



Module 2:

Free, Prior & Informed Consent

In this module:

[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](#)

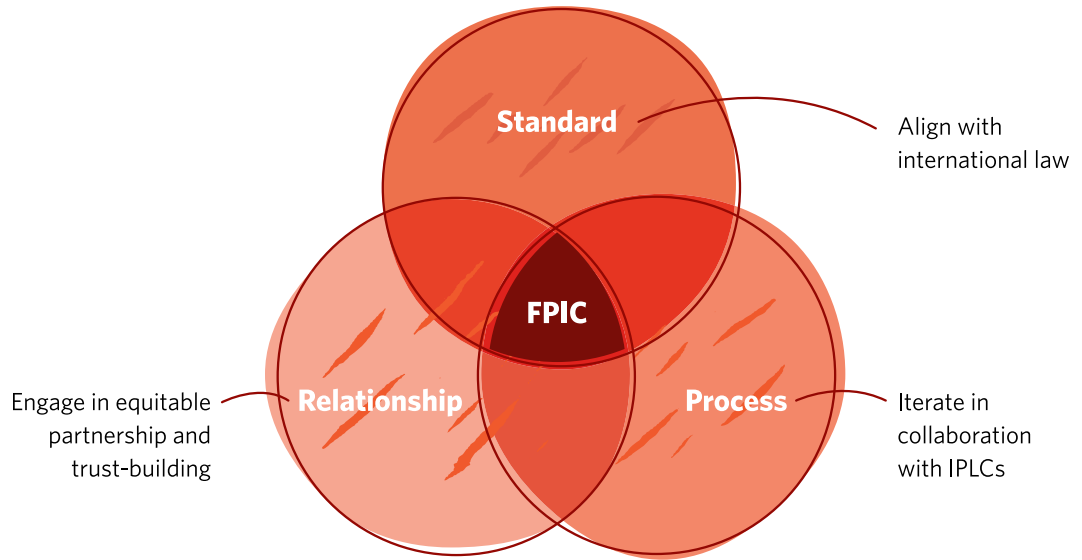
Introduction


This 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

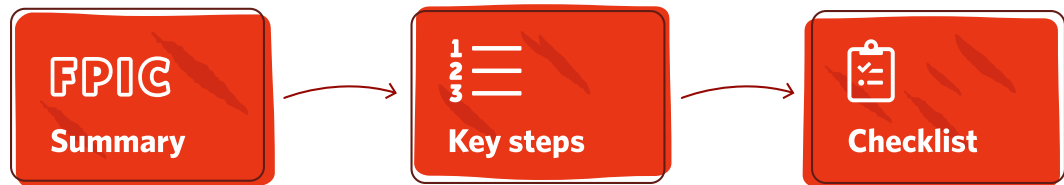
FPIC is a multi-dimensional concept—part standard, part process, part relationship—that must be embedded in TNC’s work.



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.^[1]

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.^[2]

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.^[3] 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 HRIAs 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.^[4] 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.^[5] 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.^[6]

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

^[1] 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>

^[2] 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.

^[3] FSC, *supra*, at 15.

^[4] Jerome Lewis, *supra*, at 177.

^[5] Conservation International, *supra*, at 22-23.

^[6] FAO, *supra*, at 25.



Consultation Coalition

2A. Wenland Case Study

FrostLock 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

Concerns 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?

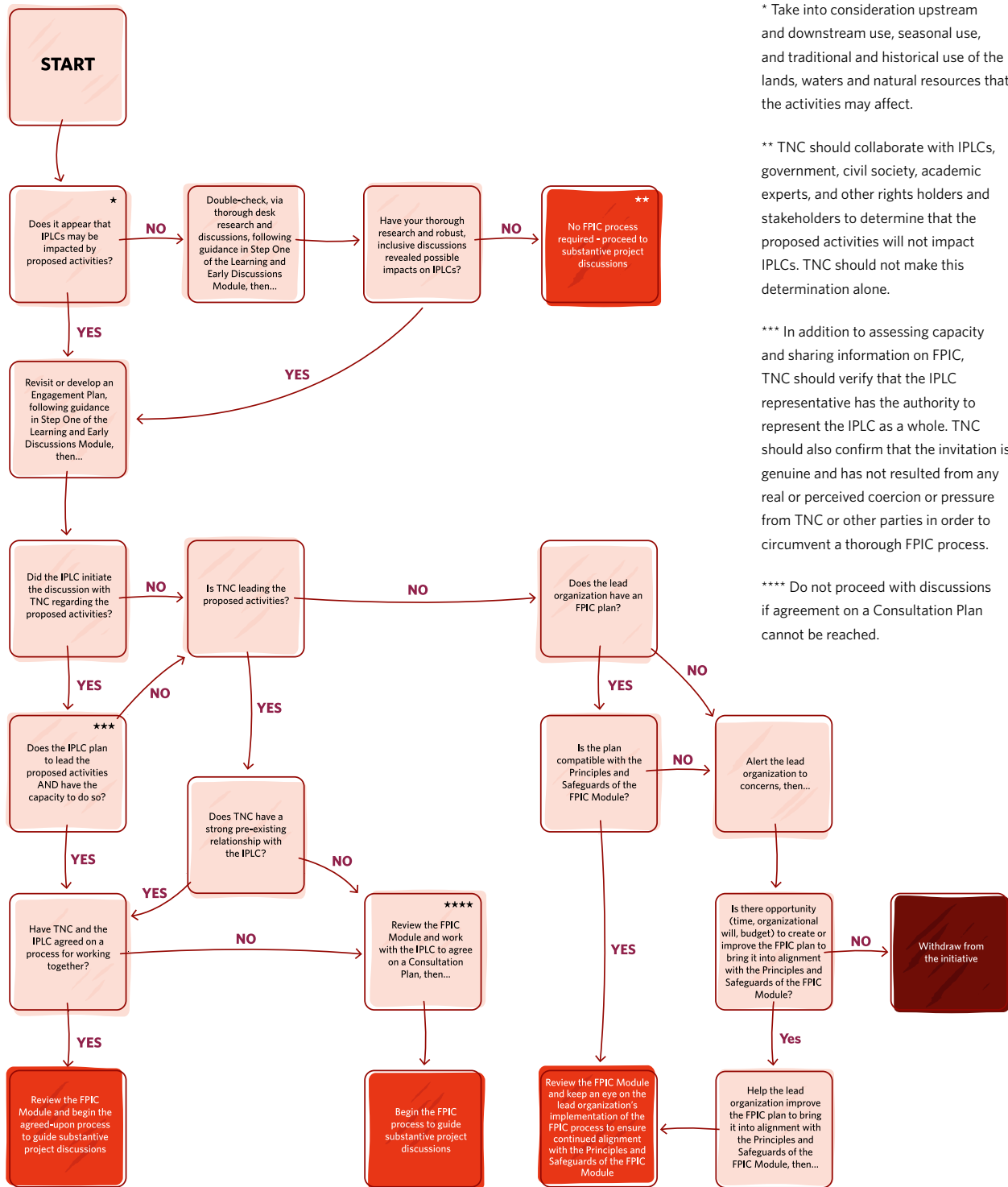
TNC must either use our leverage to resist moving ahead without full FPIC from the Wen or withdraw if FPIC isn't reached. Even if TNC cannot change the facts of the situation, we must adhere to the guiding principles of FPIC, including respect for the Right to Withhold Consent. The fact that the Wen 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?



* Take into consideration upstream and downstream use, seasonal use, and traditional and historical use of the lands, waters and natural resources that the activities may affect.

** TNC should collaborate with IPLCs, government, civil society, academic experts, and other rights holders and stakeholders to determine that the proposed activities will not impact IPLCs. TNC should not make this determination alone.

*** In addition to assessing capacity and sharing information on FPIC, TNC should verify that the IPLC representative has the authority to represent the IPLC as a whole. TNC should also confirm that the invitation is genuine and has not resulted from any real or perceived coercion or pressure from TNC or other parties in order to circumvent a thorough FPIC process.

**** Do not proceed with discussions if agreement on a Consultation Plan cannot be reached.

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
Salary		
Existing TNC staff	-	Paid by TNC
Additional Project Manager	-	Paid by TNC
Community Outreach Coordinator	-	Paid by TNC
Travel		
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
Contracts/Consultants		
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):

Category / Item	Cost	Notes
Contracts/Consultants		
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	-
Materials, Supplies & Other Direct Costs		
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	-
Communications		
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	-
Indirect Costs (@30%)	\$342,480	
TOTAL	\$1,484,080	

Draft FPIC Budget for the CMA:

Category / Item	Cost	Notes
Salary		
Existing TNC staff	-	Paid by TNC
Additional Project Manager	-	Paid by TNC
Community Outreach Coordinator	-	Paid by TNC
Travel		
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
Contracts/Consultants		
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	-
Materials, Supplies & Other Direct Costs		
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+
Communications		
Publicity for sessions	\$500	-
Indirect Costs (@30%)	\$46,500	
TOTAL	\$201,500	

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.

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 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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