
Indigenous peoples: Consultation and participation



General overview

- Consultation and participation are fundamental rights of indigenous peoples
- These rights are expressed in different forms in various instruments
- ILO C169 refers to consultation, with the objective of achieving agreement or consent



General overview (2)

- UN Declaration on the Rights of Indigenous Peoples refers to Free, Prior and Informed Consent (FPIC) in specific areas:
 - ❑ Relocation from their lands
 - ❑ Redress for loss of cultural and intellectual property, and of lands, territories and resources
 - ❑ Prior to adoption of legislative and administrative measures
 - ❑ Prior to approval of projects affecting their lands, territories and resources



General overview (3)

Other instruments/references include:

- CERD General Comment No. 23 (Indigenous peoples) – Free, prior and informed consent in relation to rights to lands, territories and resources
- World Bank: Bank Policy 4.10; and IFC Performance Standard No. 7 on indigenous peoples – concept of free, prior and informed consultation



Consultation in Convention No.169

Elements of the process of consultation:

- Prior consultation
- Good faith
- Appropriate procedures
- Through representative institutions of indigenous or tribal peoples
- Not just “information”



The objective of consultation

The objective should be to achieve agreement or consent (C169 does not directly provide a right to veto), and an adequate process should have been followed, in accordance with article 6 of the Convention.

The process of consultation should allow for those concerned to express themselves freely, in a fully informed manner.



When should consultation take place?

- When considering legislative or administrative measures (article 6.1(a))
- Prior to exploration or exploitation of sub-surface resources (article 15.2)
- When any consideration is being given to ITPs' capacity to alienate their lands or to transmit them outside their own communities (article 17)
- Prior to relocation, which should take place only with the free and informed consent of ITPs (article 16)
- On the organization and operation of special vocational training programmes (article 22)

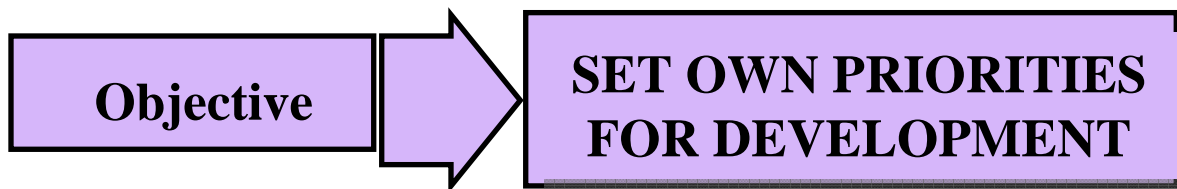


The obligation to consult should be read in the light of another fundamental principle of the Convention (article 7.1):

“The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation of plans and programmes for national and regional development which may affect them directly.”



Participation



**IMPROVEMENT OF LIVING AND
WORKING CONDITIONS**

**ALL LEVELS OF
DECISION-MAKING**

**NATIONAL & REGIONAL
PLANS AND PROGRAMMES**



Participation

Elements of participation:

- Free participation at all levels of decision-making (article 6)
- Establishment means for development of ITPs' own institutions and initiatives (article 6)
- Participation in formulation, implementation and evaluation of plans and programmes for national and regional development (Article 7)



Lessons from ILO experience

- Consultation should not be seen as an ad-hoc activity – it is a **process**
- Consultation and participation require systematic, regular, institutionalized mechanisms and coherent frameworks in which to operate
- These principles apply to all levels of governance



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- Mechanisms for consultation should, where possible, work through existing structures for purposes of longevity, sustainability and legitimacy
 - Adapt working methodologies to the structure and capacity of indigenous partner organizations and communities
 - Sustained capacity building required to operationalize consultation processes
 - Operational tools should be adaptable to local circumstances

