of the rights of indigenous peoples, upon a foundation of various sources of international human rights law. The product of a protracted drafting process involving the demands voiced by indigenous peoples themselves, the Declaration reflects and builds upon human rights norms of general applicability, as interpreted and applied by United Nations and regional treaty bodies, as well as on the standards advanced by ... other relevant instruments and processes.”

<sup>[3]</sup> Oviedo et al. (2000) Indigenous and Traditional Peoples of the World and Ecoregion Conservation: An Integrated Approach to Conserving the World’s Biological and Cultural Diversity. WWF & Terralingua.

<http://d2ouvy59p0dg6k.cloudfront.net/downloads/EGinG200rep.pdf>

## Appendix II

# Glossary of Key Terms

In this Appendix:

### Define the key terms that inform the work of this Guide

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#### Equity

Fair and just systems, institutions and practices that ensure all people have full access to power and resources to achieve their potential and thrive. Equity requires acknowledging the impacts of systemic racism, exclusion and discrimination, and dismantling all barriers to participation, opportunity and self-determination.<sup>[1]</sup>

#### Free, Prior & Informed Consent

An international legal standard that assesses whether interactions and decision-making affecting IPLCs reflects best practices for protecting the indigenous right to self-determination.<sup>[2]</sup>

- Free means consent that is given free of coercion, intimidation or manipulation.
- Prior means that consent should be sought not just in advance of any authorization or commencement of activities, but at the earliest stages of project development, before key decisions are made.
- Informed means that the IPLC has been given access to all relevant information about the purpose of the project, its size, scope and lifespan, likely participants, and impact assessments. The process must allow time to dig into underlying issues and follow up.
- Consent refers to an authoritative and legitimate collective decision made by the IPLC, using its own customary decision-making processes.

#### Gender

Gender refers to the roles and responsibilities of men, women and other genders that are created in our families, our societies and our cultures. The concept of gender also includes expectations about the characteristics, aptitudes and likely behaviors of different genders. Gender roles and expectations are learned. They can change over time, vary within and between cultures, and be influenced by other social intersections such as race or class. Understanding gender dynamics in a particular context is important for understanding and navigating power dynamics.<sup>[3]</sup>

#### Gender-disaggregated data

Information obtained through a survey or interview where people of different genders are engaged separately. This is important in situations where different genders may have different experiences, knowledge, priorities, needs, or behavior.<sup>[4]</sup>

## Human rights

Rights inherent to all people, whatever the nationality, place of residence, sex, gender identity, sexual orientation, national or ethnic origin, race, religion, language, age, ability or any other status. We are all equally entitled to human rights without discrimination.<sup>[5]</sup>

## Human rights-based approach to conservation

Integrating human rights norms and standards into policy, planning, implementation and monitoring and evaluation to ensure that conservation practice respects and promotes these rights. Using this approach, human rights and conservation become mutually and positively reinforcing pursuits.<sup>[6]</sup>

## Human well-being

A state of being in which one's needs are met, one can act meaningfully to pursue chosen goals, and one enjoys a satisfactory quality of life.<sup>[7]</sup>

## Indigenous peoples and local communities

Peoples and communities who possess a profound relationship with their natural landscapes, which they depend on for cultural, spiritual, economic and physical well-being. Original inhabitants and migrants who have a close relationship with the landscape are likewise considered to be IPLCs. TNC recognizes the collective rights of indigenous peoples as codified in international law. In this Guide, "IPLCs" is used to refer to all indigenous peoples and local communities.<sup>[8]</sup>

## Individual vs. collective rights

Most human rights treaties reflect an individualistic concept of rights and rights holders; for example, the right to education or the right to life is the right of every individual. For many indigenous peoples, identity is inseparably connected to the group to which a person belongs. For them, collective rights, such as the right to self-determination or to collective lands, are essential.<sup>[9]</sup>

## Intellectual property rights

The rights given to persons over the creations of their minds.<sup>[10]</sup> According to the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, indigenous peoples should define for themselves their own intellectual and cultural property.<sup>[11]</sup>

## Peoples

The plural "Peoples" recognizes that more than one distinct group comprises the population being referred to. For example, "Indigenous People" (singular) might mean each Indigenous individual or member of a particular community, whereas "Indigenous Peoples" (plural) indicates multiple distinct Indigenous populations.<sup>[12]</sup> The "s" at the end of "indigenous peoples" signifies that they are recognized as peoples, which signifies their collective rights, most foundationally the right to self-determination. The United Nations first accepted the term "indigenous peoples" in 2002 at the World Summit on Sustainable Development in Kimberley, South Africa.<sup>[13]</sup>

## Safeguards

Standards, policies, criteria, tools, systems and operational guidance that help ensure that design and implementation of an initiative avoids, minimizes or compensates for negative impacts.<sup>[14]</sup>

## Self-determination

The right of self-determination of peoples is a fundamental principle of international law. It is embodied in the Charter of the United Nations and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Common Article 1, paragraph 1 of these Covenants provides that: "All peoples have the rights of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development."<sup>[15]</sup> The United Nations Declaration on the Rights of Indigenous Peoples (as well as other key pieces of international legislation) codifies indigenous peoples' collective right to self-determination in international law.

## Social identities

Throughout the Guide, we refer to “social identities” to promote inclusivity in our human rights-based approach to conservation. These include:

- cultures
- Indigenous identity, including homelands, culture and kinship relations
- race and ethnicity
- religions or local belief systems
- national or regional origins
- ages, including youth and elders
- ability and disability status
- sexual orientations
- gender identities
- military and protected veteran status
- language
- education, including literacy and numeracy
- socioeconomic status, including class or caste
- geographic location, including seasonality or remoteness
- migration or visa status
- criminal record
- other status protected by law

## Notes

- [1] Definition draws from [The Nature Conservancy in Washington's Equity Statement & Definitions \(2019\)](#).
- [2] Definition draws from: Food and Agriculture Organization of the United Nations. (2016). Free and Prior Informed Consent: An indigenous peoples' right and a good practice for local communities: <http://www.fao.org/3/a-i6190e.pdf>
- [3] Definition draws from: UNESCO's Gender Mainstreaming Implementation Framework: <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/BSP/GENDER/PDF/1.%20Baseline%20Definitions%20of%20key%20gender-related%20concepts.pdf>
- [4] Y. Masuda, personal communication, June 13, 2015.
- [5] Office of the UN High Commissioner for Human Rights. What are human rights? Retrieved June 17, 2015 from <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>
- [6] Campese, J., Sunderland, T., Greiber, T. and Oviedo, G. (eds.) 2009 Rights-based approaches: Exploring issues and opportunities for conservation. CIFOR and IUCN. Bogor, Indonesia.
- [7] The Nature Conservancy. Conservation by Design 2.0 Guidance Document (2016): [https://www.conservationgateway.org/ConservationPlanning/cbd/Documents/CbD2.0\\_Guidance%20Doc\\_Version%201.pdf](https://www.conservationgateway.org/ConservationPlanning/cbd/Documents/CbD2.0_Guidance%20Doc_Version%201.pdf)
- [8] T-Roots, TNC 2015. This definition pulls from the following sources:
- UNEP and EDO NSW. (2013). Community Protocols for Environmental Sustainability: A Guide for Policymakers. UNEP, Nairobi and EDO NSW, Sydney.
- Corrigan, C. and Hay-Edie, T. 2013. 'A toolkit to support conservation by indigenous peoples and local communities: building capacity and sharing knowledge for indigenous peoples' and community conserved territories and areas (ICCAs)' UNEP-WCMC, Cambridge, UK.
- Rey, D., Roberts, J., Korwin, S., Rivera, L., and Ribet, U. (2013) A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards. Client Earth, London, United Kingdom.
- Expert Group Meeting of Local Community Representatives within the Context of Article 8(j) and Related Provisions of the Convention on Biological Diversity, (Montreal, 7 July 2011) Guidance for the Discussions Concerning Local Communities within the Context of the Convention on Biological Diversity, UNEP/CBD/AHEG/LCR/1/2, p.1.
- [9] Buppert, T., & McKeehan, A. (2013). Guidelines for applying free, prior and informed consent: A manual for Conservation International: [https://www.conservation.org/docs/default-source/publication-pdfs/ci\\_fpic-guidelines-english.pdf?sfvrsn=16b53100\\_2](https://www.conservation.org/docs/default-source/publication-pdfs/ci_fpic-guidelines-english.pdf?sfvrsn=16b53100_2). Citing Office of the UN High Commissioner for Human Rights: Frequently asked questions on a human rights-based approach to development cooperation (2006): <http://www.ohchr.org/Documents/Publications/FAQen.pdf>.

## Notes (Continued)

<sup>[10]</sup> World Trade Organization:

[https://www.wto.org/english/tratop\\_e/trips\\_e/intel1\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm)

<sup>[11]</sup> The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples. (1993):

[https://www.wipo.int/export/sites/www/tk/en/databases/creative\\_heritage/docs/mataatua.pdf](https://www.wipo.int/export/sites/www/tk/en/databases/creative_heritage/docs/mataatua.pdf)

<sup>[12]</sup> <https://indigenousfoundations.arts.ubc.ca/terminology/>

<sup>[13]</sup> [https://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP\\_web.pdf](https://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP_web.pdf), page 102)

<sup>[14]</sup> Wongbusarakum, S., Myers Madeira, E., & Hartanto, H. (2014). Strengthening the social impacts of sustainable landscapes programs: A practitioner's guidebook to strengthen and monitor human well-being outcomes. The Nature Conservancy, 10:

<https://www.conservationgateway.org/ConservationPractices/PeopleConservation/SocialScience/Documents/TNC%20Guidebook%20draft%20070814%20-%20for%20office%20print.pdf>

<sup>[15]</sup> <https://www.iwgia.org/en/focus/land-rights/330-self-determination-of-indigenous-peoples.html>



## Appendix III

# FPIC Decision Tree

### Module 2:

[FPIC Decision Tree](#)

## Appendix IV

# FPIC – Frequently Asked Questions

In this Appendix:

[Take a deeper dive into some of the more complicated questions around FPIC](#)

### What makes a relationship to landscape profound?

Understanding what makes a relationship to landscape profound requires a process of listening, learning and appreciating the IPLC's worldview. Some indicators of a profound relationship include:

- Places that feel highly significant to the members of the community
- Places where the relationship is multi-dimensional, that is, the land provides a place to live, farm or hunt and is also linked to the community's ancestral experience, culture, spiritual life, and integrity as a people.

In the Saramaka case, communities initially founded by enslaved people who had escaped enslavers in coastal cities and fled “to the interior regions of the country [Suriname] where they established autonomous communities.” The IACHR heard extensive testimony about how the people lived on the land and what it meant to them. It recognized that “the identity of the members of the Saramaka people with the land is inextricably linked to their historical fight for freedom from slavery, called the sacred ‘first time.’”

### Is there an authoritative source on what is required for FPIC?

No one source details the entirety of FPIC. Instead, there are core underlying principles, such as free, prior, informed, consent and consultation. Treaties add specificity, as do judicial decisions that consider whether FPIC was achieved in a particular case, and guides like this one try to piece it all together.

### Where did FPIC come from?

FPIC has developed from a process called customary international law. Like the common law in the U.S. and England, it is not just a matter of statutes and codes, but evolves over time from the actual conduct of states, judicial decisions, and other authoritative statements. This includes policies adopted by key institutions like the World Bank and even civil society actors like TNC. As these sources evolve, FPIC evolves too. TNC, therefore, is bound by the customary law of FPIC and also may contribute to FPIC's evolution.

1. The UN Declaration on the Rights of Indigenous Peoples is non-binding but considered to be a forceful part of normative or soft international law, especially since the only four countries who initially opposed it have reversed course and now support it.
2. The International Labor Organization's Convention No. 169 on Indigenous and Tribal Peoples, a legally binding treaty that has been ratified by 22 states, has served as a source in many judicial decisions.

The Inter-American Court of Human Rights has been active in the area of indigenous rights and FPIC, as have the courts of a handful of countries, like Canada and Colombia, who have come to be considered experts.

### **Is FPIC really the law—or just a good idea?**

The distinction between hard law (you must do something or there are consequences) and soft law (you really should do something) is fuzzy at the international level.

Some argue that all international law has a soft character. In any event, the widespread adoption of FPIC by such a wide range of actors makes FPIC relatively strong soft law, even if it's not legally binding in all cases. Governments, corporations and NGOs today recognize that violations of strong soft law like FPIC will often result in greater adverse consequences in terms of public trust and institutional capability. TNC is a founding member of the Conservation Initiative on Human Rights and has joined other environmental NGOs committed to upholding FPIC.

### **Are indigenous peoples and local communities treated the same?**

FPIC was developed with indigenous peoples in mind, meaning peoples who have lived in a place since time immemorial, survived colonialism and imperialism, and maintained their cultural integrity.

Most indigenous peoples suffered catastrophic traumas during the colonial and post-colonial eras, including:

- Forcible relocation
- Populations decimated by violence or disease
- Children stolen away to boarding schools
- Prohibitions on speaking their languages and practicing cultural and spiritual tradition
- Severe restrictions on the use of land they inhabit

TNC extends the benefits of any protection the law requires for indigenous peoples to a wider range of potentially affected local communities. Because of the nature of the work we do, TNC focuses on the experience of having a profound relationship with the natural landscape.

As one Saramaka chief, Wazen Edwards, testified: “When our ancestors fled into the forest they did not carry anything with them. They learned how to live, what plants to eat, how to deal with subsistence needs once they got to the forest.” From this experience, the Saramaka perceived that the land had not just received them, but also sustained them and liberated them. It taught them how to be free. Thus, even though the Saramaka communities were not classically “indigenous,” even to the continent of South America, the IACHR applied and developed indigenous rights law concerning their claims.

### **Consultation “versus” consent?**

The first three elements of FPIC—free, prior, informed—have been added and developed over time to protect the element at the core of the standard: consent.

This reflects that FPIC necessitates meaningful, active consent. Yet some sources have removed consent from the equation by recasting the standard as “free, prior and informed consultation.”<sup>[1]</sup>

This version of FPIC, known as Consultation-FPIC, draws on the protective strength of the free, prior and informed elements of FPIC, but ultimate authority in decision-making rests with the party conducting the consultation rather than the one being consulted.

Consultation-FPIC has critics. But it's too easy to call it a watered-down version of FPIC. Consultation can build on the consent of indigenous participants, and when appreciated in its many dimensions and genuinely implemented, it can be a powerful source of protection.

It can also avoid some of the controversies of a consent requirement, which is sometimes characterized in national politics as

an indigenous veto over sensitive land use and natural resource decision-making.

The Canadian legal system is largely based on Consultation-FPIC but has proven in recent years capable of protecting indigenous self-determination claims in the face of powerful opposition from the oil, gas, and pipeline industries. Leading indigenous activists have supported the notion of a complex interplay between consent and consultation.<sup>[2]</sup> Professor James Anaya, a pioneer of international indigenous rights law who served two terms as the UN Special Rapporteur on the Rights of Indigenous Peoples, has described the indigenous right to self-determination as “entail[ing] more than a mere right to be informed and heard but not an absolute right of veto.”<sup>[3]</sup>

One of the reasons why it is not easy to separate consent and consultation is that indigenous peoples do not all speak with one voice, so a strict interpretation of a consent requirement in the form of a veto could be wielded by one indigenous people against the wishes of a neighboring people. And the indigenous right to self-determination is in constant tension with the prerogative of sovereignty exercised by contemporary nation-states. In light of this, courts, policy-makers and practitioners, including those strongly supportive of indigenous peoples, have devised a number of approaches to balance competing interests, ensure the legitimacy of consultation, and protect the essence of consent.

How these approaches apply to a non-state actor like TNC is not entirely clear, but the question is less important in light of TNC’s commitment to obtaining full consent from impacted IPLCs before proceeding with any initiative.

It may be that TNC’s commitment to a consent-based approach won’t resolve every conflict between impacted communities. But such scenarios, uncommon as they are, can be addressed on a case-by-case basis. TNC recognizes the legitimacy of both FPIC and Consultation-FPIC processes, so long as the core underlying principles and good faith are maintained, but we have chosen to hold ourselves to a consent-based model.

## Notes

<sup>[1]</sup> For example, this standard was used by the IFC's 2006 Performance Standard on indigenous peoples and the World Bank's Operational Policy 4.10 referenced this standard. See, e.g., <https://policies.worldbank.org/sites/ppf3/PPFDocuments/090224b0822f89d5.pdf>. Ecuador's historic 2008 Constitution, which also protected the rights of nature, provided for Consultation-FPIC at a constitutional level in article 57, section 7. As discussed herein, Canada's elaborate constitutional and common law framework for protecting indigenous land and self-determination rights requires Consultation-FPIC.

<sup>[2]</sup> World Bank Operational Policy 4.10 is also a good example of this complex interplay. While the policy itself requires "free, prior and informed consultation," the policy further provides that "[t]he Bank reviews the process and the outcome of the consultation carried out by the borrower to satisfy itself that the affected Indigenous Peoples' communities have provided their broad support to the project" and that "[t]he Bank does not proceed further with project processing if it is unable to ascertain that such support exists."

<sup>[3]</sup> S James Anaya and Sergio Puig, *Mitigating State Sovereignty: The Duty to Consult with Indigenous Peoples*, 67 U. Toronto L.J. 435 (2017).

## Appendix V

# TNC's Ethics & Compliance Process

In this Appendix:

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[Get contact information for the TNC Ethics and Compliance office](#)

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[Know how to file a complaint](#)

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[Understand what happens after a complaint is filed](#)

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### Contacts for TNCs Ethics and Compliance Office

**Helpline Web Portal:**

[nature.org/tnc Helpline](https://nature.org/tnc Helpline)

**Helpline:**

Phone: (800) 461-9330 (US)

Text: 571-458-1739 (US)

See Helpline webpage for international numbers

**Mailing Address:**

4245 N. Fairfax Drive

Suite 100

Arlington, VA 22203

TNC's Ethics & Compliance Process is established to receive and resolve concerns related to TNC's alleged or perceived violations of:

- TNC's Code of Conduct;
- TNC's Policies and Procedures, including the Principles and Safeguards in this Guide;
- UN Declaration on the Rights of Indigenous Peoples;
- Conservation Initiative on Human Rights' Guiding Principles; or
- An IPLC Consent Agreement.

TNC staff should be reminded that each employee is individually accountable for compliance with TNC's Code of Conduct and Policies and Procedures.

## Anti-Retaliation

TNC prohibits any form of retaliation, including harassment, intimidation, adverse employment actions, or any other form of retaliation, against employees who in good faith raise suspected violations of law, cooperate in inquiries or investigations, or identify violations of TNC's Code of Conduct. Any employee who engages in retaliation will be subject to disciplinary action, up to and including termination.

## Who May File a Complaint

Any community, organization or individual can file a complaint as an affected party. An individual or entity who has been authorized by an affected party may file a complaint on behalf of the affected party as a representative. Complaints may be filed anonymously and will be treated confidentially to the extent possible and disclosed to those with a need to know.

## Filing a Complaint

An affected party or representative can use the TNC Helpline to file a complaint in their preferred language. The affected party or representative will be asked for the following types of information that the Ethics & Compliance Office will use to properly investigate a concern:

- Name and contact information
- The specific project or program of concern, including region, country and TNC local contact
- The approximate or actual date of the behavior that is causing a concern
- The alleged or perceived violation and the harm that is or may be resulting from the violation
- Any other relevant information or documents, if available
- Any actions taken so far to resolve the problem, including contact with TNC at the project or Business Unit level
- Whether confidentiality is requested

## TNC's Ethics & Compliance Process

1. The Ethics & Compliance Office receives a grievance and determines eligibility.
2. The Ethics & Compliance Office will acknowledge receipt of the concern within 48 hours.
3. Within four business days of receipt, the Ethics & Compliance Office will assess eligibility and respond to the affected party or representative about whether or not the complaint raises an eligible grievance. It may be that the complaint should be addressed by another part of the organization or third party. In those situations, TNC will refer the complaint to the appropriate person and notify the affected party or representative.
4. If the grievance is eligible, the Chief Ethics & Compliance Officer will notify TNC's project team and Business Unit manager to the extent possible without breaching confidentiality, and also inform the affected party or representative and commence an investigation according to TNC's investigation procedures and specific considerations for working with IPLCs.
5. The Ethics & Compliance Office will also notify the Global Diversity, Equity & Inclusion Office, the Risk Officer, the appropriate TNC legal counsel and other senior leaders as appropriate.
6. Following the investigation, the Ethics & Compliance Office will develop draft findings, a proposed approach to resolution and an action plan and timeframe and present these to the affected party or representative, TNC's project team and Business Unit manager. Each party will have five business days to respond to the Ethics & Compliance Office's proposal.
7. Within five business days of the receipt of the responses or the due date for responses, the Ethics & Compliance Office may revise the draft proposal and then will issue a decision to the affected party or representative, TNC's project team and business unit manager. TNC's project team, Business Unit manager and the affected party are expected to implement the action plan in the decision.

8. The Ethics & Compliance Office will monitor implementation of the action plan and check in regularly with the affected party or representative as specified in the action plan.



## Appendix VI

# Checklists

### Module 1:

[Learning & Early Discussions Checklist](#)

### Module 2:

[FPIC Checklist](#)

### Module 3:

[Conflict Resolution Checklist](#)

### Module 4:

[Implementation Checklist](#)

### Module 5:

[Documentation Checklist](#)

### Module 6:

[Monitoring, Evaluation & Adaptation Checklist](#)

## Appendix VII

# Documentation to Save

### Module 1:

[Documentation to Save](#)

### Module 2:

[Documentation to Save](#)

### Module 3:

[Documentation to Save](#)

### Module 4:

[Documentation to Save](#)

### Module 5:

[Documentation to Save](#)

### Module 6:

[Documentation to Save](#)

## Appendix VIII

# Templates

### Module 1:

[Engagement Plan Template](#)

### Module 2:

[FPIC Consultation Plan Template](#)

### Module 3:

[Conflict Resolution Plan Template](#)

### Module 6:

[Human Rights Indicators Template](#)

## Appendix IX

# Acknowledgments

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