

Practitioners Brief: Indigenous Peoples' Right to Free, Prior, and Informed Consent in International and Regional Human Rights Law

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Indigenous communities' right to influence decisions about activities that affect their lands and resources is an evolving area of international law, with the right to free, prior, and informed consent (FPIC) emerging as a central legal concept. This briefing provides context to the concept of FPIC and how the concept has developed in human rights law. It also examines the uses and limitations of the right to FPIC in protecting indigenous peoples' rights. This resource is intended for legal empowerment practitioners who may be somewhat familiar with FPIC but would like to learn more about utilizing the concept in different jurisdictions when dealing with various actors.

Introduction

Indigenous communities' right to make free and informed decisions about activities that affect their lands and resources is an evolving area of international law. Indigenous peoples' right to be involved in decisions that affect their lands and resources stems from the more recognized rights of self-determination, participation, consultation, and consent. International human rights jurisprudence has integrated these rights into a singular concept: the right to free, prior, and informed consent – often shortened to 'FPIC.'

The right to free, prior, and informed consent (FPIC) recognizes indigenous peoples' right to make their own informed choices about the development of their lands and resources.¹ FPIC ensures that during decision-making processes, "indigenous peoples are not coerced or intimidated; that their consent is sought and freely given prior to the authorization or start of any activities; that they have full information about the scope and impacts of any proposed developments; and that ultimately their choices to give or withhold consent are respected."²

This briefing provides context to the concept of FPIC and how the concept has developed in human rights law. It also examines the uses and limitations of the right to FPIC in protecting indigenous peoples' rights. This resource is intended for legal empowerment practitioners who may be somewhat familiar with FPIC but would like to learn more about utilizing the concept in different jurisdictions when dealing with various actors.

¹ Ward, Tara, 'The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation rights within International Law,' *Northwestern Journal of International Human Rights*, Vol. 10, Issue 2, Article 2, 2011 <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1125&context=njihr>

² *Ibid.*

The first part of this briefing summarizes States' and third parties' legal obligations to respect FPIC when making decisions about indigenous peoples' traditional homelands within international human rights law and regional human rights jurisprudence. The second part of this briefing examines the extent to which FPIC appears in the safeguards placed on international finance institutions' decision-making processes. The annexes provide additional resources.

Free, Prior, and Informed Consent in International Human Rights Law

The foundation of international human rights law is comprised of a series of international agreements that articulate how States are obligated to guarantee — and refrain from violating — the rights of individuals or groups within their jurisdiction (usually in the form of rights to specific activities, conditions, and freedoms), if the State has ratified the international agreement(s) in question.³ The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) are the two major international human rights treaties that protect civil, political, economic, social, and cultural rights. The articles of the ICCPR and the ICESCR articulate specific human rights obligations for States, but international human rights law is not restricted to these definitions. International human rights law is dynamic and constantly evolving as it is expanded and developed by international human rights courts, monitoring bodies, UN bodies and agencies (such as the International Labor Organization), national courts, NGOs, and advocates.

Within the framework of international human rights treaties, indigenous peoples' right to FPIC is derived from recognition of indigenous peoples' collective rights⁴ and right to self-determination.⁵ Pursuant to Common Article 1 of the International Human Rights Conventions— the ICESCR and the ICCPR⁶ — the right to self-determination includes indigenous people's right to determine their economic, social, and cultural development.⁷ In addition, in *General Comment* No. 21, the Committee on the ICECSR expanded on Article 15— the right of everyone “to take part in cultural life”⁸ —stating that States have a duty to “respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights.”⁹ Article 27 of the ICCPR requires States to respect communities' rights “to enjoy their own culture, to profess and practice their own religion, or to use their own language.”¹⁰

³ The UN Human Rights Treaty System, Fact Sheet No. 30/Rev.1, Office of the High Commissioner, <http://www.ohchr.org/Documents/Publications/FactSheet30Rev1.pdf>

⁴ Free, Prior, and Informed Consent of Indigenous Peoples, Office of the High Commissioner for Human Rights, September 2013, <http://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>

⁵ Doyle, C. and Carino, J., 'Making Free, Prior, and Informed Consent a Reality: Indigenous Peoples and the Extractive Sector,' May 2013, Middlesex University School of Law, <http://solutions-network.org/site-fpic/files/2012/09/Making-Free-Prior-Informed-Consent-a-Reality-DoyleCarino.pdf>

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Article 15(a), International Covenant on Economic, Social, and Cultural Rights, New York, USA, 16 December 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

⁹ General Comment No 21, Committee on the ICESCR, E/C.12/GC/21, 21 December 2009, <https://www1.umn.edu/humanrts/gencomm/escgencom21.html>

¹⁰ Article 27, International Covenant on Civil and Political Rights, New York, USA, 16 December 1966, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

Furthering this, in 1997 the Committee on the Elimination of Racial Discrimination issued their *General Recommendation No. 23: Indigenous Peoples* which clarified that discrimination against indigenous peoples does indeed fall under the scope of the *International Convention on the Elimination of All Forms of Racial Discrimination*¹¹ and called on State parties to recognize and protect “the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.”¹²

Likewise, under the International Labor Organization’s *Convention on Indigenous and Tribal Peoples in Independent Countries* (ILO Convention), Article 6 and 7¹³ require States to consult local communities, establish mechanisms to allow local communities to freely participate in decision-making, and allow the communities to decide their priorities for a development process if it affects their lives and lands in order to ensure the community exercises control over their economic, social, and cultural development.¹⁴ Interpretations of the ILO Convention have extended the duty to consult to include that consultations must be undertaken in good faith and with the goal of obtaining affected communities consent.¹⁵ Furthermore, Article 16 of ILO Convention prohibits the removal of indigenous peoples from their lands unless the relocation of the community is “considered necessary as an exceptional measure.”¹⁶ If indigenous communities must be removed from their lands, Article 16 requires States to acquire the consent of indigenous communities before they are relocated.¹⁷

Finally, the 2007 *Universal Declaration on the Rights of Indigenous Peoples* (UNDRIP) specifically mention the right to FPIC in Articles 10, 11, 19, 28, and 29.¹⁸ Although the *Universal Declaration* does not create binding obligations, the Declaration reinforces that States have a duty to respect and protect local communities’ right to practice their culture and traditions,¹⁹ right to property,²⁰ right to consultation,²¹ right to a healthy environment,²² and right to self-determination over their lands.²³

The right to FPIC is not specifically written in any of the human rights treaties referenced above. However,

¹¹ General Recommendation No 23: Indigenous Peoples, General Comments, 18/08/97, CERD, <http://www1.umn.edu/humanrts/gencomm/genrexxiii.htm>

¹² Ibid.

¹³ ‘FPIC 101: An Introduction to Free, Prior, and Informed Consent,’ <http://firstpeoples.org/wp/fpic-101-an-introduction-to-free-prior-and-informed-consent/>

¹⁴ Article 6 and 7, International Labor Organization (ILO), Indigenous and Tribal Peoples Convention, C169, 27 June 1989, C169.

¹⁵ Tamang, Parshuram, ‘An Overview of the Principle of Free, Prior, and Informed Consent and Indigenous Peoples in International and Domestic Law and Practices,’ Woskshop on Free, Prior, and Informed Consent organized by the Secretariat of UNPFII, 17-19 January 2005, UN Headquarter, New York, USA.

¹⁶ Article 16, International Labor Organization (ILO), Indigenous and Tribal Peoples Convention, C169, 27 June 1989, C169.

¹⁷ Ibid.

¹⁸ UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295.

¹⁹ Ibid., Article 11

²⁰ Id., Article 10 and Article 28.

²¹ Id., Article 19.

²² Id., Article 29.

²³ Id., Article 31.

what emerges from the rights in the text is evidence of an underlying substantive right. This underlying right—the right to FPIC—is a “substantive standard that acts like a precondition to be satisfied before the State and third parties may by act or omission impact other substantive rights. It is a requirement that imposes affirmative duties and obligations on States.”²⁴ The treaties comprising the international human rights framework collectively require State parties to fulfill the specific rights to property, participate, non-discrimination, self-determination, culture, food, health, and freedom against forced relocation.²⁵ The right to FPIC can be seen as an overarching aspect of these specific rights, or a precondition for the full realization of specific rights written in treaty obligations. In other words, without the right to FPIC, indigenous communities cannot realize their rights as articulated under international human rights law.

Despite the substantive nature of the right to FPIC, international human rights law does not specifically required States to obtain indigenous people’s FPIC before pursuing activities that affect their lands and resources. Although indigenous peoples’ right to FPIC is not binding obligations under the ICCPR and ICESCR, regional human rights treaties have produced more concrete legal obligations.

The Right to FPIC in Regional Human Rights Treaties

Of the three principle regional human rights treaties,²⁶ two so far have produced jurisprudence on indigenous peoples’ right to FPIC: the Inter-American Court of Human Rights system²⁷ and the African Union’s African Charter system.²⁸

The African Charter and the African Court on Human and Peoples’ Rights

The African Charter on Human and Peoples Rights (the African Charter) establishes the African Commission on Human and Peoples’ Rights (the African Commission) within the larger Organization of African Unity—which was replaced by the African Union—with the mandate to protect and promote human rights in Africa.²⁹ The African Charter is a binding international agreement and has been ratified by 53 states.³⁰

The African Commission, which was established in 1987, oversees and interprets that African Charter. In 1998, a protocol was added to the African Charter, creating the African Court on Human and Peoples’ Rights (the African Court). The protocol came into effect on 25 January 2005. While decisions made by the African Commission are not binding unless adopted by the African Union, decisions made by the African Court of Human and Peoples’ Rights are legally binding decisions on member States.³¹

²⁴ Guidelines on Free, Prior, and Informed Consent, January 2013, UN-REDD Program 10, <http://www.unclearn.org/sites/default/files/inventory/un-redd05.pdf>
²⁵ *Id.*

²⁶ The European Convention on Human Rights, the African Charter on Human and Peoples Rights, and the Inter-American Court of Human Rights.

²⁷ The Organization of American States, the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights, and the Inter-American Commission and Court, <http://www.oas.org/en/iachr/mandate/what.asp>

²⁸ The African Charter and the jurisdiction of the African Court of Human and Peoples’ Rights, <http://en.african-court.org/>

²⁹ Greenspan, Emily, ‘Free, Prior, and Informed Consent in Africa, An Emerging Standard for Extractive Industry Projects,’ Oxfam America, Research Backgrounder, <https://www.oxfamamerica.org/static/media/files/community-consent-in-africa-jan-2014-oxfam-americaAA.PDF>

³⁰ Ratification Table: African Charter on Human and Peoples’ Rights, African Commission on Human and Peoples’ Rights, <http://www.achpr.org/instruments/achpr/ratification/>

³¹ *Ibid.* See Annex I: State Parties of the African Court on Human and Peoples Rights.

The African Charter contains several provisions recognizing “peoples” rights: Article 9 on the right to receive information;³² Article 20 on the right to self-determination;³³ Article 21 on the right to freely dispose of wealth and natural resources;³⁴ Article 22 on the right to economic, social and cultural development;³⁵ and Article 24 on the right to a satisfactory environment suitable for development.³⁶

In 1996, two non-governmental organizations (NGOs) lodged a complaint with the African Commission, stating that the military government in Nigeria had been directly involved with “irresponsible oil developments” in the Ogoni region in south-east Nigeria.³⁷ In 2002, the African Commission recognized the Ogoni people as a “people” underneath the African Charter and found that the Nigerian government violated the Ogoni peoples’ right to property.³⁸ The African Commission stated that “in all their dealing with the Oil Consortiums, the Government did not involve the Ogoni communities in the decisions that affected the development of Ogoni land.”³⁹ Because Nigeria failed to involve the Ogoni people in decisions that affected the development of Ogoni land, the African Commission held that Nigeria had “violated the right of the Ogoni people to freely dispose of its natural wealth and resources by issuing oil concessions on Ogoni lands.”⁴⁰ In order to comply with the spirit of Articles 16 and 24 of the African Charter, the African Commission held that “a State is required to undertake scientifically and technically sound environmental and social impact assessments, publicize these results, and provide meaningful opportunities for the affected peoples to be heard and participate in the decision making process.”⁴¹

In 2012, the African Commission issued a resolution obligating States to take measure to “ensure the participation, including the free, prior, and informed consent of communities.”⁴² The African Commission did not limit this resolution to indigenous peoples; the resolution noted the “disproportional impact of human rights abuses upon rural communities in Africa that continue to struggle to assert their customary rights of access and control of various resources, including land, minerals, forestry, and fishing”⁴³ and asserted FPIC is a safeguard to protect communities from potential abuse from natural resource projects.⁴⁴

In Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endor-

³² Organization of African Unity (OAU), African Charter on Human and Peoples’ Rights (“Banjul Charter”), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)

³³ Greenspan, Emily, ‘Free, Prior, and Informed Consent in Africa, An Emerging Standard for Extractive Industry Projects,’ Oxfam America, Research Backgrounder, <https://www.oxfamamerica.org/static/media/files/community-consent-in-africa-jan-2014-oxfam-americaAA.PDF>

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Coomans, Fons, “The Ogoni Case before the African Commission on Human and Peoples’ Rights,” *International and Comparative Law Quarterly*, vol. 52, July 2003, pp. 749-760, <http://www.righttoenvironment.org/ip/uploads/downloads/OgoniCaseProf.Coomans.pdf>

³⁸ The Soc. and Econ. Rights Action Ctr. and the Ctr. for Econ. and Social Rights v. Nigeria, Communication No. 155/96, African Commission on Human and Peoples Rights, ¶ 53 (October 2001) <http://www.cesr.org/downloads/AfricanCommissionDecision.pdf>

³⁹ Id.

⁴⁰ Id.

⁴¹ Ward, Tara, ‘The Right to Free, Prior, and Informed Consent: Indigenous Peoples’ Participation rights within International Law,’ *Northwestern Journal of International Human Rights*, Vol. 10, Issue 2, Article 2, 2011 <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1125&context=njihr>, 66.

⁴² African Commission on Human and Peoples’ Rights, 224: Resolution on a Human Rights-Based Approach to Natural Resources Governance (May 2012), <http://www.achpr.org/sessions/51st/resolutions/224/>.

⁴³ Id.

⁴⁴ Ratification Table: African Charter on Human and Peoples’ Rights, African Commission on Human and Peoples’ Rights, <http://www.achpr.org/instruments/achpr/ratification/>, 11.

-ois Welfare Council v. Kenya, the African Commission found the forcible removal of the Endorois people from their lands to create a game reserve violated their right to property, natural resources, development, and culture, among other rights.⁴⁵ The African Commission stated that “the State has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions” whenever “any development or investment projects that would have a major impact” within their territory.⁴⁶ The African Commission referenced the U.N. Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People’s comment that “[f]ree, prior and informed consent is essential for the [protection of] human rights of indigenous peoples in relation to major development projects.”⁴⁷ It is important to note that as of 2015, the Kenyan government has not implemented the Commission’s decision.⁴⁸

In 2013, the African Commission applied to the African Court to institute proceedings against the Republic of Kenya in order to halt the eviction of Ogiek people from their traditional lands.⁴⁹ The African Court accepted the African Commission’s application. The African Court provisionally ordered that the Republic of Kenya reinstate the previous restrictions it had on land transactions and to refrain from acts that would or could prejudice the application before the Court.⁵⁰ The African Court’s provision order followed the African Commission’s determination that the Ogiek people were an “indigenous minority ethnic group.”⁵¹ The African court’s order highlights the risk of violation of the Ogiek’s right to culture and protection of traditional values, right to property, and right to development, in addition to other rights.⁵² *ACHPR v. Republic of Kenya* is a pending case before the African Court.⁵³

The African Commission’s interpretations of the African Charter limit member States’ ability to interfere with property rights and clearly reinforce the need for public participation and FPIC when development projects affect local communities.⁵⁴ The African Commission recognizes collective rights and acknowledges communities’ rights to make decisions about their resources and social, economic, and cultural development.⁵⁵

With *ACHPR v. Republic of Kenya*, the African Court has the opportunity to transform the African Commission’s interpretation of the African Charter into a legally binding decision on member states. Because the

⁴⁵ Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003, African Commission on Human and Peoples’ Rights, 4 February 2010, http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46_276_03_eng.pdf

⁴⁶ *Ibid.* at Para. 291

⁴⁷ *Ibid.* at Para. 293

⁴⁸ Statement by Endorois Welfare Council-Kenya at the 56th Ordinary Session of the African Commission on Human and Peoples’ Rights, 21st April to 7th May in Banjul, The Gambia, Endorois Welfare Council, http://www.achpr.org/files/endorois_welfare_council_kenya.pdf

⁴⁹ African Court on Human and Peoples’ Rights, African Commission on Human and Peoples’ Rights v. The Republic of Kenya, Application No. 006/2012, Order of Provisional Measures (March 15, 2013), <http://www.african-court.org/en/images/documents/Orders> [accessed 25 July 2016]

⁵⁰ *Ibid.*

⁵¹ Greenspan, Emily, ‘Free, Prior, and Informed Consent in Africa, An Emerging Standard for Extractive Industry Projects,’ Oxfam America, Research Backgrounder, <https://www.oxfamamerica.org/static/media/files/community-consent-in-africa-jan-2014-oxfam-americaAA.PDF>

⁵² *Ibid.*

⁵³ Pending Cases, African Court on Human and Peoples’ Rights, <http://en.african-court.org/#pending-cases> (accessed 25 July 2016)

⁵⁴ Ratification Table: African Charter on Human and Peoples’ Rights, African Commission on Human and Peoples’ Rights, <http://www.achpr.org/instruments/achpr/ratification/>, 15

⁵⁵ *Ibid.*

African Commission has acknowledged that indigenous peoples, like the Ogiek, must be consulted and give their FPIC before any development or investment project can take place on their lands. *ACHPR v. Republic of Kenya* is an example of how the right to FPIC is constantly evolving and potentially becoming a more recognized and legally binding obligation on States.

The Inter-American Court of Human Rights

The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights (Inter-American Court) work together as the principal organs of the Organization of American States (OAS) to protect human rights within the Inter-American human rights system. The Inter-American human rights system was created with the adoption of the American Declaration of the Rights and Duties of Man in 1948. In 1969, the American Convention on Human Rights (ACHR) was adopted by the OAS and created the Inter-American Court to enforce and interpret the ACHR. Since then, the Inter-American Court has produced a series of opinions affirming indigenous peoples' right to FPIC.⁵⁶

The right to FPIC jurisprudence in the Inter-American system evolved from the right to property, the right to self-determination, and the right to culture.⁵⁷ Article 21 of the ACHR states that everyone has the right to fully use and enjoy their property and that no one shall be deprived of their property without just compensation.⁵⁸ A series of cases developed the right to FPIC in the Inter-American system by expanding the protection of Article 21 of the ACHR to indigenous peoples' land and resources.⁵⁹

In its interpretation of Article 21 of the ACHR, the Inter-American Court has held that "Article 21 of the Convention protects the right to property, which includes, among others, the rights of members of...indigenous communities within the framework of communal property."⁶⁰ The Court concluded that because indigenous communities have a collective understanding of the concept of property, indigenous communities' ownership of land "is not centered on an individual, but rather on the group and its community."⁶¹ Because indigenous communities have a collective understanding of property rights, the Court held that "both the private property of individuals and communal property of the members of...indigenous communities are protected by Article 21 of the American Convention."⁶²

In addition to expanding the interpretation of Article 21's right to property, the Inter-American Court developed the foundation for indigenous peoples' right to FPIC and consultation. In *Saramaka v Suriname*, the Court held that a State is obligated to obtain the FPIC of indigenous communities' within its territorial bound-

⁵⁶ Page, A., 'Indigenous Peoples' Free Prior and Informed Consent in the Inter-American Human Rights System,' 16, <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1374&context=sdlp>

⁵⁷ Id.

⁵⁸ Organization of American States (OAS), American Convention on Human Rights "Pact of San Jose, Costa Rica" (B-32), 22 January 1969.

⁵⁹ Khatri, U., 'Indigenous Peoples' Right to Free, Prior, and Informed Consent in the Context of State-Sponsored Development: The New Standard Set by *Sarayaku v. Ecuador* and its Potential to Delegitimize the Belo Monte Dam,' Volume 29, Issue 1, *American University International Law Review*, 165, 177-178 (2013).

⁶⁰ Case of The Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, 31 August 2001, para. 148, http://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf

⁶¹ Case of the Indigenous Community Sawhoyamaya, Series C No 146, 29 March 2009, para. 120 (quoting Case of The Mayagna (Sumo) Awas Tingni Community, n 46, para. 149, above), http://www.corteidh.or.cr/docs/casos/articulos/seriec_146_ing.pdf

⁶² Case of the Yakye Axa Indigenous Community v Paraguay, Yakye Axa Indigenous Community v Paraguay, Merits, reparations and costs, Series C no. 125, 17 June 2005, para. 143, http://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf

aries—with respect to the communities' culture and traditions—when a development projects will have an impact on indigenous peoples territory.⁶³

The scope of the right FPIC was developed further recently in the Inter-American system in the case of *Sarayaku v. Ecuador*.⁶⁴ In 2003, the Kichwa community of Sarayaku filed a petition with the Inter-American Commission for Human Rights claiming that Ecuador had unlawfully allowed a private company to develop Kichwa land without consulting the community or obtaining their consent.⁶⁵ In 1996, the Ecuadorian government granted an Argentinian oil company a prospecting deal to explore oil reserves under the ancestral lands of the Kichwa people.⁶⁶ The company initiated seismic testing to explore the oil reserves on the Kichwa's territory without their permission, and with the support of the Ecuadorian government.⁶⁷ The Inter-American Commission referred the case to the Inter-American Court.⁶⁸ In 2012, the Inter-American Court held that Ecuador violated Article 21 of the ACHR when the State failed to consult the Kichwa people about a project that affected their territory and lands.⁶⁹ The Court held that the commencement of seismic testing on Kichwa lands without the Kichwa's consultation or consent violated the Kichwa's right to consultation, right to participation in decision-making, and right to FPIC before the initiation of any activities that would affect their property rights.⁷⁰ In addition to finding that Ecuador had violated the Kichwa's right to FPIC, the Court articulated that the State has the obligation to carry out good-faith consultations and stipulated that "good-faith" requires no coercion during decision-making, by either the State or a third party.⁷¹

In the *Sarayaku* case, the Court ultimately asserted that the State's obligation to consult indigenous peoples with the goal of obtaining FPIC is non-delegable, which means that States must bear the burden of ensuring indigenous peoples' right to FPIC and cannot avoid this duty by transferring the obligation to a third party.⁷² In other word, States bear the burden to ensure the right to FPIC is respected and cannot transfer that burden to project partners or businesses operating within their territory. Within the Inter-American system, the right to FPIC, as articulated in *Sarayaku*, establishes State obligation in relation to indigenous peoples' property rights under Article 21.

Advocacy Strategies for Enforcing Indigenous Peoples' Rights to FPIC

There are geographic and institutional limitations to the right to FPIC. Outside the regional human rights

⁶³ Case of the Saramaka People v Suriname, *Saramaka People v Suriname*, Interpretation of the judgment on preliminary objections, merits, reparations and costs, Series C No 185, 12 August 2008, Inter-Am. Ct. of H.R., http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf

⁶⁴ Ward, Tara, 'The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation rights within International Law,' *Northwestern Journal of International Human Rights*, Vol. 10, Issue 2, Article 2, 2011 <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1125&context=njihr>, 64

⁶⁵ *Kichwa People of Sarayaku and its members v. Ecuador*, Case 12.465, Inter-Am. Comm'n H.R., Application to the Inter-Am. Ct. H.R. ¶¶ 56-69 (Apr. 26, 2010).

⁶⁶ 'A Hard Earned Victory for Indigenous Rights in Latin America: *Sarayaku v. Ecuador*,' *Earth Rights International*, <https://www.earthrights.org/blog/hard-earned-victory-indigenous-rights-latin-america-sarayaku-v-ecuador>

⁶⁷ Khatri, U., 'Indigenous Peoples' Right to Free, Prior, and Informed Consent in the Context of State-Sponsored Development: The New Standard Set by *Sarayaku v. Ecuador* and its Potential to Delegitimize the Belo Monte Dam,' Volume 29, Issue 1, *American University International Law Review*, 165, 177-178 (2013), 182.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.* at 183

⁷¹ *Ibid.*

⁷² *Ibid.*

agreements, FPIC remains a concept recognized by intergovernmental organizations, international bodies, conventions, and international human rights law that lacks an internationally agreed upon definition.⁷³ The lack of a concrete definition of FPIC across international human rights law limits the global application of the concept. However, as seen in *ACHPR v. Republic of Kenya*, the right to FPIC is an acknowledged and growing tool that advocates can use to try to compel or persuade States and international bodies to respect indigenous peoples' rights.

As described previously, the ILO System and the Inter-American System both require States to adopt legislation implementing indigenous peoples' participation rights in consultation with the affected indigenous peoples.⁷⁴ However, many countries argue that it is difficult to implement the ILO Convention's FPIC obligations because the Convention does not state how to fulfill the right to FPIC in practice.⁷⁵ Nevertheless, Colombia,⁷⁶ Chile,⁷⁷ Ecuador,⁷⁸ and Peru⁷⁹ have implemented or attempted to implement legislation consistent with the ILO Convention obligation to respect the right to FPIC.⁸⁰

The Inter-American System has developed a series of standards in relation to indigenous peoples' right to FPIC and participation rights. First, States are required to have effective mechanism to "delimit, demarcate, and title indigenous peoples' lands and territories."⁸¹ Second, changes to the title of indigenous peoples' land cannot occur without the community's consent.⁸² Third, indigenous people have the right to be consulted in consideration with any development projects undertaken on their land and territories or if the scale of the project will have a profound impact on the survival of affected peoples.⁸³

The African Commission requires States to order or permit independent scientific environmental and social impact studies prior to any major industrial development; to provide the information to the communities exposed to potentially hazardous materials and activities; and to provide meaningful opportunities for affected communities to be heard and to participate in the development decisions affecting them.⁸⁴

⁷³ Tamang, Parshuram, 'An Overview of the Principle of Free, Prior, and Informed Consent and Indigenous Peoples in International and Domestic Law and Practices,' Workshop on Free, Prior, and Informed Consent organized by the Secretariat of UNPFII, 17-19 January 2005, UN Headquarter, New York, USA.

⁷⁴ Ward, Tara, 'The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation rights within International Law,' *Northwestern Journal of International Human Rights*, Vol. 10, Issue 2, Article 2, 2011 <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1125&context=njihr>, 84

⁷⁵ Diaz, Carlos Andres Baquero, 'Regulating Prior Consultations in South America,' *DeJusticia's Global Rights Blog*, 25 Mar 2014, <https://dejasticiablog.com/2014/03/25/regulating-prior-consultation-in-south-america/>

⁷⁶ Ministerio del Interior, Colombia. (1998, July 13). Decreto 1320 de 1998 - Recursos Naturales en Comunidades Indígenas (Decree 1320 of 1998) (Note: "the ILO Committee of Experts and the Colombian Constitutional Court have requested that the national government change the law and not apply the decree, because it does not consider the experiences of those ethnic groups. In 2013, the government repeated the same error, and emitted another Decree without consulting with these ethnic groups about the objective and content of the decree." See n 68 above).

⁷⁷ *Ibid*; Executive Degree No. 1247 of 2012 https://issuu.com/fundacionpachamama/docs/decreto_1247_19-jul-2012

⁷⁸ *Ibid*. See Supreme Degree 22 of 2013.

⁷⁹ *Ibid*. ("Peru developed a national policy (composed of Law 29.785, Supreme Decree No. 001 of 2012, and a Methodological Guide")

⁸⁰ Ward, Tara, 'The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation rights within International Law,' *Northwestern Journal of International Human Rights*, Vol. 10, Issue 2, Article 2, 2011 <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1125&context=njihr>

⁸¹ *Ibid*. at 65-66

⁸² *Ibid*. at 66

⁸³ *Ibid*.

National legislation or domestic case law can provide another avenue for advocates. While only a handful of countries have taken steps to incorporate the right to FPIC into national legislation or case law—India,⁸⁵ the Philippines,⁸⁶ Malaysia,⁸⁷ Australia,⁸⁸ Venezuela,⁸⁹ Peru,⁹⁰ and Canada⁹¹ — these developments are incredibly encouraging for advocates. In the Vedanta case,⁹² the Supreme Court of India affirmed the right to FPIC in its interpretation of the Forests Rights Act of 2006 and ordered the State to place these issues before local community, who would ultimately make the final decision.⁹³ Constitutional arguments and domestic legislation may provide advocates with a solid foundation to formulate a compelling argument for a national court.

Another strategy of interest to human rights advocates is appealing directly to financial institutions and development project proponents. Although the burden to obtain FPIC has predominately fallen on States, international finance institutions and development institutions have begun to incorporate the concept of FPIC into their own decision-making processes. The World Bank, the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), the African Development Bank (AfDB), the Asian Development Bank (ADB), and the Overseas Private Investment Corporation (OPIC) have developed operational policies that require projects funded by these institutions to carry out a series of environmental and social safeguard evaluations. All projects financed by these institutions must complete the requisite safeguards in order to obtain project financing. Each of these institutions has an independent body responsible for receiving and reviewing claims from affected communities about the adverse effects of financed projects.

Not all of these finance institutions have safeguard policies that specifically require potential project partners to obtain the FPIC of indigenous groups affected by the project. However, the World Bank, IFC, MIGA, ADB, and OPIC have safeguard policies requiring various levels of consultation and disclosure with affected indigenous peoples. Annex III of this guide contains a table produced by the Boreal Leadership Council in their September 2015 report *Understanding Successful Approaches to Free, Prior, and Informed Consent in*

⁸⁴ Coomans, Fons, "The Ogoni Case before the African Commission on Human and Peoples' Rights," *International and Comparative Law Quarterly*, vol. 52, July 2003, pp. 749-760, <http://www.righttoenvironment.org/ip/uploads/downloads/OgoniCaseProf.Coomans.pdf>

⁸⁵ Tandon, Aradhna, "Examining the Implementation of the Right of 'Free, Prior, and Informed Consent' of Indigenous People: The Indian Experience," Law and Natural Resources Course Paper, SOAS, University of London, 10 April 2016.; The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, Ministry of Tribal Affairs Notification, Ministry of Law and Justice, India, <http://tribal.nic.in/WriteReadData/CMS/Documents/201306070147440275455NotificationMargewith1Link.pdf>; *Samatha v State of Andhra Pradesh and Others* (1997) 8 SCC 191.; *Orissa Mining Corpon. Ltd. v. Ministry of Environment and Forests* (2013) 6 SCC 476.

⁸⁶ Administrative Order No. 1, Rules and Regulations Implementing Republic Act No. 8371, (the Indigenous Peoples' Rights Act of 1997), Office of the President, National Commission on Indigenous Peoples, Republic of the Philippines, 29 October 1997, <http://ncipro67.com.ph/wp-content/uploads/2015/09/ncip-ao-no-1-s-2006-fpic-guidelines.pdf> ; Administrative Order 3, series of 2002, Section 6, Office of the President, National Commission on Indigenous Peoples, Republic of the Philippines, http://www.mgb.gov.ph/images/stories/NCIP_Dao3-2003.pdf

⁸⁷ Busiinge, Ronald, 7, "Free Prior and Informed Consent (FPIC) concept to responsible mining in sustaining rivers and communities." www.earthsavers.ws, <http://archive.riversymposium.com/index.php?element=BUSIINGE>

⁸⁸ Australian Aboriginal Land Rights (Northern Territory) Act (1976) Available on http://www.austlii.edu.au/au/legis/cth/consol_act/alrta1976444/.

⁸⁹ Busiinge, Ronald, 7, "Free Prior and Informed Consent (FPIC) concept to responsible mining in sustaining rivers and communities." www.earthsavers.ws, <http://archive.riversymposium.com/index.php?element=BUSIINGE>

⁹⁰ Diaz, Carlos Andres Baquero, 'Regulating Prior Consultations in South America,' *DeJusticia's Global Rights Blog*, 25 Mar 2014, <https://dejusticiablog.com/2014/03/25/regulating-prior-consultation-in-south-america/>

⁹¹ *Tsilhqot'in Nation v. British Columbia*, 2014 S.C.C. 44, [2014] 2 S.C.R. 256 ; *Delgamuukw v British Columbia*, 1997: 3 SCR 1010 (Supreme Court of Canada)

⁹² Administrative Order No. 1, Rules and Regulations Implementing Republic Act No. 8371, (the Indigenous Peoples' Rights Act of 1997), Office of the President, National Commission on Indigenous Peoples, Republic of the Philippines, 29 October 1997, <http://ncipro67.com.ph/wp-content/uploads/2015/09/ncip-ao-no-1-s-2006-fpic-guidelines.pdf>

⁹³ *Ibid.*

*Canada. Part I: Recent Developments and Effective Roles for Government, Industry, and Indigenous Communities*⁹⁴ explaining the different roles governments, businesses, and indigenous groups have during project development. See Annex IV: International Finance Institutions at the end of this report for more information about international finance institutions' operational policies and complaint mechanisms.

Conclusion

The right to FPIC is acknowledged as a substantive obligation within the Inter-American System and under the African Charter. Eighty-one countries have some kind of tangible obligation to respect and ensure indigenous peoples' right to FPIC.⁹⁵

Although application of the jurisprudence of the African Commission and the Inter-American Court is limited to the member States of the regional human rights agreement, there is a developing norm of international law that, at minimum, obligates States and international actors to recognize indigenous peoples' land rights. The scope of the recognition and the legal obligations that accompany acknowledging indigenous peoples' land rights remains a subject of debate in international law. International scholars argue that, at minimum, States and international actors are required to consult with indigenous groups in good faith. The right to consultation within international human rights can be read to require States to consult indigenous communities when it initiates or consents to activities that would involve or impact indigenous peoples rights in relation their land and resources. The right to consult does not provide as much protection as the right to FPIC, but it does contain the same foundation in international law as the right to FPIC.

Although indigenous peoples right to decide what happens to their traditional lands is not yet specifically protected outside the African Union, the Inter-American System, and a handful of other countries, the evolving principles of the right to FPIC has put increased pressure on States — and other actors, such as international finance organizations — to ensure that indigenous communities are consulted and involved in activities that impact their lands and resources. Advocates have and will continue to push the evolution and expansion of the protections of the right to FPIC. The efforts of international human rights advocates and communities around the world will continue to make the right to FPIC tangible and practical tool with global recognition and enforcement.

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⁹⁴ Understanding Successful Approaches to Free, Prior, and Informed Consent in Canada. Part I: Recent Developments and Effective Roles for Government, Industry, and Indigenous Communities, Understanding Useful Approaches to FPIC in Canada. Boreal Leadership Council. Sept. 2015, http://borealcouncil.ca/wp-content/uploads/2015/09/BLC_FPIC_Successes_Report_Sept_2015_E.pdf.

⁹⁵ See Annex I & II

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ANNEXES

Annex I: State Parties to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

Signed and Ratified = Green

Signed but not ratified = White

Not signed or ratified = Grey

State	Signed	Ratified	Deposited
Algeria	13/07/1999	22/04/2003	03/06/2003
Angola	22/01/2007		
Benin	09/06/1998		
Botswana	09/06/1998		
Burkina Faso	09/06/1998	31/12/1998	23/02/1999
Burundi	09/06/1998	02/04/2003	12/05/2003
Cameroon	25/07/2006		
Cape Verde			
Central African Republic	04/03/2002		
Chad	06/12/2004		
Comoros	09/06/1998	23/12/2003	26/12/2003
Congo	09/06/1998		
Cote d'Ivoire	09/06/1998	07/01/2003	21/03/2003
Democratic Republic of the Congo	09/09/1999		
Djibouti	15/11/2005		
Egypt	17/02/1999		
Equatorial Guinea	09/06/1998		
Eritrea			
Ethiopia	09/06/1998		
Gabon	09/06/1998	14/08/2000	29/06/2004
Gambia	09/06/1998	30/06/1999	15/10/1999
Ghana	09/06/1998	25/08/2004	16/08/2005
Guinea	08/07/2003		
Guinea-Bissau	09/06/1998		
Kenya	07/07/2003	04/02/2004	18/02/2005
Lesotho	29/10/1999	28/10/2003	23/12/2003
Liberia	09/06/1998		
Libya	09/06/1998	19/11/2003	08/12/2003
Madagascar	09/06/1998		
Malawi	09/06/1998		
Mali	09/06/1998	10/05/2000	20/06/2000
Mauritania	22/03/1999	19/05/2005	14/12/2005
Mauritius	09/06/1998	03/03/2003	24/03/2003
Mozambique	23/05/2003	17/07/2004	20/07/2004
Namibia	09/06/1998		
Niger	09/06/1998	17/05/2004	26/06/2004
Nigeria	09/06/2004	20/05/2004	09/06/2004
Rwanda	09/06/1998	05/05/2003	06/05/2003
Sahrawi Arab Democratic Republic			
Sao Tome and Principe			
Senegal	09/06/1998	29/09/1998	30/10/1998
Seychelles	09/06/1998		
Sierra Leone	09/06/1998		

Somalia	23/02/2006		
South Africa	09/06/1999	03/07/2002	03/07/2002
South Sudan			
Sudan	09/06/1998		
Swaziland	07/12/2004		
Tanzania	09/06/1998	07/02/2006	10/02/2006
Togo	09/06/1998	23/06/2003	06/07/2003
Tunisia	09/06/1998	21/08/2007	05/10/2007
Uganda	01/02/2001	16/02/2001	06/06/2001
Zambia	09/06/1998		
Zimbabwe	09/06/1998		

Annex II: State Parties to the American Convention on Human Rights

Ratified = Green Not ratified = Grey Denounced = Red

States	Ratification	Denunciation
Antigua and Barbuda		
Argentina	14 August 1984	
Bahamas		
Barbados	5 November 1981	
Bolivia	20 June 1992	
Brazil	09 July 1992	
Canada		
Chile	10 August 1990	
Colombia	28 May 1973	
Costa Rica	02 March 1970	
Dominica	03 June 1993	
Dominican Republic	21 January 1978	
Ecuador	08 December 1977	
El Salvador	20 June 1978	
Grenada	14 July 1978	
Guatemala	27 April 1978	
Guyana		
Haiti	14 September 1977	
Honduras	05 September 1977	
Jamaica	19 July 1978	
Mexico	02 March 1981	
Nicaragua	25 September 1979	
Panama	08 May 1978	
Paraguay	18 August 1989	
Peru	12 July 1978	
St Kitts and Nevis		
Saint Lucia		
St. Vincent and the Grenadines		
Suriname	12 November 1987	
Trinidad and Tobago	4 April 1991	26 May 1998
United States		
Uruguay	26 March 1985	
Venezuela	23 June 1977	10 September 2012

Annex III: FPIC and Project Development

FPIC During Project Development* ¹		
Government	Industry	Indigenous Groups
Proposal Phase		
Publish notice of project proposal and any related documentation	Identify appropriate authorities who represent Indigenous peoples	Notify industry representative of Indigenous interests in project
Consult before issuance of mineral leases to companies	Identify intent to seek consent, and request any protocols or engagement mechanisms for consent-building process	Share with proponent any internal protocols that will be used
Identify (and notify) Indigenous people who have Constitutional or other rights to consultation on	Provide funding where applicable to enable Indigenous participation and data-collection	Identify opportunities and expectations for consultation and engagement (including funding requirements)
Issue decision regarding consultation on process and whether it will be delegated to the federal or provincial authority, or to the proponent	Consult with Indigenous communities to set an agreed-upon consultation process, including creation of protocols and opportunities for information- sharing	Engage in the environmental assessment process at critical stages
Provide funding where applicable to support Indigenous involvement in consultation on process	(Ongoing: communicate regularly, share information, build relationships in community)	Conduct necessary studies to assess potential impacts of project
Assess gravity of impacts to Indigenous groups, and whether or not accommodation on is required	Engage in formal consultation process as required by government (at a minimum), and by industry best management practices and Indigenous protocols (at best)	Share findings of studies, including the Indigenous community's key concerns, values, and priorities
Keep consultation logs to document engagement with all interested parties	Consider and integrate data contributed by Indigenous communities, including participatory mapping and social, environmental, and culture and rights impact assessments	Identify opportunities for migrations / alternatives that would lead to consent, agreement, or non-opposition
	Identify opportunities for migrations / project alternatives that could lead to consent, agreement, or non-opposition	Create Impact and Benefit Agreement or other agreement with proponent or identify as early on as possible that consent may not be an op on
	(Allow sufficient time for Indigenous communities to consider and evaluate options)	
	Create formal agreement with Indigenous communities, including ongoing consultation protocol and conflict resolution mechanisms	
Permitting Phase		

¹ This table was created by Boreal Leadership Council and was published in the September 2015 Report: *Understanding Successful Approaches to Free, Prior, and Informed Consent in Canada. Part I: Recent Developments and Effective Roles for Government, Industry, and Indigenous Communities*. The Boreal Council gave permission for Namati to use Table 1 of the Report for this Practitioners Guide. *Understanding Successful Approaches to Free, Prior, and Informed Consent in Canada. Part I: Recent Developments and Effective Roles for Government, Industry, and Indigenous Communities*, Understanding Useful Approaches to FPIC in Canada. Boreal Leadership Council. Sept. 2015, http://borealcouncil.ca/wp-content/uploads/2015/09/BLC_FPIC_Successes_Report_Sept_2015_E.pdf.

Government	Industry	Indigenous Groups
Assign permit and licenses conditions that are protective of rights and title	<p>Continue providing fulsome information on project developments</p> <p>Formalize agreement (although this could be previous to permitting), including dispute and grievance processes</p> <p>Seek independent verification of FPIC if desired (for industry certification purposes). At this point the only certification route is through FSC for the forest products sector</p>	Continue to assess impacts to right and title as well as to resource values such as culture, fish, wildlife, plants, archaeology, social, health, economy regulated under some decision processes, like EA. Communicate evidence and likely effects to Crown and industry
Operations Phase		
Government	Industry	Indigenous Groups
<p>Ongoing permitting</p> <p>Duty to consult when re-issuing licenses</p> <p>Different Ministries have different roles; DFO, for example, would be consulting if monitoring data shows a need for further investigation</p>	<p>Implement agreement</p> <p>Engage in participatory monitoring</p>	<p>Monitoring (administrative and physical) of the terms of project permits and agreements</p> <p>Continued assessment of new information, new planned activities, conflicts, accidents, breaches of terms and conditions</p> <p>Continued communication of Aboriginal concerns if any</p>
Decommissioning and Reclamation Phase		
Government	Industry	Indigenous Peoples
<p>Follow-through on closure requirements, ongoing monitoring and consultation</p> <p>Ensure compliance with terms of agreed-upon closure plan; consultation necessary for any changes</p>	<p>Follow-through on closure requirements, ongoing monitoring and consultation</p> <p>Ensure compliance with terms of agreed-upon closure plan; consultation necessary for any changes</p>	<p>Ongoing engagement with industry or government for closure planning</p> <p>Ongoing monitoring</p>

Annex IV: International Finance Institutions

Institution	Indigenous Peoples Operational/ Safeguard Policy	Complaint Body	Other Relevant Policies
African Development Bank	N/A	Independent Review Mechanism (IRM) ²³	OS 1: Environmental and Social Assessment; OS 2: Involuntary Resettlement ⁴
Asian Development Bank	Safeguard Policy Statement (SPS) ⁵	Accountability Mechanism (AM) ⁶⁷	The Operations Manual ⁸
International Finance Corporation	IFC's Performance Standards (PS): PS 7 – Indigenous Peoples ⁹	Compliance Advisor Ombudsman (CAO) ¹⁰¹¹	PS ; PS 5; PS 8
Multilateral Investment Guarantee Agency	IFC's PS: PS 7 – Indigenous Peoples ¹²	Compliance Advisor Ombudsman (CAO)	PS 1; PS 5; PS 8
Overseas Private Investment Corporation	IFC's PS: PS 7 – Indigenous Peoples ¹³	Office of Accountability (OA) ¹⁴	OPIC Environment and Social Policy Statement ¹⁵ ; World Bank's General and Industry Sector Environmental, Health and Safety Guidelines ¹⁶
International Bank for Reconstruction and Development (IBRD)	Operational Policies (OP): 4.10 Indigenous Peoples ¹⁷	World Bank Inspection Panel ^{18 19}	OP 4.12 Involuntary Resettlement ²⁰ ; OP 4.36 Forests; World Bank Policy on Access to Information ²¹
International Development Agency (IDA)	OP 4.10 Indigenous Peoples	World Bank Inspection Panel	OP 4.12 Involuntary Resettlement; OP 4.36 Forests; World Bank Policy on Access to Information

² Independent Review Mechanism, African Development Bank, <http://www.afdb.org/en/about-us/organisational-structure/independent-review-mechanism-irm/>

³ "The African Development Bank (AfDB) was established in 1964 as part of the AfDB Group. The bank's mission is to contribute to the sustainable economic development and social progress of its 53 African member countries and 24 non-African member countries. Usually located in Abidjan, Ivory Coast, the bank's headquarters have temporarily relocated to Tunis, Tunisia."

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⁴ *Id.*

⁵ "SPS applies to all ADB-assisted projects reviewed by the Bank's management after 20 January 2010." *The Asian Development Bank's Accountability Mechanism*, Accountability Council, <http://www.accountabilitycounsel.org/wp-content/uploads/2012/04/The-Asian-Development-Banks-Accountability-Mechanism.pdf>

⁶ Accountability Mechanism, Asian Development Bank, <http://www.adb.org/site/accountability-mechanism/main>

⁷ *The Asian Development Bank's Accountability Mechanism*, Accountability Council, <http://www.accountabilitycounsel.org/wp-content/uploads/2012/04/The-Asian-Development-Banks-Accountability-Mechanism.pdf>

⁸ The Operations Manual can be accessed at: <http://www.adb.org/documents/operations-manual>, *The Asian Development Bank's Accountability Mechanism*, Accountability Council, <http://www.accountabilitycounsel.org/wp-content/uploads/2012/04/The-Asian-Development-Banks-Accountability-Mechanism.pdf>

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¹⁰ The Office of Compliance Advisor Ombudsman, <http://www.cao-ombudsman.org>

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¹⁴ Office of Accountability, OPIC, <https://www.opic.gov/who-we-are/office-of-accountability>

¹⁵ OPIC Environment and Social Policy Statement, 15 October 2010, https://www.opic.gov/sites/default/files/consolidated_esps.pdf

¹⁶ Environmental, Health, and Safety General Guidelines, International Finance Corporation, World Bank Group, <http://www.ifc.org/wps/wcm/connect/554e8d80488658e4b76af76a6515bb18/Final%2B-%2BGeneral%2BEHS%2BGuidelines.pdf?MOD=AJPERES>

¹⁷ *The World Bank Inspection Panel*, Accountability Council, http://www.accountabilitycounsel.org/wp-content/uploads/2013/05/HRGM_WWW_WB.pdf

¹⁸ The Inspection Panel, The World Bank Group, <http://ewebapps.worldbank.org/apps/ip/Pages/Home.aspx>

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²⁰ Operational Policies, The World Bank, <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,menuPK:4564185~pagePK:64719906~piPK:64710996~theSitePK:502184,00.html>

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