



Free, prior and informed consent?

Village Forest (Hutan Desa) licences in Indonesia



photo: Sébastien de Royer/World Agroforestry Centre

What is free, prior and informed consent?

Free, prior and informed consent (FPIC) has been recognised as a process to ensure the right of indigenous people and local communities to give, or withhold, their involvement in actions, activities, law and policies that apply to, and affect, their land, territories and natural resources. Its origin is in the concept of indigenous people's right to self-determination, supported by international treaties, such as the UN Declaration on the Rights of Indigenous Peoples and Convention 169 of the International Labour Organization, and is closely linked to customary and historical connections with land. While initially associated with indigenous peoples, in the forestry sector and, more recently, in the REDD+ discourses, it has been extended to include 'forest-dependent people' and, in some texts, 'local communities' (RECOFTC 2012). FPIC is an attempt to reconcile the long history of interventions and development practices that ignored people's customary and local rights and neglected negotiations seeking informed consent from affected communities. FPIC as a method is designed to encourage decision-making based on people's own norms, customary and local rules and is meant to allow them to reach agreement through their own systems: it protects the right to participate. It is, therefore, not merely about informing and obtaining some form of consent but rather also about the effective and meaningful participation of indigenous peoples and local

Main messages

- The government, along with civil society institutions if available in an area, should deploy a communications strategy with prospective communities for Village Forest (Hutan Desa) licences to increase awareness of their rights, responsibilities and governance mechanisms, including fair benefit sharing and the processes and criteria for future extension of the Village Forest licence once received.
- Basic implementation of free, prior and informed consent is lacking in the Village Forest identification and implementation process.
- Without real consultation and consent, risks of conflicts between individuals and groups involved in a Village Forest scheme and the intended role and goal of the scheme are high and can lead to elite capture of the Village Forest governance system and benefits.
- Granting Village Forest licences without considering local rights, traditions and claims can lead to conflict between customary and administrative norms, institutions and practices.
- Principles and criteria are provided on how free, prior and informed consent could be integrated starting from the initial preparation phases in order to benefit the broader communities.
- Trainings and access to capital and skills for community forest management and harvesting of NTFPs are crucial if gains and livelihoods are to be realized from these schemes.

communities, including women. FPIC is intended to safeguard their material interests, cultures and ecological values and minimize harm. The process should be free from force, intimidation, coercion, or pressure by anyone (government, company, organisation).

Crucial components of FPIC are proper access to information, legal support and sufficient time for discussion. Prior implies that communities must be given enough time to consider all the information and reach a decision. It is also important that proper interpretation of the information is made. Because every community is different and has different decision-making processes, any affected community should begin its involvement by being included in negotiations on how much time is required. This is fundamental for procedural justice. Equally important for communities exercising FPIC is to ensure that their systems of decision-making are genuinely represented and decisions are made in ways that are inclusive of, and accountable to, members of the communities. Indeed, there are usually many opinions and decision makers in every community and consent from one faction might not represent the entire group. It is, therefore, important to agree on a practical and unequivocal definition of FPIC based on customary, appropriate, deliberation processes, such as ‘musyawarah’^[1].

A fair, informed and transparent decision-making process, based on FPIC and the acknowledgment and protection of existing rights, gives all stakeholders the opportunity to fully and actively participate in the decision-making process. However, it is also crucial in the process to have an internal mechanism to evaluate what has been agreed upon, monitor implementation, record the process and allow revision. The opportunity for revision is crucial because local communities and indigenous people may not have had experience with the process, which might unfold in ways that do not meet their expectations. Hence, periodic review is important. Monitoring is effectively the consent process itself and needs to be done in order to ensure transparency and informed consent.

[1] Musyawarah is a customary practice of consensus decision-making in Indonesia observed in village meetings. The concept involves developing a consensus in village assemblies, which emerges as a unanimous decision called ‘mufakat’. This decision can be reached by a process in which the majority and minorities approach each other by making the necessary readjustments in their respective viewpoints or by an integration of the contrasting standpoints into a new conceptual synthesis. It excludes, therefore, the possibility that the majority will impose its views on the minorities (Kamawura 2011). This brief focuses on consent rather than consultation. It is important to respect how consent is manifested culturally by customary communities in addition to the mere physical signing of agreements but power relation are in play, often in many subtle ways.

Why is FPIC relevant for the establishment of community-based forest management schemes?

Much of the attention on FPIC in Indonesia has focused on development projects or investments in the agricultural sector, especially oil palm, and sometimes in the context of REDD+, where the intention is not to deprive communities of their livelihoods and negotiations are undertaken with the ‘agents of intervention’ to allow use of land or other natural resources and share the benefits (for example, land conversion or carbon stocking).

Little attention has, however, been given to how FPIC could be applied conceptually in community-based forest management (CBFM) mechanisms where authority is delegated to local communities. CBFM is meant to transfer to forest communities access and management rights for land and forests. Ideally, it can provide communities with tangible security over such resources. However, if imposed in a rushed, ‘top-down’ approach and without real understanding of the intention, it could lead to potential governance issues in a community. In this brief, we are suggesting that basic ideas of FPIC, such as proper information dissemination and broad participation, that achieve consent are crucial components for the successful acceptance and understanding of any such program.

Village Forest (Hutan Desa)

A CBFM scheme being promoted by the Ministry of Environment and Forestry throughout Indonesia is the Village Forest (Hutan Desa) licence, which gives the right to villages to manage state-owned forest land for a period of 35 years, renewable for a further 35 years, subject to approval of an annual work plan. Areas that can be recognised as Village Forest must be administratively part of, and managed by, a village institution charged with the task of improving general village welfare. Such areas are located in state-forest zones and include ‘protection’ and ‘production’ forest categories as long as there is no existing permit for the designated area. A village that is granted a licence is required to establish a committee (Lembaga Pengelola Hutan Desa/LPHD) to manage it. The committee is also responsible for submitting detailed annual (Rencana Tahunan Hutan Desa/RTHD) and long-term (Rencana Kerja Hutan Desa/RKHD) work plans to the provincial governor in order to receive a Licence of Village Forest Management (Hak Pengelolaan Hutan Desa/HPHD).



Area allocated for Village Forest in Kapuas Hulu, West Kalimantan. (photo: Sébastien de Royer/World Agroforestry Centre)

No study has yet been made of the implementation of Village Forest licences to determine whether communities targeted by such schemes were involved in a way that showed they clearly understood the implications of the program. As stressed by Moelino et al (2015), it seems that CBFM in Indonesia is often seen by local governments as a tool to legalise forest occupation by local people and, thus, more often accepted by 'accident' rather than because of understanding the benefits of collaboration and/or to achieve improved forest governance. It is maybe for this reason that to date little effort seems to have been spent on strengthening institutions and ensuring the application of free, prior and informed consent.

However, in order to be inclusive and fair, the process of any CBFM scheme, such as a Village Forest licence, should ensure inclusion of a broad range of community interests. Local communities are often not homogenous and certain dominant groups might use management plans to access land and to legitimise their control of resources. Nor are village communities necessarily egalitarian and inclusive, thus, CBFM schemes might result in benefiting only certain elites, excluding a large proportion of the population, particularly, women and vulnerable people. Dominant groups might use external interventions, such as a Village Forest licence, to strengthen their claim of superiority over more marginalised, less-organised groups. These are internal village governance issues that could be further exacerbated if the social and power relations within communities are ignored.

An efficient and effective application of FPIC principles could safeguard the different interests within a community and ensure that respect and understanding are included in the preparation of work plans. Such a process could strengthen the ownership of the process and reduce the likelihood of conflict within a community.

Findings from the field

Studies conducted of Village Forest licences in five different villages in Jambi and West Kalimantan provinces, which form the basis of this brief, revealed several critical issues.

- 1) The procedure for obtaining a Village Forest licence is more of a bureaucratic than an empowerment process. Villagers were often unaware of the mechanism, its objectives and implications. Most of the villagers interviewed had not been invited to any introductory event for an explanation of the process nor to participate in training. Respondent villagers were not satisfied with the dissemination of information about the objectives and implications of the program. In many cases, not even a photocopy of the regulation (P.89/Menhut-II/2014) was available in the village so that residents could read for themselves the stipulations of the licence.
- 2) Village Forest committee members had not shared information adequately with the rest of the village. Residents mentioned that because they were not part of the committee they had no access to proper information. Information only reached management groups and village elites. This unequal access to knowledge increased the risk of elite capture because only a few influential people seemed to be familiar with the concept and limited, by default, the participation of others.
- 3) Women had not generally been invited to any 'socialisation'^[2] events regarding the scheme. They had little power in decision-making related to the management of the Village Forest licence and had restricted access to information about it. Their participation was marginalised when the scheme was promoted at meetings, especially if the majority of participants were male. Female respondents expressed that they did have not much to say because forest management was made to be seen as a male affair. They did not really understand the rules and objectives of the licence and were unclear about area boundaries. It was presumed that if the head of the household, who was usually male, attended then that sufficed for informing all members of the household. In none of the studied villages was there a female committee member^[3].

[2] In Indonesian, 'sosialisasi' refers to the process of popularizing something to the public or a specific target group.

[3] We hope that this is not the case in other Village Forest schemes.

- 4) In most of the studied villages, there was a risk of poor leadership because the heads of the committees had been appointed based on their social status within the village rather than their interest in the scheme. Some heads had even been appointed against their wishes. The process of selecting committee members had been more through an appointing process by the few village members who were invited during socialisation rather than a voting process. Democratic voting that involved all concerned, including women, had not taken place. Although voting processes can create factions, a true 'no objection' to those appointed needed to be established.
- 5) In most of the villages studied in Jambi Province, the majority of villagers had not been involved in mapping the potential Village Forest area and were often totally unaware of the boundaries of the licenced area. In some villages, the maps used for the allocation of land under the scheme were former concession maps of companies that were granted timber licences in the past. Forestry officials were using these maps to speed the licensing process. When participatory mapping exercises had been conducted for the demarcation of the prospective area, they often only involved committee members. Respondents frequently mentioned that Village Forest followed some administrative boundaries within the village domain and did not represent people's interests, local cultural domains or claims.
- 6) Tensions between committee members and villagers over management of the licence were commonly found, especially in Production Forest areas. There were multiple interests competing over the uses, benefits and management of the licences. The process was often entangled in complex intra-village contention, internal politics and conflict between individuals and groups. Contention was commonplace between villagers and committee members and mistrust on the villagers' side was often noticed. Interests were often different and the contentious social relations might hinder the success of the scheme.
- 7) In some villages, not everyone was willing to be part of the program. For example, in one village in Kalimantan not all sub-villages were involved in the program. One of the sub-villages stepped back from the proposal owing to a lack of understanding and a web of complex intra-village contention.
- 8) So far, Village Forest licences have mainly benefited a few individuals and have not been successful in generating any substantial benefits for broader village communities; the latter being the intention of the program (Ministry of Forestry 2014). In some villages located in Production Forest zones, the wealthiest members benefited from the scheme by acquiring usufruct rights to land through monetary transactions. This was the case in one of the studied villages in Jambi. In this village, after the granting of the licence the committee promulgated a village law allowing individual households to open 3 ha each in the Village Forest zone for rubber cultivation. Less advantaged villagers did not benefit from this situation owing to a lack of financial capital while the wealthiest members were able to bring up to 50 ha under their control, leading to jealousies among community members.
- 9) In some other cases, people had been trained in activities to improve their livelihoods, such as honey harvesting. However, training had only benefited a few individuals. The ones who were trained, including committee members, were generally encouraged to distribute their knowledge to the rest of the villagers but generally failed to do so, justifying themselves by saying that they did not dare divulge information prior to the final management licence being granted by the government^[4].
- 10) Village Forest is formally defined as a state forest not encumbered by any rights or permits. 'No existing permits' means that there are no permits given by the state (Moelino et al 2015). In this context, the traditional rights of local people are not recognised. However, in places such as West Kalimantan where indigenous communities hold strong attachments to, and exclusive rights over, customary territories—and land-based identity is very strong—the concept of a Village Forest licence might not be well understood since the underlying belief is that forests belongs to the community through customary 'adat' rights and not to the state. A Village Forest licence remains part of the state-forest zone. Agreeing to such a licence granted under the state's apparatus implies that the customary communities recognise the jurisdiction of the state over the forest lands that they have managed through customary norms.
- 11) In some areas of Jambi, villagers hold plots of land that they have inherited from their ancestors (former swidden fields locally called 'sesap') and which are now formally located in a Village Forest licence area. These plots can be the focus of contentious claims over land. The licence does

[4] In order to obtain approval to participate in Village Forest programs, local communities have to submit an application that includes maps of the proposed forest areas and information on land size, function and existing resources. The Ministry of Environment and Forestry in Jakarta sends a verification team to the field and determines the forest areas for the sites. After determination by the Ministry, the community is then required to submit a management plan to their local government in order to receive a management licence (Hak Pengelolaan Hutan Desa/HPHD).

not recognise these kinds of traditional land-inheritance systems and prior investments made by communities following their customary practices^[5].

- 12) Furthermore, granting Village Forest licences where sub-village boundaries are unclear and contested or without considering local rights and claims can exacerbate horizontal and vertical conflicts between customary and administrative institutions.
- 13) Last but not least, the initial licence period is aligned with only one generation (35 years), compared with commercial timber licences given to companies for 55 (natural forests) and up to 100 (plantations) years. Intergenerational equity and fair benefits should also be addressed.

[5] While the 1960 Basic Agrarian Law and numerous subsequent natural resource management regulations give much attention to the recognition of customary rights (Hak Ulayat), there is in fact little de facto recognition and, thus far, little political will.

Criteria for applying FPIC to the implementation of Village Forest licences

Based on these findings, we identified several criteria for applying basic ideas and principles of FPIC in the implementation of Village Forest licences. We have also drawn on guidelines and other documents on FPIC, including those produced by UN-REDD, Forest Stewardship Council and Gesellschaft für Internationale Zusammenarbeit (GIZ), and training material, such as *Putting free, prior and informed consent into practice in REDD+ initiatives* published by RECOFTC: The Center for People and Forests. See the references and bibliography for details. The aim is that government CBFM initiatives, such as Village Forest, recognise the importance of following an FPIC-like process during implementation and monitoring.

Criteria for application of FPIC in Village Forest schemes

1. Identify and map all rights-holders, existing rights and land-uses^[6]

- 1.1. Identify rights-holders and clarify who holds what rights in the targeted area (customary/traditional/legal rights)
- 1.2. Engage in participatory mapping
- 1.3. Map all tenure claims in the area from within the community, from neighbouring communities, and from the government or third parties
- 1.4. Ensure participatory mapping and assessment engage with all groups in a community, including women, youth, the poor, as well as established elders and elites

2. Inform local communities and rights-holders

- 2.1. Develop appropriate communication and information strategies
- 2.2. Ensure continuous and repeated socialization
- 2.3. Ensure important information on impacts, benefits and implications of the scheme are provided
- 2.4. Ensure that communities obtain independent information and advice about the plan

3. Identify appropriate decision-making institutions^[7]

- 3.1. Identify how communities make decisions (customary/formal)
- 3.2. Agree on a decision-making process that includes all members of a community
- 3.3. Agree on a decision-making institution aligned with the Village Forest committee that will speak for the community
- 3.4. Ensure that decision-making institutions are representative and appropriate through a voting process

4. Negotiate and let the community decide

- 4.1. Allow sufficient time for the community to discuss the Village Forest work plan
- 4.2. Ensure that communities decide freely if they want to enter into negotiations or not
- 4.3. Ensure that negotiations is done through the agreed decision-making institution and do not engage the wrong leaders in a way that leaves out the interests of the communities
- 4.4. Establish a mutually-agreed format for consent (an agreement that sets the conditions under which a community gives its consent)
- 4.5. Find ways to assure communities that their right to reject the work plan will be respected and that they have sufficient capacity to negotiate

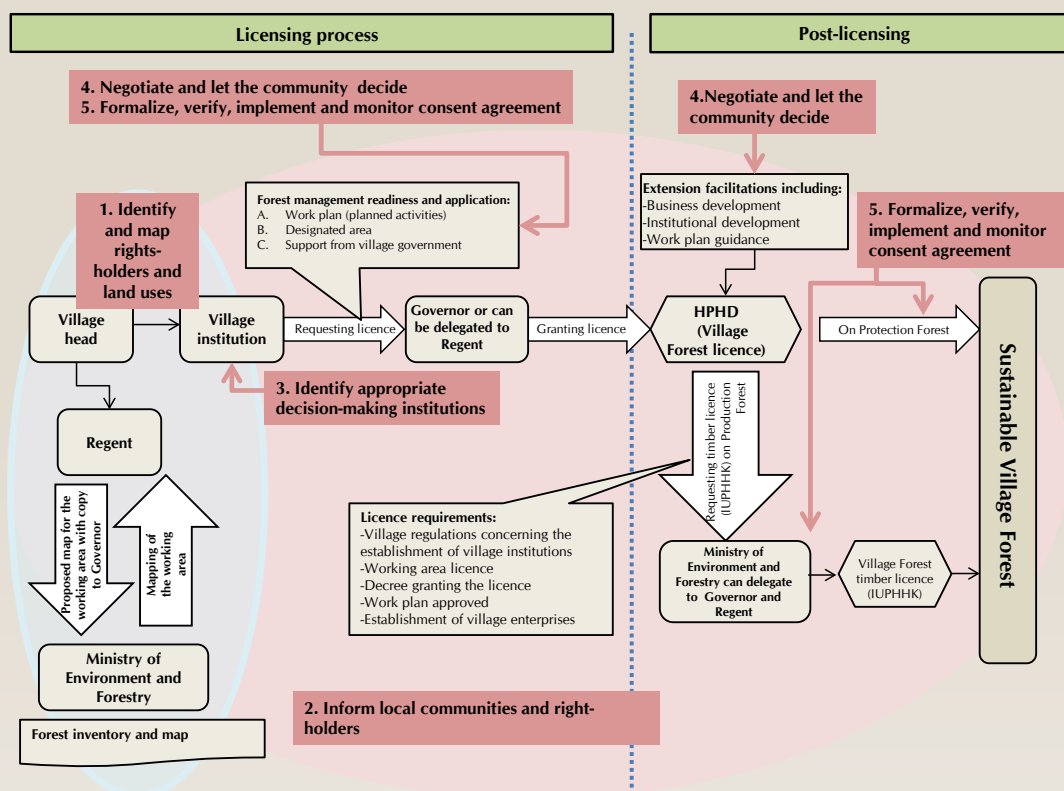
5. Formalize, verify, implement and monitor the consent agreement

- 5.1. Formalize the consent agreement in a culturally-acceptable way
- 5.2. Implement and monitor the consent agreement

Furthermore, prior to the granting of the Village Forest licence, a common vision of the Village Forest and its management needs to be established, including clear agreements on roles, rights, responsibilities and sanctions.

[6]—Identification of the 'rights-holders': those who have either statutory or customary claims to land and resources and from whom consent must be sought.

[7] Identification of the community institutions considered to be able to legitimately enter into negotiation.



Internal village governance process of applying FPIC criteria in Village Forest preparation phases.
(Source: World Agroforestry Centre/S. de Royer, G. Galudra)

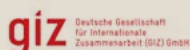
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Correct citation

De Royer S, Pradhan U, Galudra G. 2016. *Free, prior and informed consent? Village Forest (Hutan Desa) licences in Indonesia*. Brief no 62. Bogor, Indonesia. World Agroforestry Centre (ICRAF) Southeast Asia Regional Program.

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